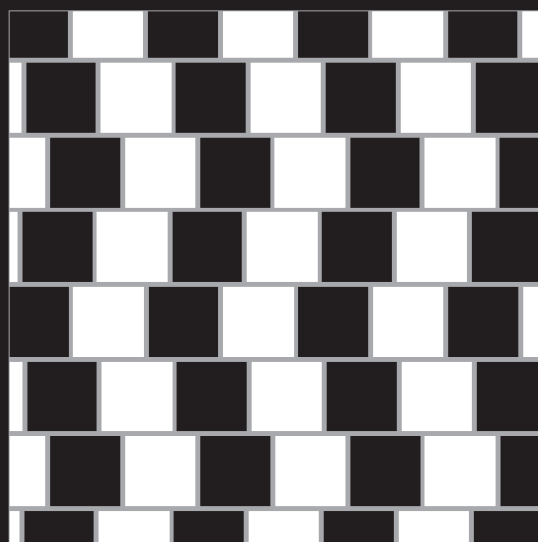


The State of Human Rights in Israel and the Occupied Territories



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The Association for Civil Rights in Israel (ACRI)

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Introduction

Each year, the Association for Civil Rights in Israel (ACRI) publishes a report on the state of human rights. This year's report, published to coincide with International Human Rights Day on December 10, provides a survey of the human rights situation in 2007 in Israel and the Occupied Territories. Through the report, ACRI wishes to draw attention to the most flagrant human rights violations, note positive trends and developments, and trace significant human rights-related processes that affect Israeli citizens and residents. In preparing the report, we relied on a variety of information sources, including: government publications; NGO reports; newspaper articles; parliamentary documents; and court litigation.

The principal infringements of human rights stem from the policies and actions of government authorities, which either fail to protect rights or violate them directly. The "blanket" of rights that the State is supposed to ensure for all individuals is steadily shrinking, leaving more room for rights violations and exposing more people to human rights infringements, often those who belong to the periphery. In light of this worrying situation and the negative impact it has on the fabric of society, the continued silence of the Israeli public concerning human rights violations is deafening. ACRI's aim in publishing this report – and sharing its contents and their significance with decision-makers, the media, and the general public – is to reduce the disparity between the importance of human rights (to every man and woman, to democracy, and to society) and the place afforded them by the Israeli public.

In recent years, we have witnessed a growing trend toward unequal access to health services and the evolution of two separate health systems that are fundamentally different in terms of quality – one for the wealthy and the other for the poor. Public medicine is on a downward spiral that threatens to erode social solidarity.

Fear, stereotyping, and delegitimization characterize the Jewish majority's relations with the Arab minority in Israel. These attitudes are reflected, in part, by racist legislation and draft legislation, by the "special treatment" that Arab citizens receive at airports, and by attempts to limit the right of Palestinian citizens of Israel to participate equally in political life and express their views, collective identity, collective memory, and shared vision.

We have chosen to devote special attention in this report to two populations that are rarely in the public spotlight: the residents of East Jerusalem, whose dire living conditions are the result of deliberate policies that have perpetuated neglect and discrimination for the past 40 years; and the Bedouin residents of the unrecognized villages in the Negev, who are subject to continued discrimination in planning and land issues, and who faced a particularly harsh policy of house demolitions during the past year.

Phenomena that characterize trafficking in persons – such as "binding" workers to a single employer and demanding that they pay brokerage fees – still prevail. Regulations and procedures for formalizing the legal status of foreign spouses, parents, and children of Israeli citizens remain, for the most part, shrouded in fog. While there have been a number of improvements in regulations concerning acquiring status in Israel, immigration policies toward non-Jews have stiffened. The "temporary" ban on granting legal status in Israel to Palestinian spouses of Israeli citizens and residents has been in effect for more than five years. The considerable rise in the number of refugees arriving in Israel (mainly

through Egypt) in the past year was accompanied by the government's increasing evasion of its moral and legal obligations toward refugees and asylum-seekers.

The continuing violations of human rights in the Occupied Territories are described in ACRI's reports year after year. The reality of life in the Occupied Territories means that even the most fundamental rights are not guaranteed. This year's report highlights restrictions on freedom of movement, which render it almost impossible for West Bank residents to maintain an ordinary day-to-day life; the situation in Hebron, a microcosm of all the violations brought about by the ongoing occupation, the settlements, and Israeli policies in the Occupied Territories; and the dire situation in Gaza, primarily focusing on the consequences of Israel's decision to close the crossings to and from the area in response to the take-over by Hamas.

There were encouraging developments this year regarding the rights of workers and job-seekers. It appears that efforts to raise public awareness about the exploitation of contracted workers, together with the public pressure that followed, finally prompted the government to take responsibility – as both the country's largest employer of contracted workers and as the authority charged with enforcing employment laws. We hope that the momentum of the important developments of the past year will continue so that contracted workers will be able to work with dignity. Harsh public criticism was also effective in bringing about a reassessment of the welfare-to-work plan (also known as the "Wisconsin Plan") and introducing fundamental changes to its implementation.

In the field of criminal justice, it is important to note on the one hand the enactment of new legislation that prohibits imposing prison sentences on unrepresented defendants. On the other hand, the right of a person to be present at hearings concerning his or her case is being eroded.

Technological developments have advanced freedom of expression and information, but also raise dilemmas and conflicts between these rights and other rights and interests. The primary danger stems from the harmful use of databases and the Internet to invade the privacy of workers (by their employers) and citizens (by government authorities), which present new threats to the right to privacy that even the fertile imagination of George Orwell could not have envisioned.

All of these topics, and more, are addressed in the following report. To find out more, please visit ACRI's Web site (www.acri.org.il).

The Right to Health: Better to be Wealthy and Healthy

The right to health is a fundamental right. Under the provisions of the National Health Insurance Law, enacted in 1994, every Israeli resident is entitled to health services in accordance with the principles of justice, equality, and mutual support.¹ However, given its shortcomings over the last decade, the Israeli health system is far from being able to adhere to these principles. On the contrary – we are witnessing increasing inequality in access to health services. Insufficient funding of the public health system, coupled with

The current erosion of state-provided health services undermines the social contract between the State and its citizens, and severely violates basic rights.

privatization of health services, have led to deterioration in the scale and quality of services provided by the health system – the only system accessible to weak populations and even a good portion of the middle-class. Decreased funding for the public health system (in 2004 Israel was among the industrialized countries with the lowest national spending on

health) presents a hardship for needy citizens who require medication and medical services, and it requires that all insured persons (who can afford to do so) contribute toward the cost of their medical care. The result is two health systems that differ substantially in quality – one for the wealthy and one for the poor. The current erosion of state-provided health services undermines the social contract between the State and its citizens, severely violates basic rights, and reneges on the State's obligations under the International Covenant for Economic, Social, and Cultural Rights. This report focuses on the effects of the underfunding of the public health system, with special emphasis on the hospital crisis; the simultaneous erosion of the health services basket and growth of supplemental insurance plans; and the exclusion of various population groups that have very limited access to health services.

Distress in the Hospital System

Over the past few years, government funding for health services has been declining, and the 2007 budget continues this trend. The Ministry of Health's budget allocation per capita (excluding supplements to the Kupat Holim [health funds] service package and mental health services) for 2007 is 14% lower than that of 2001; the Ministry's development budget for 2007 is 43% lower than that of 2001.²

Functioning in the midst of budget distress, public hospitals have suffered in recent years from a lack of planning and a steady erosion of their budgetary and human resources allocations. The price is being paid by the patients, whose rights under the Patients' Rights Law and the National Health Insurance Law to quality health treatment, sound health, dignity, and privacy are being violated. Other victims are the medical personnel, who are forced to work under stressful conditions that prevent them from offering their patients the best possible treatment. A position paper published by the

¹ It should be noted that while the law expanded insurance coverage for Israeli residents and provided protection for persons who were previously uninsured, it was incomplete from the start. The health services basket does not include mental health services, nursing care, or dental treatment.

² Barbara Swirski, "A Budget Deficit Becomes the Norm: The Health System Budget for 2007", Adva Center and Physicians for Human Rights, December 2006, <http://www.adva.org/view.asp?lang=he&catID=8&articleID=431>

Israel Medical Association³ in January 2007 contained the following data highlighting the crisis in the hospital system:

- The approved number of hospital beds is not updated in accordance with the population growth rate and aging population. The hospital beds/population ratio has thus decreased. In 1970, the number of beds per 1,000 persons was 3.27; by 2004, that number had dropped to 2.1 beds per 1,000 persons, and at the start of 2007 it reached 1.94 – the lowest figure in the Western world.

The number of approved hospital beds per 1,000 persons reached 1.94 in 2007 – the lowest figure in the Western world.

- Since the approved number of beds has not changed, the growing need has been met by the addition of "non-approved" beds: approximately 25%-30% of all beds in hospital internal medicine units (IMUs) have been added beyond the number permitted by government standards. As a result, the units have become so overcrowded that some patients' beds are placed in corridors, depriving those patients of their rights to privacy and dignity and reducing the medical staff's ability to provide adequate treatment.
- On routine days, the average occupancy rate in hospital units is 100% (as opposed to 85% in the Western world). In winter, as might be expected, occupancy rises: in the winter of 2006/7, occupancy in the IMUs and pediatric units of general hospitals reached 130% and 112%, respectively.⁴
- Because of the acute need for beds, hospitals are sometimes forced to release patients before they have completed their treatment. The result is a "revolving door" situation in which the same patients whose medical problems have not been fully solved return to the hospital to reoccupy beds. But since they cannot remain there until they have fully recovered, they are released, and the cycle begins anew.
- The enormous overcrowding in hospital units is conducive to the spread of infections, viruses, and diseases.
- The number of hospital personnel is determined by the number of approved beds rather than by the actual number of beds in use (which is much higher). As a result, doctors are responsible for larger numbers of patients: in a unit containing 38 beds, one doctor is charged with the care of at least 11 patients, as opposed to 5 or 6.

The distress is particularly alarming in general and respiratory intensive care units (ICUs), where there are essentially two problems. Firstly, as in IMUs, the approved number of beds is insufficient for meeting the actual needs; secondly, the cost of ICU beds is much higher than the cost of IMU beds. The Ministry of Health does not set realistic budgets for intensive care units. Although budgeting has been improved for the hospitals' benefit since 2005, it still does not reflect the total costs involved in operating

³ "The Hospital System – The Big Failure", Position paper, Israel Medical Association, Association of Hospital Directors, Internal Medicine Association, Association for General Intensive Care, The Association for Emergency Medicine, and Geriatric Association, January 2007, http://www.ima.org.il/Ima/FormStorage/Type1/emda_herum_metzuka.doc.

⁴ According to a report by the Israel Center for Disease Control of the Ministry of Health, January 13, 2007, as quoted in the position paper, "The Hospital System – The Big Failure", cited in fn. 3.

ICUs (for human resources, operating expenses, and special medical equipment).⁵ The result is that hospitals are sometimes hard-pressed to operate even the approved number of beds in ICUs. In February 2007, the Ministry of Health announced that Israel currently lacks 500 ICU beds.

When beds are lacking in ICUs, there is no alternative but to move some patients in need of intensive treatment to IMUs, despite the risk to their lives. A 2003 study found that the mortality rate in the first three days of hospitalization for patients not admitted to ICUs was double that of those who were admitted to these units.⁶ According to Israel Medical Association data,⁷ at the start of 2007 60% of patients on life support machines were being hospitalized in units other than ICUs.

One recommendation made by a special investigatory team established by the Ministry of Health in 2005⁸ was to add 3,000 hospital beds (some of them in ICUs) by the year 2015. In August 2007, however, the Ministries of Health and Finance announced that they had signed an agreement, prior to the vote on the 2008 budget, specifying that no new beds would be added to Israeli hospitals before 2010, apart from 85 beds at Hillel Yaffe Hospital in Netanya.

The Shrinking Health Services Basket

Ever since the passage of the National Health Insurance Law in 1994, the health services basket has steadily eroded, as has the guarantee that health services would be provided in accordance with the principles of justice, equality, and mutual support. The basket is adjusted annually according to representative indices, among them population growth, the aging population, and increases in the cost of services. However, the indices that were determined by law do not cover all needs, and every adjustment that falls outside of their scope requires a government decision, which is usually through the Budget Arrangements Law or an amendment to the Budget Law. Moreover, the Ministry of Finance refuses to anchor in law a mechanism for a regular update that takes into account technological advancements in medicine – new drugs, equipment, and procedures; this is counter to the Ministry of Health's view that a mechanism should be put in place that would increase the worth of the basket automatically by 2% each year. In the end, decisions about the size and contents of the basket often come about as a result of public pressure, though they never fully meet existing needs. Calculations by the Adva Center, which take into account additional indices for adjusting the basket, indicate that between 1994 (when the National Health Insurance Law was passed) and 2007, there was a 44% decline in the funding for the health services basket.

The gaps in the health services basket are filled by the supplemental insurance plans offered by the Kupot Holim [health funds] that provide medication and treatment not included in the basket to insured members of the funds, at an extra cost. These plans are a hybrid of public and private health insurance: the Kupot Holim, charged with dispensing public health services, sell these services privately to their members, subject to government supervision. Over 70% of the public currently holds supplemental health

⁵ Shelly Levi, "The Hospitalization Crisis in General Intensive Care Units of Israeli Hospitals", Knesset Center for Research and Information, February 2007.
<http://www.knesset.gov.il/mmm/data/docs/m01691.doc>.

⁶ Introduction to "The Hospital System – The Big Failure", cited in fn. 3.

⁷ Ibid.

⁸ "The Hospitalization Crisis in General Intensive Care Units of Israeli Hospitals", cited in fn 5, as well as "The Hospitalization System – The Big Failure", cited in fn. 3.

insurance plans; the other 30% of the population relies entirely on the medication and treatment contained in the national health services basket, some of which also require the payment of fees. Should they require treatment not included in the basket, they must pay for it privately. For the most part, of course, it is Israel's disadvantaged population groups that are not covered by supplemental health insurance plans: 33% of persons age 65 and older, 53% of the Arabic-speaking community, and 42% of the Russian-speaking community do not hold supplemental insurance plans – as opposed to 11% of the Hebrew-speaking community.⁹

Between 1994 and 2007, there was a 44% decline in funding for the health services basket.

At the start of 2007, the Ministry of Health permitted the large Kupot Holim, Clalit and Maccabi, to upgrade their supplementary insurance plans to include life-saving drugs and other essential treatment not contained in the health services basket. This step was taken in flagrant violation of the right to equality and could lead to a steep decline in national health insurance coverage. The vulnerable populations

left outside the supplemental health care system will be unable, by themselves, to apply the necessary public and political pressure to make adjustments to the basket. In early August 2007, the Health Minister responded to public pressure by refusing to permit an upgrade in supplemental health insurance, and the 2008 Arrangements Law included a section that prohibits supplemental insurance plans of this type. At the same time, the Health and Finance Ministers reached an agreement to expand the health services basket by approximately NIS 1 billion by the year 2010 in annual increments of NIS 325 million. In this way, theoretically, life-saving drugs that were to be available only through supplementary insurance plans will enter the health basket and be accessible to the entire population. It should be noted, however, that rather than insisting on a percentage-based, automatic mechanism for adjusting the basket¹⁰, the Health Ministry once again compromised by agreeing to a fixed sum for additions to the basket. The agreed-upon sum is still not sufficient to compensate for the erosion of the health services basket.

Unequal Access to the Public Health System

Vulnerable Population Groups

A report published by Physicians for Human Rights¹¹ in April 2007 describes the mechanisms which are rendering public health services guaranteed by the National Health Insurance Law difficult to impossible to access for various population groups in Israel. The report concludes that the distance of any particular group from Israel's social center determines its ability (or inability) to realize its right to access health services. The groups excluded by various mechanisms include: low wage earners; Bedouin residents of the unrecognized villages in the Negev; Palestinian residents of East Jerusalem; Israelis married to residents of the Occupied Territories; prisoners; Palestinian spouses of Arab citizens of Israel; migrant workers; refugees and asylum-seekers; and victims of

⁹ See, for example, Shelly Levi, "Kupot Holim Complementary Health Insurance: Data and Questions for Discussion", cited in fn. 5.

¹⁰ The anchoring in law of an automatic mechanism for adjusting the basket has been on the public agenda for the past decade and now enjoys almost unanimous support from health policy professionals.

¹¹ "The Israeli Health System: Inclusion and Exclusion Cycles", Physicians for Human Rights, April 2007.

human trafficking. In total, these groups comprise approximately 1.25 million men and women.

One of the exclusion mechanisms preventing hundreds of thousands of people in Israel from realizing their right to health is the ability to pay. The Arrangements Law of 1998 permitted the Kupot Holim to charge members partial fees for medication and medical services, as well as to add new charges for additional services. Over the years, these fees have been rising: the financial participation of Kupot Holim members in covering the cost of medication has increased by an average 35%.¹² According to Ministry of Health data, Israeli citizens are ranked third in the world in their private spending on medication, covering 56% of the national expenditure on medicine with their own funds. In many instances, members of Israel's vulnerable population groups are unable to afford these expenses.

A Brookdale Institute report¹³ noted that in 2005 15% of Israeli residents – about one million men and women – reported not buying medication prescribed for them; the percentage among low wage earners was 23%. Thirty percent of low wage earners and 20% of chronically ill patients reported choosing to forgo medical treatment or prescribed medication in 2005 due to the cost. A 2006 Israel Medical Association survey of a representative sample of Israeli Jews,¹⁴ found that 23% of this public abstained from some form of medical treatment – a doctor's visit or the purchase of essential medication – for themselves, their children, or their parents. Most of those who forwent treatment were Orthodox or ultra-Orthodox Jews, low wage earners, and people from families of five or more members. For 30% of them, abstention from treatment led to a deterioration in their health. According to the same survey, more than half of Israel's Jewish population (56%) is not confident that it will be able to afford medication if needed. We can surmise that the situation among the Arab population, who account for a greater proportion of low wage earners, is even worse. It is important to emphasize that the payments in question are not for services offered by supplementary health insurance plans (upgraded or not); they are private payments for public health services that are supposed to be accessible to all.

The Center and the Periphery

In peripheral areas, particularly in southern Israel, low socioeconomic status is correlated with limited access to health services. Relative to the central region, a high percentage of the population in peripheral areas are from vulnerable groups that include new immigrants and Bedouin residents of the unrecognized villages. Health indicators in the South are consistently lower than those of the Center. Israel's lowest average life expectancy rate, for example, is recorded for the communities surrounding Beer Sheva; and the infant mortality rate in the South is 7.6 per 1,000 live births, as opposed to 3.3 in the Center and 3.1 in Tel Aviv.¹⁵

Public health services are far less available and accessible to residents of peripheral areas, particularly in the South, than for residents of central Israel. The distress in

¹² Ibid.

¹³ Cited in "A Budget Deficit Becomes the Norm: The Health System Budget for 2007".

¹⁴ Prof. Avi Dagani and Dr. Rina Dagani, "Public Opinion Regarding the Public Health System in Israel – The Poverty Report", January 2007, <http://www.ima.org.il/Ima/FormStorage/Type1/poverty012007.ppt>.

¹⁵ Leon Epstein and Tuvia Horev, "Inequality in Health and in the Health System", Taub Center for Social Policy Studies in Israel, September 2007, http://www.taubcenter.org.il/files/H2007_Health_Inequality.pdf.

hospitals is also more acute in these areas, evidenced, among other things, by a shortage of doctors (especially specialists) and medical equipment. For example:

- The ratio of general hospital beds per person is lowest in the South (1.5, as opposed to 2.66 in Tel Aviv, and 2.7 in Haifa); the rate of dialysis stations is 3.2 per 100,000 persons in the South, as opposed to 8 in the center and 12.3 in Haifa; and the rate of emergency medical stations in the South is 6.4 per 100,000 persons, as opposed to 15.2 in Tel Aviv, 25.6 in Jerusalem, and 20.4 in Haifa.¹⁶
- The quantity of specialized medical equipment, such as CT and MRI scanners, is significantly lower in the North and South than in the Center and in Haifa.¹⁷
- Not a single neurosurgical department exists in the entire Galilee region, home to 1.2 million persons.¹⁸
- Despite significant improvement in recent years, ambulance coverage is still not fully adequate in all regions, and there exists a great disparity between the response times in different parts of the country.¹⁹

Public health services are far less available and accessible to residents of peripheral areas, particularly in the South, compared with residents of central Israel.

These gaps are evidenced in daily life in peripheral areas and in the residents' level of satisfaction with the public health system. Just a two-hour drive away from Tel Aviv, there are far fewer medical specialists and the waiting period for appointments can last for many weeks; in many cases hospitals are often only able to provide preliminary examinations, and in more complicated cases patients and their families are forced to travel to the Center to receive treatment (which necessitates additional expenses); and sometimes, even in life-threatening situations, there

is no choice but to transfer patients to the Center, even if the time lost in doing so has critical ramifications. It is possible to argue that in certain areas of specialization, the optimal utilization of resources requires that treatment should be concentrated into a limited number of national institutions; however, even these must be accessible to the entire population within reasonable time frames, and through an efficient public transport system. In general, it stands to reason, and the principle of distributive justice demands, that the State invest in the development of local health services where they are lacking, and in areas where the residents are in special need of available and accessible health services.

¹⁶ Ibid.

¹⁷ According to a report on health in the Negev by the Center for Health Policy in the Negev, Ben-Gurion University of the Negev (a collection of data and reports that were published by individual researchers and government institutions between 2003 and 2006), included in a petition filed by the Beer Sheva group: Equality in Health, Physicians for Human Rights, and the Movement for Freedom of Information, HCJ 1793/07 *Zoresky vs. Kupat Holim Clalit*, http://www.phr.org.il/phr/files/articlefile_1184088385296.doc.

¹⁸ Orna Cohen, "Far from Success", *Medical Time*, 3 (24), May 2007.

¹⁹ Kobi Peleg, "Equity and Accessibility to Emergency Medical Services at the Pre-hospital Stage", Taub Center for Social Policy Studies in Israel, November 2005.

The Rights of Workers and the Unemployed

Subcontracted Workers

The number of Israeli workers hired through employment agencies and service contractors has grown considerably in recent years. According to this employment model, employees perform work for an organization, though they are formally employed not by the organization but by a third party – the contractor. In general, the employment status of workers hired by contractors is lower than that of other wage earners, and contracted employment is common primarily among weak groups in the labor market – migrant workers, women, and new immigrants. The average wage of subcontracted workers is 60% of the average general wage, and only 5% of subcontracted workers earn NIS 25 per hour or more. Even when the day's pay for a subcontracted worker is equal to that of a salaried worker with a similar position in the organization, he or she does not receive certain benefits included in collective agreements, which sometimes constitute a very significant part of the monthly pay. The rights of subcontracted workers, most notably those hired by contractors for cleaning and security services, are routinely violated to an alarming extent. Among the most common violations of workers' rights in these fields are: paying below-minimum wages; employing people for overtime work (including holidays) illegally and with no remuneration; firing workers without paying severance; withholding social benefits; preventing leave or withholding salary during leave; reducing pay through illegal deductions and fines; and attempting to crush labor organization.

The directive of the Ministry of Finance's General Accountant represents a significant breakthrough in protecting the rights of subcontracted workers employed in government ministries.

Human rights organizations, as well as public bodies and representatives, have been leading a struggle in recent years to draw attention to the deplorable exploitation of subcontracted workers and to take steps to protect their rights. It appears that these efforts have begun to bear fruit, and that public pressure influenced the State to finally take responsibility – as both the country's largest employer of subcontracted workers and the authority charged with ensuring that labor laws are enforced. Important developments in the last

year offer some hope that subcontracted workers in Israel may have a better chance of working in dignity:

- In March 2007, the Ministry of Finance's General Accountant, Dr. Yaron Zelekha, issued a directive for all government ministries that conduct business with employment subcontractors through tenders. The directive details all social benefits that subcontracted workers are entitled to receive under labor protection laws, and instructs any subcontractor bidding on a government ministry tender to attach to their bids a detailed breakdown of the cost of employing workers. According to a follow-up directive by the Director-General of the Ministry of Interior, as of July 2007 the directive also applies to local authorities. The directive represents a significant breakthrough in protecting the rights of subcontracted workers employed in government ministries, and it is hoped that it will bring about a reduction in the violation of their rights.

- More severe measures are being taken against subcontractors that violate labor laws: In another directive addressed to companies submitting bids for tenders published by government ministries or local authorities for manpower services, the Ministry of Finance's General Accountant required that the companies present confirmation from the enforcement department of the Ministry of Industry, Trade, and Labor that they have not violated basic employment laws – guaranteeing minimum wage, a day of rest, and remuneration for overtime – in the previous three years.
- In June 2007, the Knesset approved the first reading of a draft bill²⁰ requiring that the organizations actually using the services of subcontracted workers take responsibility for protecting their rights. The bill specifies that subcontracted workers whose rights have been violated can demand their legal rights from those who ordered their services and are their actual employers. This would provide employers with an incentive for ensuring that the subcontractors with whom they work do not violate workers' rights. The draft bill, which was initiated by the Forum for the Enforcement of Workers' Rights,²¹ was first brought to the Knesset for a vote in November 2005, but the Ministry of Finance derailed the effort.
- The struggle against "loss tenders": "Loss tenders" are tenders in which the lowest bid offered for the supply of services wins, despite the clear violations of workers' rights entailed by the terms of the winning bid. The actual employer – in many cases the government – is aware that the fee it pays to the winning subcontractor is not sufficient for the subcontractor to pay the workers whatever they are entitled to according to the law; to make a profit, the subcontractor will need to erode the workers' rights. Worse still is the fact that the conditions of tenders sometimes stipulate a maximum price that does not enable subcontractors to pay their workers in accordance with their workers' rights – rights which are enshrined in the labor protection laws. The aforementioned General Accountant's directive sets a minimum price for the cost of employing subcontracted workers.

The Wisconsin Plan

In August 2005, a program named "Mehalev" (a Hebrew acronym for "from guaranteed income to guaranteed employment" – better known as the "Wisconsin Plan") went into effect. Its purpose was to reduce the number of guaranteed income recipients by integrating them into the job market. The government decided that private firms would operate the program in four cities – Jerusalem, Ashkelon, Hadera, and Nazareth – for a trial period of two years. A Mehalev administration was established within the Ministry of Industry, Trade, and Labor to oversee the program.

Even before it got under way, the program was the target of severe criticism by human rights organizations, which noted, among other things, that it had failed in its country of origin – the U.S.

Once the program was up and running, Mehuyavut – Commitment to Peace and Social Justice, Yedid, Sot El-Amal (Laborer's Voice), and other organizations that closely

²⁰ Client Responsibility for the Rights of the Employees of Service Subcontractors, 2007, <http://www.knesset.gov.il/Laws/Data/BillKnesset/153/153.pdf>

²¹ The members of the forum are: the Association for Civil Rights in Israel; Itach – Women Lawyers for Social Justice; Mehuyavut – Commitment to Peace and Social Justice; Hotline for Migrant Workers; Israel Women's Network; the Social Welfare and Legal Clinic at Tel Aviv University; and the Employment Welfare Clinic at Hebrew University in Jerusalem.

monitored the implementation of the program reported receiving thousands of complaints about ongoing rights violations and improper treatment of program participants. The organizations charged that the program ignored obstacles inherent in the job market that prevent some participants from being hired; that its format was unsuitable for many who were required to enroll, such as persons with disabilities, the elderly, parents of young children, new immigrants, and minority groups; that there was insufficient investment in employment support services such as vocational training, childcare, transportation subsidies, Hebrew-language study, and opportunities to complete formal education; and that participants attempting to appeal a decision made by the company's staff encountered a host of bureaucratic obstacles. The State Comptroller's report²² published on June 4, 2007, pointed to the program's failings in dealing with people with limited fitness for work, as well as instances in which the participants' skills and experiences did not match the employment plans devised for them. The Comptroller stated that the Mehalev director had not specified procedures and criteria in advance for withholding welfare benefits, despite the fact that the companies operating the employment centers are "private bodies that are likely to profit from the discontinuance of benefits." Even when procedures were set, stated the Comptroller, the program's administrators had no means of enforcing them.

The Dinur report concluded that "despite its good intentions and thorough planning, the program did not succeed in offering suitable tools to a significant portion of its clients."

Another report released in June 2007 came from an inter-ministerial committee appointed by the Prime Minister to review the program. Heading the committee was the Director-General of the Prime Minister's Office, Ra'anan Dinur. The report concluded that "despite its good intentions and thorough planning, the program did not succeed in offering

suitable tools to a significant portion of its clients," and that the economic model that provides incentives to companies to reduce the number of guaranteed income recipients did not achieve its goal. Like the charges made by organizations and the findings in the Comptroller's report, the Dinur Committee report described fundamental problems in the program. It recommended establishing a new program that adopts the following policies: incentives will be offered to the companies based on the quality of the job placements they achieve for participants rather than the number of welfare benefits they cancel; participants who encounter particularly difficult obstacles to entering the job market will receive more tailored assistance; until the program offers suitable employment-related tools, participants will be required to visit the employment centers for counseling sessions only; until the program expands its services to accommodate persons aged 45 and older, responsibility for these participants will be transferred to the National Employment Service; surveys of participants will be conducted on a frequent and regular basis to assess their satisfaction with the program; and the program's administration will be redefined to ensure effective government supervision of employment center activities. Also in June, the High Court of Justice rejected a petition by human rights organizations to revoke a decision by the Industry, Trade, and Labor Minister to extend the Mehalev Program for another four years. The Court was convinced that the program is still in its trial period and is being continually monitored and researched; that its character, operational details, and scale of implementation have yet to be fully determined; and that

²² State Comptroller, "Some Aspects of the Mehalev Program ("Wisconsin Plan")", June 2007, <http://www.mevaker.gov.il/serve/contentTree.asp?bookid=490&id=157&contentid=&parentcid=undefined&sw=800&hw=530>.

changes in the program were still taking place based on conclusions drawn from the ongoing monitoring. The revised program, titled "Employment Lights" and based on the recommendations of the Dinur report, got under way in August 2007. It is hoped that the government and Knesset will continue to act on recommendations for change so that the program can, to the greatest extent possible, improve the wellbeing of its participants.

The Rights of Palestinian Citizens of Israel

A Racist Spirit

Racism toward Arab citizens among the Jewish public in Israel continues to rise, as shown consistently in surveys and reports.

A number of examples include:

- According to the Democracy Index published by the Israel Democracy Institute²³ in June 2007, 87% of the public think that Jewish-Arab relations in Israel are not good, and only 50% agree that Jews and Arabs should enjoy full equal rights. 55% of Israeli Jews surveyed support the idea that the government should encourage Arab emigration and 78% are opposed to Arab political parties (including Arab ministers) joining the government. This is the highest percentage of opposition registered since the early 1990s.
- A report by the Center Against Racism²⁴ in March 2007 reveals a 26% rise in racist incidents against Arab citizens in 2006. The report published findings of an annual survey that keeps track of the Index of Racism in Israeli society. The survey shows that 49.9% of the Jewish population feels fear when hearing Arabic spoken in the street, 31.3% feels revulsion, 43.6% senses discomfort and 30.7% feels hatred. These findings indicate an increase in the negative feelings expressed by the Jewish population toward Arabs, in contrast to the previous survey of December 2005; the most prominent increase – almost double – was in the feeling of hatred toward Arabs (30.7% as opposed to 17.5%). 75.3% of those questioned declared that they would not agree to live in the same building as Arabs (as opposed to 67.6% in 2005); 61.4% are not willing to have Arab friends visit their homes – a dramatic increase since 2005 (45.5%); and over half the population (55.6% as opposed to 40.6% in 2005) agree that Arabs and Jews should have separate recreational facilities.
- Arab citizens of Israel are represented in a stereotyped, negative, and threatening light by the media, as shown, for example, in research by the Second Authority for Television and Radio²⁵ and the Keshev Center for the Protection of Democracy in Israel.²⁶

It does not take very much for feelings of fear, hatred, and racism to be translated into actions. The racist mood is manifested among the population in a variety of ways, from cries of "Death to the Arabs" in football stadiums, through building separation fences

²³ "2007 Israeli Democracy Index: Cohesiveness in a Divided Society", The Israel Democracy Institute, June 2007, on the Israel Democracy Institute Web site: www.idi.org.il.

²⁴ Bachar Awawda and Attorney Alla Heider, "Index of Racism for 2006: Racism against Israeli Arabs – Citizens of the State of Israel", The Center Against Racism, April 2007, <http://www.no-racism.org/arabic/data/publications/index2006.doc>

²⁵ Nechama Laor, Noa Alpent Leffler, Havi Inbar-Lankri, "The Absent and Present at Peak Viewing Time – Follow-up Study", The Second Authority for Television and Radio, January 2006.

<http://www.rashut2.org.il/editor/uploadfiles.פתוחה%20ברית%20שער%20ליל%20סופי%20מחקר%20דוח/pdf>

²⁶ See, for example: "A Moment of Keshev: Maariv's Index of Fear", Keshev – The Center for the Protection of Democracy in Israel, March 13, 2007,

<http://www.keshev.org.il/Site/FullNews.asp?NewsID=139&CategoryID=25>

between Jewish and Arab communities,²⁷ to racist draft legislation brought to the Knesset.

Recently, we have witnessed an increasing number of attempts and initiatives by Knesset members (MKs) and public figures to emphasize and strengthen the Jewish character of the State. Some of these initiatives are designed to test the Arab population's loyalty to the State of Israel. Thus, for example, MK Amira Dotan proposed that the right to vote and eligibility for National Insurance benefits should be conditioned on performing military or national service; another draft bill requires MKs and ministers to declare their allegiance to the State of Israel as a "Jewish and Democratic State."²⁸ These proposals reveal an erroneous interpretation of human rights, which condition the realization of rights on the fulfillment of obligations. They increase the delegitimization of Arab citizens, who are related to more as enemies than as citizens with equal rights.

Another example of racist legislation is the draft bill declaring that land belonging to the Jewish National Fund (JNF) should be allocated to Jews only.

Another example of racist legislation is the draft bill²⁹ declaring that land belonging to the Jewish National Fund (JNF), which constitutes approximately 13% of state lands, should be allocated to Jews only. The proposal is designed to preempt a High Court of Justice decision on petitions on this issue,³⁰ which are still pending, and contradicts the position of Israel's Attorney General, according to which the State is bound by the principle of equality even when managing lands belonging to the JNF. The bill passed its preliminary reading in the Knesset in July 2007 by a large majority of 64 to 16 Knesset members.

In this context, it is important to note the extension of the validity of the Citizenship and Entry into Israel Law (Temporary Order), which prevents Palestinian spouses of Israeli citizens and residents from obtaining status in Israel. This law will be discussed in more detail in the chapter on citizenship status, but meanwhile it will be noted that in March 2007 the United Nations Committee on the Elimination of Racial Discrimination recommended that Israel revoke the law and "reconsider its policy with a view to facilitating family reunification on a non-discriminatory basis. The State party should ensure that restrictions on family reunification are strictly necessary and limited in scope, and are not applied on the basis of nationality, residency or membership of a particular community."³¹

Palestinian citizens of Israel also face discriminatory treatment during airport security checks. At Israeli airports, Arab passengers receive "special treatment," entailing rigorous and often humiliating security checks that are far more stringent than those performed on most Jewish passengers. This special treatment is rooted in "racial profiling," which labels Arab citizens as highly dangerous on the basis of their being

²⁷ See, for example: Yael Padan and Shuli Hartman, "Fences, Walls and Environmental Justice", Bimkom – Planners for Planning Rights, <http://www.bimkom.org/dynContent/articles/walls.%20fences.%20justice.pdf>

²⁸ Basic law proposal: The Government (Amendment – Declaration of Allegiance of MKs), <http://www.knesset.gov.il/privatelaw/data/17/2526.rtf>

²⁹ ILA bill (Amendment – JNF land management in favor of the Jewish people), 2007.

³⁰ HCJ 7452/04, *Fuad Abu Raya vs. ILA*; HCJ 9010/04 *The Arab Center for Alternative Planning vs. ILA*; HCJ 9205/04 *Adalah vs. ILA*.

³¹ Concluding Observations of the Committee on the Elimination of all forms of Racial Discrimination, <http://daccessdds.un.org/doc/UNDOC/GEN/G07/424/79/PDF/G0742479.pdf?OpenElement>

Arabs, even when there is no indication or information about the potential danger of a particular Arab passenger. In recent years, the number of complaints about the problematic treatment suffered by Arabs at airports has increased. Many more examples are cited in a report³² published by the Arab Association for Human Rights and the Center for Racism in December 2006, and in a petition against racial profiling filed by ACRI in June 2007 to the High Court of Justice³³. Arab citizens are exposed to differential and humiliating treatment, and are often regarded with suspicion in Jewish towns, in the street, at the entrance to public recreation and commercial facilities, and at bus and train stations.

Racial profiling fits in well with the belief systems, opinions, and fears described above that are based on a prejudiced view according to which Arab citizens are dangerous because they are Arabs. Racial profiling severely violates the basic rights of Arab citizens, such as their rights to equality, dignity, privacy, and freedom of movement. It adds another layer to the serious discrimination, deprivation, and exclusion that Arab citizens have suffered for many years, while perpetuating discriminatory beliefs and practices.

Freedom of Expression and Political Activity

Recently, attempts to violate the right to freedom of expression of the Arab population have intensified. These include relating to legitimate political activities of Arab citizens as "subversive," and imposing economic pressure on Arab journalists.

The tendency to delegitimize the Arab population in Israel and distance it from the social landscape was clearly manifested during the past year in increased attempts to undermine their rights to freedom of expression. This occurred against the backdrop of the publication of four fundamental documents written by leading groups and personalities in the Arab community, with the aim of

creating a framework for the Palestinian citizens' identity, perceptions, and goals. These documents, which include the Future Vision of the Supreme Follow-Up Committee for Israeli Arabs,³⁴ Adalah's Democratic Constitution,³⁵ Mossawa's Ten Points Document and the Haifa Declaration of Mada al-Carmel,³⁶ call, among other things, for a change in the legislative structure of the State so as to ensure equal citizenship for Palestinians and the recognition of the collective historical rights of the Palestinian people in its homeland. These publications sparked outrage among members of the Jewish population, who viewed them as a threat to Israel as a Jewish state. In March 2007, the *Ma'ariv* newspaper published information about a closed meeting between the Director of the General Security Service (GSS), Yuval Diskin, and the Prime Minister, which dealt

³² Adv. Tarek Ibrahim, "Suspected Citizens: Racial Profiling Against Arab Passengers by Israeli Airports and Airlines", Arab Association for Human Rights and the Center Against Racism, December 2006, <http://www.arabhra.org/HRA/Pages/PopupTemplatePage.aspx?PopupTemplate=38>

³³ HCJ 4797/07 *The Association for Civil Rights in Israel vs. The Israel Airports Authority*.

³⁴ "The Future Vision of the Palestinian Arabs in Israel", The National Committee for the Heads of the Arab Local Authorities in Israel, on the Adalah Web site, <http://www.adalah.org/newsletter/eng/dec06/tasawor-mostaqbali.pdf>

³⁵ "The Democratic Constitution", Adalah – The Legal Center for Arab Minority Rights in Israel, http://www.adalah.org/eng/democratic_constitution-e.pdf

³⁶ "The Haifa Declaration", Mada al-Carmel – Arab Center for Applied Social Research, <http://www.mada-research.org/archive/haifaenglish.pdf>

with these documents, during which Diskin defined the Palestinian citizens of the State of Israel as a "strategic threat." In response to the article, the GSS responded that it is obligated to thwart the subversive activities of any group seeking to harm the Jewish, democratic character of the State of Israel, even if these activities are conducted democratically. This standpoint presents the legitimate political activity of Palestinian citizens of Israel as subversive, and was also endorsed by Israel's Attorney General. This is a particularly dangerous approach which undermines the foundations of democracy, according to which all activity that is not explicitly prohibited by law is permissible. Moreover, the activities described by the GSS as potentially subversive are activities which enable the realization of a wide variety of basic human rights, including freedom of thought and expression, the right to equal participation in political life, the right to spiritual autonomy, and the right to dignity. The GSS's use of vague terms, such as "subversive," in order to thwart legitimate political activity opens the door to a dangerous abuse of its authority. It could lead to a reality in which Arab citizens of Israel will find themselves persecuted because of their political views, even when they are not involved in activities that endanger state security. This fear also arises from reports about GSS investigations of activists in Arab civil society organizations.

Another attempt at restraining Arab citizens' freedom of expression was evident in the threat of financial boycott of the Arab press — that government announcements will cease to be published in newspapers that criticize the policies of Israel or government officials. This practice, which was reinforced by the directives of Israel's former Attorney General, Elyakim Rubinstein, would discontinue government advertising in a newspaper that consistently negates the Jewish and democratic character of the State. Attempts such as these to control the content of the Arab media severely infringe freedom of the press and freedom of expression: Firstly, a publication opposing the Jewish or democratic character of the State (for example, an article that calls for the State of Israel to change from a Jewish state to a bi-national state) is not in itself a criminal act. Secondly, in the absence of an explicit, unambiguous legal directive that permits the violation or limitation of freedom of expression, the state authorities are not authorized to infringe the constitutional right of Arab journalists and newspapers to express themselves freely.

Palestinian citizens of Israel have the right to express their views, their collective identity, their collective memory, and their shared vision, and to use any means to that end which are not expressly forbidden by law. In this context, it should be positively noted that the Education Minister approved an Arabic textbook that presents the Palestinian narrative of the events of the 1948 War — the "Nakba." It would be appropriate for this narrative to find expression in the Jewish education system as well.

Budgets for Northern Rehabilitation Programs

For many years, the Arab population in Israel has suffered from deprivation and discrimination in the distribution of public resources in all areas of life. The Second Lebanon War highlighted the previously recognized need for massive investment in improving the infrastructure and development in northern Arab villages. The war exposed the fact that the majority of these Arab villages were not protected, proven by the fact that approximately 40% of civilian deaths as a result of the war were Arabs. The Mossawa Center believes that the rocket damage to the Arab villages was fatal because they did not have a suitable public defense system: Public shelters were almost non-existent, siren and alarm systems were lacking, and the existing systems were neglected. In Nazareth and Shagur, for example, there are no public shelters.

The State Comptroller's report on the home front's preparedness and performance during the Second Lebanon War,³⁷ published in July 2007, also paints a grim picture of the defense situation in the northern Arab villages. The report states as follows:

“From September 2006 to March 2007, the State Comptroller's office investigated the northern local authorities' budgeting method for the establishment of shelters, and their maintenance and adaptation for the designated purpose. [...]

The inspection revealed a dismal picture of the protection and shelters in the non-Jewish sector. In the 13 local authorities where the State Comptroller's office collected information, more than 150,000 residents (more than 70% of residents in those authorities) had no form of shelter or protection.”

The situation described above indicates serious neglect by central and local government in the treatment of everything concerning shelters for residents in the non-Jewish sector: the Ministry of Finance and the Ministry of Interior, the Home Front Command, and local authorities had not allocated budgets for this purpose; there are very few shelters in public institutions, and those that do exist have very little basic equipment; private shelters are lacking, as are shelters in educational institutions. As a result, tens of thousands of citizens in the non-Jewish sector in the North have no shelters for emergency situations.

After the war, the government decided to invest the huge sum of NIS four billion from various sources into the rehabilitation and development of the North. The Deputy Prime Minister's office was appointed to implement the plan. Human rights organizations appealed to the government and the Knesset, calling for clear and transparent criteria for the distribution and utilization of the funds, so as to prevent inequitable distribution and discrimination, especially concerning the Arab population in the North.

However, even though the plan for the distribution of the funds was publicized among the different government ministries, including targets for the various projects, and in spite of the government's claim that the funds were being equitably distributed, the plan lacks inter-ministerial coordination and a detailed list of priorities for regions, communities, and populations. Moreover, the plan does not present clear, transparent criteria for the distribution of funds, which would ensure equality and affirmative action for vulnerable groups — Arab citizens and other populations with low socio-economic status.

In June, Ra'anan Dinur, Director of the Prime Minister's Office, reported that since the war, within the framework of the northern rehabilitation plan, more than NIS 300 million of the promised NIS 900 million had already been already transferred to the Arab villages, and that the remainder will be transferred during 2007. However, judging from a follow-up meeting on the subject held by the Knesset Committee of Internal Affairs on June 25, the picture looks bleak regarding the rehabilitation and development of the North in general, and in the Arab villages in particular. The committee understood that the development of the North following the war is not high on the government's agenda and that implementation of the plan was sluggish. The committee stressed that the security of the Arab and Druze population in the North continues to be ignored, as no plan for protecting these communities has been presented.

³⁷ The State Comptroller, "Preparedness and Performance of the Home Front during the Second Lebanon War" – Report Abstract, p. 111
<http://www.mevaker.gov.il/serve/contentTree.asp?bookid=494&id=157&contentid=&parentid=undefined&w=800&hw=530>

In a press release issued in July 2007, the Mossawa Center claimed.³⁸

"The Haifa Municipality, which received NIS 160 million to rehabilitate the city after the war, has not utilized the funds for providing shelters in the Arab neighborhoods that suffered emotional and physical damage... [in the Arab villages] there is still no improvement in shelters, in psychological treatment, in protection of the Nazareth hospitals, in the distribution of Magen David Adom [the national emergency medical service] mobile units, in evacuation arrangements for civilians at times of war, and in food assistance."

Mossawa also claims³⁹ that the entire government ministry development budget for all the Arab communities in Israel for 2007 was NIS 747 million. The northern rehabilitation plan for the Arab communities alone was supposed to have reached NIS 968 million. In addition, the organization notes that due to foot-dragging and torpidity on the part of the government ministries in all that concerns implementation of the plan, the allocated budgets have also not been fully utilized.

To complete the picture, it should be noted that complaints have also been made regarding: the funds distributed to the Jewish communities within the northern rehabilitation plan framework; the distribution criteria; the rate of correcting deficiencies; unfulfilled promises; and plans for cuts in the national budget in 2008, which are likely to harm the northern communities. In a meeting of the Knesset Finance Committee in October 2007, the Prime Minister's representative reported that an external evaluation began in September to assess the implementation of the plan in each separate community.

The Unrecognized Villages of the Negev

The Bedouin Arab population in the Negev consists of approximately 160,000 citizens. About half live in government-planned towns, and the rest, more than 80,000 residents, live in villages that the State refuses to recognize or that are currently in various stages of the planning process under the auspices of the Abu Basma Regional Council. The unrecognized villages, most of which are home to hundreds and even thousands of residents, have existed for decades. A large number existed even before the establishment of the State, and others were established in the 1950s and 1960s, when the government forcibly transferred the residents from their historical lands to the restricted zone (Sayag) — the area that is primarily located between Beer Sheva, Arad, Yeroham, and Dimona. For decades, the State refused to recognize these villages which are excluded from official planning and do not fall under any municipal jurisdiction. They have been denied basic services, infrastructure, and rights, such as water and drainage systems, roads, telephone and electricity connections, and the right to build legally. Education, welfare, health, and employment services are also extremely limited in the unrecognized villages. The most serious problem stems from the State's house demolition policy in the Negev, which forces these citizens to live under the constant fear of losing their homes. The State relates to the Negev Bedouin population as "trespassers," even though they were transferred to these lands by government order.

³⁸ "Seventy per cent of Arab citizens still have no shelters or protection", press release on Mossawa Center Web site, 18.7.07 <http://www.mossawacenter.org/default.php?lng=1&pg=23&dp=2&fl=7>

³⁹ "The Prime Minister's office did not report to or attend the meeting of the Finance Committee that discussed the implementation of the rehabilitation budget for northern Arab villages", press release on Mossawa Center Web site, 10.7.07. <http://www.mossawacenter.org/default.php?lng=1&pg=28&dp=2&fl=7>

The State is working toward forced eviction from the villages, without suitable compensation and without due process, without the cooperation of the residents and with no consideration for this population's lifestyle, tradition, and communal structures. The government's aim is to concentrate the Bedouin in the existing townships, which are already rife with poverty and unemployment, and in the villages that are currently in the planning stages.

House Demolitions

The unrecognized villages are located in the Sayag, defined as an area without municipal jurisdiction and no local planning and building committee. Thus, there is no recourse for anyone wishing to obtain a building permit to construct a home. In the

For decades, the State has refused to recognize the unrecognized Bedouin villages of the Negev. They are excluded from official planning and do not fall under any municipal jurisdiction. As such, they have been denied basic services, infrastructure, and rights.

absence of official planning for their communities, the residents of the unrecognized villages are forced to live in makeshift houses, shacks, and tents which were built without permits. Nonetheless, the State implements the Planning and Building Law and other land laws, and blatantly and sweepingly violates the fundamental right to housing of the Bedouin citizens. The authorities demolish houses in the unrecognized villages – sometimes even in villages that are in the process of receiving formal planning – without providing the

residents with an alternative housing solution, leaving hundreds of men, women, and children destitute. In 2007, a particularly large number of houses were demolished. From the beginning of the year until November, more than 200 buildings were demolished in the unrecognized villages, compared to much lower figures in previous years: 23 in 2002, 63 in 2003, 15 in 2005 and 96 in 2006.⁴⁰ For example, the village of Tawil Abu Jarwal was completely destroyed several times in the past year; the residents rebuild the houses each time, and the government returns to demolish them. Hundreds of homeless people remain "invisible" to most Israeli citizens: most cases of house demolitions hardly receive any media coverage and do not penetrate the public consciousness.

The following table contains data on house demolitions carried out since the start of 2007, as collected from various sources⁴¹ by ACRI. It is important to note that in many cases, the residents preempt the government and dismantle the houses slated for demolition themselves, to save themselves and their children the anguish and financial cost involved in government demolition of houses.⁴² The organizations dealing with the issues have no data concerning such independent demolitions, which are often not reported; thus, the table does not include these demolitions.

⁴⁰ According to data provided by the Regional Council of Unrecognized Villages of the Negev.

⁴¹ Regional Council of Unrecognized Villages of the Negev, Negev Coexistence Forum, the Association of Forty, Interior Ministry Web site, and news reports.

⁴² House demolition is often accompanied by violence and arrests, and the owner of the demolished house has to pay the demolition costs.

Date	Location	No. of Demolished Houses
9.1.2007	Tawil Abu Jarwal	14-21
16.1.2007	Wadi Al-Naam	2 The village is in the midst of negotiations with the planning authorities to find an alternative location.
6.2.2007	El-Batal	6
7.3.2007	Tawil Abu Jarwal	26
9.5.2007	Tawil Abu Jarwal	Approximately 30 (all the shacks and tents in the village)
21.5.2007	Atir – Um al-Hiran	4
6.6.2007	Hashem Zane	4
13.6.2007	Amra-Terabin	2
13.6.2007	Tawil Abu Jarwal	13
25.6.2007	Atir – Um al-Hiran	28 (14 houses and an additional 14 buildings – animal pens, kitchens, etc.)
19.7.2007	Tawil Abu Jarwal	21
	Hirbat al-Watan	2
	Wadi Al-Naam	1
1.8.2007	Al-Nassra (Al-Jorf)	2 16 people were injured, including several pregnant women.
15.8.2007	Sawa	1
30.8.2007	Tawil Abu Jarwal	20-25 tents were demolished and expropriated – all the tents in the village.
5.9.2007	Jatmaat	6
5.9.2007	Bir Hadaj	1 The village is in preliminary planning stages
24.10.2007	Tawil Abu Jarwal	20-25 tents were demolished and expropriated – all the tents in the village.
1.11.2007	A-Sir	5
	Wadi Al-Naam	10
7.11.2007	Bir al-Hamam	2.5 (two stone houses and half of another building)
	Aljarin	1
	Alzarnog	1

In July 2007, the government decided to establish a new authority – the Bedouin Settlement Authority – in the Ministry of Construction and Housing. This authority will coordinate government operations on the issue of Bedouin settlement and deal with land allocation and distribution. This is in addition to the Bedouin Administration in the Israel Lands Administration and the Administration for Coordination of Government Operations in the Bedouin Sector which are also subordinate to the Ministry of Construction and Housing.

As part of this decision, the government nominated the Construction and Housing Minister to form a public committee headed by retired Supreme Court Justice Eliezer Goldberg. The committee will be responsible for issuing recommendations to the minister for formulating a draft bill for settling the Bedouin sector in the Negev. Even if the intention to address the issue should be welcomed, the wording of the decision raises a number of questions and problems: Firstly, the relationship between the new and existing authorities is unclear, as is the connection between the recommendations and the partial Outline Plan for the Beer Sheva Metropolis that was recently published

(further details below). Secondly, there is no appropriate representation for the Arab population of the Negev in the new authority: According to the decision, only four of its 21 members will be Bedouin. An additional problem is the condition that only representatives without an "ownership claim" will be allowed to participate in the committee and the new administration. Even if this condition is supposed to prevent an alleged conflict of interests, it excludes from the decision-making process those people who are likely to be affected by its outcomes. At the end of October, the government approved the establishment of the public committee; the committee is due to submit its recommendations within six months of commencing its activities.

In July 2007, following the decision to establish the new authority, the Construction and Housing Minister and the Interior Minister appealed to Israel's Attorney General to approve the freezing of the policy of house demolitions until the completion of the committee's recommendations. The residents of the villages and their representative organizations welcomed the declaration, but the following day, the State demolished another 24 houses in the Negev: these included 21 houses in the village of Tawil Abu Jarwal and one in the village of Wadi Al-Naam, in spite of the negotiations to find an alternative location for the village.⁴³ In September, the Attorney General⁴⁴ announced that following an examination of the proposal to freeze the demolitions vis-à-vis the relevant law enforcement authorities, the proposal was found to be unfeasible. However, the Attorney General noted that a re-examination of the enforcement policy is required. As of the beginning of November, house demolitions in the unrecognized villages of the Negev continued.

The Outline Plan for the Beer Sheva Metropolis

The partial Outline Plan for the Beer Sheva Metropolis that was published this year fails to provide a reasonable, equitable solution for the Bedouin population in the unrecognized villages, and perpetuates discrimination in the distribution of land resources.

In June 2007, the partial Outline Plan for the Beer Sheva Metropolis (23/14/4) was published. This plan is the outcome of a petition⁴⁵ to the High Court of Justice against the District Outline Plan for the Southern Region (14/4) that ACRI filed in 2000 on behalf of human rights organizations and representatives of the

unrecognized villages in the Negev. The petition challenged the District Plan's failure to provide the Bedouin Arab citizens with any legal alternative regarding their settlement other than relocation to the townships. As a result of the petition, the planning authorities undertook to prepare a partial Outline Plan for the Beer Sheva Metropolis (the area where 95% of the Negev Bedouin reside), which will include rural settlement solutions for Bedouins, in coordination with representatives of this population and in accordance with their needs. However, the State failed to seize this opportunity: Although the planning team for the Outline Plan met several times with the petitioners, it disregarded the planning authorities' obligation to the High Court of Justice and refused to investigate certain concrete proposals for a planning solution for the villages. In the midst of a

⁴³ In addition to the negotiations to find an alternative location, in March 2007, in response to an appeal against the ILA's eviction order issued to many residents of the village, the High Court of Justice ordered an 18-month delay in the eviction injunction, to attempt to reach an agreement.

⁴⁴ In a letter to ACRI dated 5.9.07, in response to ACRI's intervention.

⁴⁵ HCJ 1991/00 *Abu Hamad et al vs. the National Planning and Building Council et al.*

drawn-out discussion about the Outline Plan designated for the Arab settlements, new Jewish settlements not included in the plan were hastily established, within the framework of implementing various government decisions. In this manner, for example, approximately 30 Jewish "individual farms" were planned and established.

The partial Outline Plan for the Beer Sheva Metropolis that was published this year fails to provide a reasonable, equitable solution for the population in the unrecognized villages, and perpetuates discrimination in the distribution of land resources. The plan does enable the recognition or establishment of nine communities,⁴⁶ which were contained in the plan thanks to government decisions prior to its preparation, and offers planning solutions for an additional two of the large villages within the planning area.⁴⁷ However, dozens of other villages, which are home to tens of thousands of people, do not appear on the new plan. The significance of this is two-fold: In the short-term, there is no solution to the acute problems currently facing these communities. Their residents have no possibility of obtaining building permits or municipal services, since these are dependent on their communities' inclusion in the Outline Plan. In the long-term, as the plan determines land designation for the next 20 years, the absence of these communities on the planning map will make it very difficult to find any planning solution for them for the next two decades. The new plan has designated part of the territory previously allocated for agricultural, industrial, and military purposes as having special status that enables its future use as a possible solution for existing Bedouin settlement. However, the plan does not specify that this land will be used for Bedouin settlement, and thus opens the door for the establishment of new Jewish settlements on this territory instead. In addition, the lands belonging to most of the villages were not included in this land use designation, and the planning mechanism being developed to determine land use in this area does not include any criteria or a time frame. This means that a concrete planning solution for the Arab population in the Negev will once again be postponed for decades.

In contrast, the Outline Plan allows a wide range of different types of settlement for the Jewish population: dozens of community settlements sprawling across extensive areas, including dozens of dunams of land for each farmer, in addition to generous allocation of lands for residential use and individual farms. A variety of rural communities for the Jewish population already exists in the Negev. In the Beer Sheva area alone, there are more than 100 such community settlements. The new Outline Plan sometimes plans additional Jewish settlements on the sites of unrecognized villages, which, as already mentioned, do not appear on the map. For example, two future Jewish settlements named Yatir and Hiran are marked on the site of the unrecognized villages of Atir and Um al-Hiran.

In September and October 2007, human rights organizations and the residents of the unrecognized villages filed objections to the partial Outline Plan. Similar to its predecessor, this plan leaves tens of thousands of citizens to make the difficult choice between continuing to live in their historical villages, without a planning solution and in humiliating conditions, or re-locating to the townships that are incompatible with their needs and lifestyle. It is important to emphasize that the Jewish population of the Negev is not required to make this difficult choice or to forgo its lifestyle in order to receive basic rights, such as a running water supply. The opposite is in fact the case: during the preparation of the plan, plans for legalizing the individual farms in the Negev continued

⁴⁶ Bir Hadaj, Qasr as-Sirr, Amm Batin, Abu Krinat, Al Sayed, Nahal Shemarya (for Tarabin al-Sana), Drejat, Makchul (Marit) and Moleda (for El-Atrash).

⁴⁷ Abu Talul and el-Farah.

to flourish, and were anchored in a recent government decision⁴⁸ and in development plans such as "Negev 2015," which is designed to draw a strong Jewish population to the Negev in place of the original Bedouin residents. Former Construction and Housing Minister Meir Sheetrit initiated an additional problematic plan in February 2007. This plan, based on "evacuation-compensation," offered increased compensation to Bedouin residents who would agree to relocate to the permanent townships, but threatened forced eviction of those who would not agree to accept the compensation and leave independently. An aggressive, one-sided solution is once again on the agenda, instead of attempting to solve the land ownership dispute between the State and the Bedouin population in the Negev through dialogue with the population's representatives.

A document published by the Adva Center⁴⁹ in September 2005 provides a thorough summary of the Israeli government's policy regarding the unrecognized villages over the years: The document states that although several important changes have been registered over the last decade, the cumulative impression is that the Israeli governments have not reached any decision to take steps to settle the issue of the Negev Bedouins' status and rights. Steps taken by the government over the years are characterized by: the absence of an in-depth examination of the issue and its repercussions for the Bedouin-Arab population, the Negev, and the image of Israeli society; the lack of a determined decision to bring about a serious breakthrough; the tendency to address specific issues in response to pressure, such as recognizing another few communities or slightly increasing the financial compensation; the profusion of authorities, committees, and bodies charged with dealing with the issue of Bedouin settlement; an increased number of decisions which were not implemented; the allocation of low budgets, spread over too many years and only partially utilized; and, the situation in which, from time to time, the State continues to act through coercion, such as submitting counter-claims⁵⁰ to the courts, carrying out house demolitions, and spraying fields cultivated by Bedouin farmers with chemicals.

The recommendations of the UN Committee on the Elimination of all forms of Racial Discrimination,⁵¹ published in March 2007, call on Israel to "enquire into possible alternatives to the relocation of inhabitants of unrecognized Bedouin villages in the Negev to planned towns, in particular through the recognition of these villages and the recognition of the rights of the Bedouins to own, develop, control and use their communal lands, territories, and resources traditionally owned or otherwise inhabited or used by them." In this context, it is important to note that the Bedouin residents of the unrecognized villages are a national, religious, and cultural indigenous minority; according to international law, the State is obligated to recognize, respect, and realize their right to preserve their culture.

It is Israel's obligation to respect and realize the rights of the Arab Bedouin citizens of the unrecognized villages of the Negev to adequate housing, education, health, livelihood, and dignity. The acute distress in the unrecognized villages necessitates a comprehensive, systemic solution, based on the principle of equality, and on the

⁴⁸ "Individual Settlements in the Negev and Galilee", Government Decision No. 2000, July 15, 2007

⁴⁹ Shlomo Swirski and Yael Hasson, "Transparent Citizens – Israeli Government Policy Toward the Negev Bedouin", Israel Equality Monitor, Issue No. 14, Adva Center, September 2005.
<http://www.adva.org/categories.asp?lang=en&catID=2>

⁵⁰ Claims submitted by the State regarding Bedouin land claims, in which the State requests that the Court register the lands as State lands.

⁵¹ Concluding Observations of the Committee on the Elimination of all forms of Racial Discrimination, <http://daccessdds.un.org/doc/UNDOC/GEN/G07/424/79/PDF/G0742479.pdf?OpenElement> , see fn. 31.

recognition of the residents' collective right to continue living within the communal frameworks to which they are accustomed. This solution should recognize the existing villages from a planning and municipal perspective, and allocate appropriate budgets for establishing infrastructures, closing gaps, and eradicating longstanding discrimination.

Educational Institutions in Sderot

For years, the lives of residents of Sderot and communities close to the Gaza border have been disrupted by Qassam rockets landing in their backyards. Despite the duty of the State to defend its citizens and its vows to do so year after year, protection of these areas is still far from complete. The State Comptroller's report on the defense of Sderot and the Gaza-border communities,⁵² published in January 2006, concluded that the process of approving and funding the plan to provide the necessary protection to Sderot and the Gaza-border communities has been delayed for an unreasonably long time. The delay in funding approval, it charged, is the main reason the plan has not yet been implemented. At the time the Comptroller's report was published, about 17 months after the government approved the disengagement from Gaza, the construction work in the most vulnerable communities had yet to be completed, and in some communities construction had not even begun. This Comptroller described this situation as "severe and intolerable." The main problem remaining today in Sderot is buildings constructed in the 1970s. These structures have shingled roofs and lack security rooms, making their residents vulnerable to direct rocket fire. Residents of Sderot and Gaza-border communities have recently petitioned the High Court of Justice⁵³ to demand protection for these buildings. Deliberation on the petition has been postponed until early December 2007.

Protection of Educational Institutions

Despite the State's duty to defend its citizens, and its vows to do so year after year, protection of Sderot and the communities close to the Gaza border is still far from complete.

In early July 2006, about six months after publication of the Comptroller's report, the government adopted the protection plan prepared by the Home Front Command, which calls for reinforcing 24 schools in the Gaza-border region according to the "protected space" method. Only a portion of the school classrooms and other areas have been reconstructed to withstand rocket fire under the provisions of this method. When the "Red Alert" rocket siren sounds, students are to reach these areas within 15 seconds. Representatives of communities that are not yet fully protected – a resident of Kibbutz Kvar Aza and the Parents

Committee of Sderot – petitioned the High Court of Justice in October 2006. Deliberations on the petition centered on the degree of protection provided by the "protected space" method. In the course of the deliberations, the government announced that protected space construction would be provided for all preschools and first- through third-grade classrooms in the Gaza-border region. On May 29, 2007 the Court ruled⁵⁴ that the protected space method is not a sufficiently reasonable security response to the dangers that students face. It demanded that the government provide protection for all classrooms using the "full protection" method by the start of the 2007/8 school year. Shortly before schools reopened, the government recommended that students continue

⁵² Audit Report on the Disengagement: Protection of Communities in the Gaza Border Region – Decisions and their Implementation", January 2006, <http://www.mevaker.gov.il/serve/contentTree.asp?bookid=449&id=2&contentid=8297&parentid=8294&sw=800&hw=530>.

⁵³ HCJ 7844/07 *Cohen vs. The Government of Israel*.

⁵⁴ HCJ 8397/06 *Wasser vs. The Minister of Defense*; HCJ 8619/06 *The Municipal Parents Committee of Sderot vs. The Ministry of Defense*, <http://elyon1.court.gov.il/Files/06/970/083/n21/06083970.n21.HTM>.

to use the existing facilities until they were completely fortified with "full protection." It gave assurances that seven of the existing schools would be fully protected by the end of the Jewish High Holidays (the second week in October) and that construction of 13 new schools (to replace the existing ones) would be completed by 2010. In mid-October, the Sderot Municipality reported that work on the seven schools was proceeding satisfactorily.⁵⁵ Nevertheless, the Sderot Parents Committee and the Committee for the Security of Sderot petitioned the High Court of Justice to demand that other educational frameworks outside of the city be found for the students until all schools in Sderot are fully protected.

Shortage of Educational Psychologists

The function of the Educational Psychological Service is to provide psychological and counseling services to students, parents, and educators. Given the trauma caused by Qassam rocket landings in residential areas, the Service received many reports of students in Sderot and the Gaza-border area who show signs of distress, tension, and impaired functioning. The presence of school psychologists in this type of situation is critical; it can reduce distress and help students cope with ongoing tension.

According to a Knesset Center for Research and Information document,⁵⁶ 3,951 students were enrolled in Sderot schools (and preschools) as of February 2007. The Educational Psychological Service provides funding for 6.5 positions in the city, but only three of these positions are currently filled. Educational Psychological Service personnel are quoted in the report as saying that the Service operates in emergency mode in Sderot: the psychologists work, for the most part, at assistance stations and do not reach the schools, and they provide only basic services, devoting most of their time to dire emergencies and only cursory attention to their regular duties. Given the lack of human resources, there is no possibility of providing Sderot students with long-term treatment or what may be referred to as "booster" treatment. The report also notes that there are days on which only one educational psychologist is on duty in Sderot. Failure to fill the positions in the city is symptomatic of the overall shortage of educational psychologists in the region, due primarily to the working conditions offered: very low pay compared with the private sector and no compensation for on-call and emergency work (which is frequently required, given the state of the city's security). As of the start of the 2007/8 school year, the situation had not changed, and the number of educational psychologists in Sderot remains far from meeting the current needs.⁵⁷ Schools rely on private contributions and assistance from NGOs to provide the necessary services. The Ministry of Education and the Sderot Municipality, which pay the salaries of the educational psychologists, must find ways to allocate budgetary funds to encourage them to work in the city, so that at least the existing positions will be filled.

⁵⁵ According to an October 15, 2007 conversation between ACRI and the spokesperson for the Sderot Municipality.

⁵⁶ Vargen, Yuval, "The Shortage of Psychologists in the Sderot Educational System", Footnote 2, Knesset Center for Research and Information, February 2007.

⁵⁷ According to an October 15, 2007 conversation between ACRI and the spokesperson for the Sderot Municipality.

The Rights of Migrant Workers

In October 2006, Israel enacted legislation⁵⁸ that prohibits trafficking in persons for the purpose of slavery, forced labor, prostitution, human organ trafficking, human reproduction, or immoral publications. The law was conceived as a tool for intensifying the battle against human trafficking and protecting its victims (beyond those trafficked for prostitution, a practice banned by previous legislation). A 2007 U.S. State Department report on human trafficking ranked Israel in the second of its three categories, signifying that it is among the countries that do not meet minimal standards in the struggle against trafficking but are making serious efforts to do so.⁵⁹ Unfortunately, the government's more enlightened views of the victims of trafficking in women have not been evidenced for victims of other types of trafficking. Characteristic features of trafficking, such as "binding" workers to their employers and requiring payments to brokers, still prevail and will be discussed later in this chapter.

This year saw the successful end of a long struggle to grant legal status to migrant workers' children who were born in Israel or have lived there since they were very young, such that their primary language is Hebrew and their culture Israeli. The Ministry of Interior has received a total of 827 requests for formal status for these children and their families (amounting to 2,500 individuals). Of these, 522 (63%) of the requests were approved, 196 were rejected, and 112 are still under consideration.⁶⁰

The Binding Arrangement

"Every person – even if he is a stranger in our midst – is entitled to the right to dignity as a human being. Money can be divided. Dignity, at its core, cannot be divided. So it is with the dignity and liberty of workers. Indeed, one must conclude – painfully and shamefully – that the migrant worker became the employer's serf; ... that binding workers to employers created a form of modern slavery. In this binding arrangement the State ... shackled the workers' hands and feet to the employer who 'imported' them – nothing less. Shame covers our faces upon seeing these things. How can we be silent...?" (Justice Mishael Cheshin, in High Court of Justice ruling, HCJ 4542/02)

In March 2006, following a long struggle by human rights organizations, the High Court of Justice ruled⁶¹ that the arrangement by which agricultural firms, nursing care services, and other industries "bind" migrant workers to a single employer is an infringement of the basic rights of those workers and must be discontinued. According to this arrangement, the work permits granted to migrant workers are valid for only one particular employer. If the workers leave these specified jobs – even when prompted by exploitation at the hand of their employers – their temporary residency permits are automatically revoked, and they become illegal aliens who face deportation. The binding arrangement gave employees enormous power; they knew that the migrant workers they employ would stay in their jobs even if their rights were severely violated. The arrangement was a virtual invitation to exploit workers. In its judgment, the Court banned the arrangement and gave the government six months to draft new employment arrangements for migrant

⁵⁸ The Prohibition of Trafficking in Persons Law (legislative amendment), 2006.

⁵⁹ "Trafficking in Persons Report 2007", U.S. State Department, June 2007. For the section dealing with Israel, see <http://www.state.gov/g/tip/rls/tiprpt/2007/82806.htm>.

⁶⁰ HCJ 8204/05 *The Association for Civil Rights in Israel vs. The Government of Israel*, updated announcement by the Attorney General's Office, June 28, 2007.

⁶¹ HCJ 4542/02 *Kav LaOved [Worker's Hotline] vs. The State of Israel*.

workers. Every few months, however, the government delays the starting date for the new arrangements; as of October 2007, 18 months after the court ruling was handed down, they have yet to be implemented. The most recent government decision on the issue set the starting date in the nursing care industry for November 2, 2007 and in the agricultural industry for December 1, 2007. It is clear at this point that even these dates will be valid on paper only.

Eighteen months after the High Court of Justice ruled that migrant workers may not be "chained" to specific employers, new regulations have yet to be implemented.

In September 2007, even before the government had fully implemented its ruling, the High Court of Justice handed down another ruling⁶² that negates the earlier principles it established with regard to the binding arrangement. The ruling addressed the case of Turkish workers holding a permit to work for a specified employer (the Yilmazlar construction company) according to an agreement signed between Israel and Turkey. The Court's majority opinion was that

the binding arrangement in this instance was legal because the workers had not been required to pay brokerage fees for their employment; their work conditions were, presumably, being supervised closely by the State; and, other than the binding arrangement itself, there was no evidence that any other rights of the company's employees were being violated. This ruling, unlike its predecessor, implied that the practice of binding migrant workers to specific employers, in and of itself, does not necessarily violate workers' rights. The Hotline for Migrant Workers and Kav LaOved [Worker's Hotline] have requested that the Court review its judgment by re-deliberating the case.

As early as May 2005 another employment system – the "corporate arrangement" – was instituted in the construction industry. It was designed by the relevant government ministries with no involvement by individuals or organizations that represent the interests of migrant workers and without considering their opinions. The corporate arrangement is a tripartite method: Israeli corporations, whose sole purpose is to employ migrant construction workers, receive licenses to act as manpower contractors in this sector subject to detailed conditions; migrant workers in the field of construction are actually employed by construction contractors but registered as employees of the corporations which are responsible for paying the workers' wages and protecting their social rights; the workers are permitted to move from one corporation to another once each quarter; if they complain that their rights have been violated by the corporation and these complaints are judged legitimate by the workers' rights division of the Ministry of Industry, Trade, and Labor, the workers can switch corporations within the quarter.

In two reports, published in March and August 2007,⁶³ the Hotline for Migrant Workers and Kav LaOved examined the corporate arrangement. Their main conclusions were that this new system has not led to the elimination of the binding arrangement, it has

⁶² HCJ 10843/04 *Hotline for Migrant Workers vs. The Government of Israel*, <http://elyon1.court.gov.il/Files/04/430/108/p26/04108430.p26.HTM>.

⁶³ Jonathan Berman, "Chaining Migrant Workers to Corporations: Interim Report on the Employment of Migrant Workers in Construction by 'Manpower Corporations,'" Hotline for Migrant Workers and Kav LaOved, March 2007, http://www.hotline.org.il/hebrew/pdf/Workers_in_Construction-mid_term_report.pdf and Jonathan Berman, "Freedom Inc." Hotline for Migrant Workers and Kav LaOved, August 2007, http://www.hotline.org.il/english/pdf/Corporations_Report_072507_Eng.pdf.

done little to narrow the enormous power gap between employer and employee, and it forces employees to be entirely dependent on their employers. The upshot is that migrant workers employed in construction are in an inferior position that opens the door to exploitation and violation of their rights. The reports highlight the following findings:

- While the new arrangement allows migrant workers to switch employers more easily, it draws some connection between employment by a particular employer (in this case a particular manpower corporation) and the legality of the worker's stay in Israel. This connection, as with the previous arrangement, encourages exploitation of workers.
- The procedure for switching employers within the framework of the corporate agreement is not entirely clear, and not all workers are informed of this option. Moreover, since it is the corporation that determines salary level and employment conditions, switching employers under the umbrella of the same corporation does not improve the worker's situation.
- Since implementation of the new arrangement, mediation fees paid by Chinese construction workers to manpower corporations in Israel and China have risen sharply, by 66%. The average fee has reached the astronomical figure of \$15,760. (See the following section on mediation fees.)
- The State benefits greatly from the corporate arrangement, at the expense of workers. As of August 2006, the State had accrued a total of NIS 191,771,032 in revenue through this arrangement in the construction industry.
- For the cases examined in the reports, workers, on average, earned only 85% of the salaries they were contracted to be paid. While the new system did, indeed, increase salaries, the workers are now, essentially, "subsidizing" the system through significantly higher brokerage fees paid before their arrival in Israel.
- Beyond an increase in salary, there are no apparent improvements in working or housing conditions for migrant workers in the construction industry.
- The Ministry of Industry, Trade, and Labor imposed sanctions on nine of the 43 corporations within the arrangement because of unlawful activity. None of their permits were revoked, however.
- 42% of the workers interviewed while under detention were arrested as a consequence of the "binding" features of the new arrangement.

These findings paint a bleak picture for future employment conditions for migrant workers in other industries. Even if the "corporate arrangement" replaced the binding arrangement in these industries, it is unlikely to bring any improvement in these workers' conditions. Those with the most to gain are the State and the corporations.

Brokerage Fees Paid by Migrant Workers

Charging brokerage fees to migrant workers seeking employment in Israel is not a new phenomenon. While the astronomical (by their own countries' standards) fees charged by the manpower companies are supposed to cover the cost of bringing the workers to Israel, they actually serve as a means of earning more profits at the workers' expense. In fact, brokerage fees are an incentive for bringing larger numbers of new workers to

Israel, rather than employing those who are already in Israel and, for various reasons, have lost their jobs. Thus, on the one hand, the State (through the Immigration Police and courts) arrests and deports "illegal migrant workers," and, on the other hand, permits the entrance of new migrant workers – despite its stated intention to reduce the number of migrant workers in the country. Migrant workers are forced to take out loans at high interest rates, and sometimes even mortgage their homes and property, to raise the necessary funds to pay the brokerage fees. Several months of work are required to cover their debts and begin saving money to support their families.

Until July 2006, the law forbade charging any fee to migrant workers as a condition for their employment in Israel. In reality, however, fees were charged in violation of the law. New regulations, which took effect in July 2006,⁶⁴ set a maximum allowable fee of NIS 3,050 (approximately \$710) for brokerage services in Israel and in the workers' countries of origin. However, a Kav LaOved survey published in 2007 revealed that the regulation not only failed to end illegal practices but also failed to prevent a further rise in fees. The 35 Philippine nursing care workers interviewed by Kav LaOved paid an average of \$4,675 each to come to Israel – a figure six times the maximum fee allowed. The report noted that despite clear evidence of violations of the law's directives, no indictments have been filed. The highest brokerage fees – up to \$20,000 – are paid by Chinese workers. A Kav LaOved petition to the High Court of Justice in this matter⁶⁵ claims that authorities in China and Israel – including the Foreign Ministry, Ministry of Industry, Trade, and Labor, Ministry of Interior, and Israel Police – are well aware of the practice but take no action to end it. A Knesset Center for Research and Information document⁶⁶ summarizes the problem:

"The estimated annual income from the illegal charging of brokerage fees is at least \$250 million. The high brokerage fees have turned the workers themselves into a product carrying a price tag. As long as exchanging existing workers with new ones remains profitable and legal, there is no hope for changing the pressure that manpower companies apply to allow them to continue bringing new migrant workers into Israel."

A solution to the problem may be on the horizon: a signed agreement between Thailand and the International Organization for Migration (IOM) determines the IOM's supervision of the recruitment of agricultural workers in Israel. The first workers recruited under the terms of the new agreement are due to arrive in Israel in the coming months, and, beginning in January 2008, the only migrant workers coming to Israel will be from countries with which Israel has a bilateral agreement allowing for supervision of brokerage fees.

⁶⁴ Employment Service Regulations (fees from job-seekers related to employment brokerage), 2006.

⁶⁵ HCJ 1193/07 *Kav LaOved vs. The Interior Minister*, http://www.kavlaoved.org.il/UserFiles/news399_file.doc

⁶⁶ Gilad Natan, "Illegal Brokerage Fees Charged to Migrant Workers", Knesset Center for Research and Information, February 2007, <http://www.knesset.gov.il/MMM/doc.asp?doc=m01729&type=pdf>.

Citizenship and Residency Status

A sovereign State has the authority to decide who will enter its gates and who will be entitled to permanent status. However, the State must also take human rights into account. States must respect the right to family life, are not permitted to turn away refugees, asylum-seekers, and stateless persons, and must provide help in cases of humanitarian distress.

Israel lacks a clear immigration policy for non-Jews. Policies for formalizing the status of family members in Israel – the spouses, parents, and children of Israeli citizens – are constantly changing. They are rooted in internal procedures, most of which are never published. There are no overt criteria that guide decision-making on crucial issues – granting status to those who have made Israel the center of their lives, to asylum-seekers, or to those in need of humanitarian aid. These issues are handled by civil servants who consult with each other and act at their own discretion.

In 2005, the government appointed a public committee, headed by Professor Amnon Rubinstein, to assess Israel's immigration policies, examine the relevant legislation and regulations, and propose new immigration policies and legislation. The committee's interim report was submitted in February 2006. The newly established government did not reappoint the committee, and the examination of Israel's immigration policies was never completed.

Israel lacks a clear immigration policy for non-Jews. Replacing policy are procedures that the Ministry of Interior refuses to publish openly and fully.

Replacing policy, therefore, are procedures – bureaucratic guidelines used by civil servants in the Population Registry to grant or deny status in Israel. Although the law, backed by explicit court rulings, guarantees the right of every individual to know the relevant criteria used for determining his or her status in Israel, the Ministry of Interior stands by its

refusal to publish Population Registry procedures openly and fully. The Ministry's Web site posts excerpts of procedures that are not updated (and therefore misleading). The procedures are not shared with the Knesset Committee of Internal Affairs or even the courts, and they are not always known to the Population Registry employees charged with implementing them. Thousands of individuals are confronted with this bureaucratic black hole. In May 2007, ACRI and other human rights organizations petitioned the Jerusalem Administrative Court to demand full and effective publication of the procedures.⁶⁷ In December 2007, the Court accepted the petition and ordered the Interior Ministry to publish the full procedures within 30 days.

The operations of the Inter-Ministerial Committee for Special Cases are also shrouded in thick fog. The committee meets from time to time at the Ministry of Interior to advise the director of the Population Registry on applications for status in Israel. The vast majority of these requests are rejected, and the persons applying for status are not even informed of the committee's existence and the possibility of contacting it with individual requests. The names of the committee members are not published; nor are the dates or minutes of its meetings or its guidelines for decision-making. No one can appear before

⁶⁷ Administrative Appeal (Jerusalem) 530/07 *The Association for Civil Rights in Israel vs. The Ministry of Interior*, pending and undecided.

the committee to argue a case, and its decisions (when made public) are not explained satisfactorily.

During the past year (in the period in which Ronnie Bar-On served as Interior Minister), the Population Registry instituted procedures that remove some barriers to acquiring status in Israel. Restrictions were eased for the minor children and elderly parents of Jews married to non-Jews. In addition, women who married Israeli citizens and began the graduated procedure for formalizing their status in Israel, and later separated from their spouses after suffering domestic violence or abuse, are now permitted to follow through on their requests for status.

However, although restrictions have been eased, primarily for relatives of new immigrants, policies controlling the immigration of non-Jews to Israel have become stiffer. It is hard to dismiss the thought that the main purpose of easing the regulations was to garner the political support of immigrant parties for proposed legislation that would stiffen immigration policy in general.

For more than five years, the Palestinian spouses of Israeli citizens have been denied legal status in Israel. This situation has its origin in a policy of the Ministry of Interior that was extended by government decision, and, since 2003, has been enshrined in the Citizenship and Entry into Israel Law (Temporary Order).⁶⁸ Members of Israel's Arab minority are the most affected by this law, as the community naturally maintaining marriage and family ties with Palestinians in the Occupied Territories. In May 2006, the High Court of Justice (in a majority decision of six over five justices) rejected the petitions opposing the law. The Court determined that the law serves a temporary security purpose. A majority of the justices on the expanded panel, did, however, rule that the law severely violates the constitutional rights of Israeli citizens to family life and equality. Since then, despite government claims that the law is a temporary measure, the validity period of the law has been extended several times; most recently, in March 2007, the law's validity was extended to the end of July 2008. In addition, the scope of the law has been expanded and now prevents spouses or family members who are from Iran, Lebanon, Syria, Iraq, and other "enemy states" (determined by the government) from obtaining status. Three petitions to the High Court of Justice against the law are currently pending.⁶⁹

Tougher immigration regulations for non-Jews also came in the form of a draft bill proposed by the government⁷⁰ stipulating that persons residing in Israel illegally will be required to leave its borders for a "cooling off" period of several years before being allowed to acquire status in the country. This legislation would affect the right of many individuals to family life and equality: the spouses of Israeli citizens and residents; parents of Israeli minors; the elderly parents and minor children of Israeli citizens and residents; indigenous Bedouin residents of the Negev whose status in Israel has never been formalized; asylum-seekers; women victims of trafficking; and many others. The government argues that rigorous and extensive checks of applicants for status are necessary in order to prevent individuals who are illegally residing in Israel from exploiting the procedures for gaining status. Yet the government has no real data concerning this phenomenon of exploitation. Moreover, however rigorous the

⁶⁸ Citizenship and Entry into Israel Law (Temporary Order), 2003.

⁶⁹ HCJ 466/07 *Zahava Gal-On vs. The Government Attorney General*; HCJ 544/07 *The Association for Civil Rights in Israel vs. The Minister of the Interior*; HCJ 830/07 *Tabeli vs. The Government Attorney General*.

⁷⁰ Draft Bill for Entry into Israel (Amendment No. 19), 2006.

investigation process, there is no need to force applicants to leave the country, thereby separating them from their spouses and children.

Refugees and Asylum-seekers

The number of asylum-seekers arriving in Israel rose steeply in 2007. Within the first nine months of the year, 3,000 requests for asylum were recorded.

The number of asylum-seekers arriving in Israel (primarily via Egypt) has risen steeply over the past year. According to United Nations High Commission for Refugees (UNHCR) records for Israel, there were 922 requests for asylum in the country in 2004, 909 in 2005, and 1,348 in 2006.⁷¹ Within the first nine months of 2007, 3,000 requests for asylum were

recorded.⁷² Most asylum-seekers reach Israel through Egypt under extremely trying conditions. Some fled from the Darfur region in western Sudan, where armed militia have been perpetrating massacres and mass murders – defined by the international community as genocide. Since the Israeli government classifies Sudan as an enemy nation, it is not willing to grant refugee status to Sudanese asylum-seekers.⁷³ It has, nevertheless, refrained thus far from deporting them to Egypt for fear that they will be returned to Sudan. Others have arrived from southern Sudan, Eritrea, the Congo, and the Ivory Coast – which the UNHCR recognizes as states to which it is forbidden to deport refugees because of the dangerous situation there. Israel, therefore, does not deport the asylum-seekers to any of these countries.⁷⁴ Many of the refugees are penniless when they reach Israel and have no relatives or friends in the country. They have experienced great hardship, and some bear the scars of physical and mental abuse.

The 1951 UN Convention on the Status of Refugees defines refugees as persons who have fled their countries of origin as a result of persecution based on their religion, nationality, political views, race, or association with a particular social group. The cornerstone of the Convention is the principle of *non-refoulement* – a total prohibition on returning asylum-seekers to places where they face danger to their lives, bodily integrity, or freedom.

Although Israel is a signatory to the Convention, it lacks clear policies, enshrined in legislation, regarding refugees who seek asylum. The mechanism for accepting refugees into Israel is based on unpublished procedures established by the Ministry of Interior. Decisions on individual requests for asylum are made by an inter-ministerial committee that makes none of its deliberations public. The percentage of requests for refugee status granted by Israel, among the lowest in the Western world, stands at 1%. Of the 909 requests for asylum in 2005, for example, Israel granted refugee status to only 11 individuals under the Convention. In 2006, there were 1,348 requests, and only six persons (less than 0.5%) received refugee status. In 2007, another 350 refugees have received temporary protection, 805 requests for asylum have been denied, and 863

⁷¹ Uri Tal, "Sudanese Infiltrators and Asylum-seekers in Israel", Knesset Center for Research and Information, June, 2007, <http://www.knesset.gov.il/mmm/doc.asp?doc=m01790&type=pdf>.

⁷² An estimate by the Hotline for Migrant Workers, based on official estimates and data sent to ACRI on September 24, 2007.

⁷³ According to data by the Hotline for Migrant Workers, there were approximately 270 Sudanese asylum-seekers in Israel in 2006. By the end of August 2007, their number had reached 1,800.

⁷⁴ HCJ 7302/07 *Hotline for Migrant Workers vs. The Minister of Defense*.

persons are in the process of requesting asylum and their cases are under review. Even persons recognized as refugees are not granted permanent status in Israel. They receive a temporary permit allowing them to stay for a limited time in the country, and the permit can be renewed every two years if the situation in their countries of origin does not enable their return.

While Israel recognizes and accepts the principle of not returning refugees to their homelands, there have been several cases of men and women arriving at its borders and being turned away immediately, with no opportunity to request asylum. On other occasions, asylum-seekers (women and children included) have been imprisoned for extended periods, sometimes under very difficult conditions.

With the rise in the number of refugees arriving without permits this year, the army ceased transferring them to detention facilities for a brief time. Asylum-seekers apprehended by the army at the Egyptian border were brought to Beer Sheva – to the

On occasion, asylum-seekers (women and children included) are imprisoned for extended periods, sometimes under very difficult conditions. Others are simply left to fend for themselves, with no assistance from any of the relevant authorities.

doorsteps of police stations or the central bus station – and left to fend for themselves. None of the local authorities provided assistance. The only care provided for the refugees (and still being provided for some) was from human rights organizations and other NGOs. At a June 2007 session of the Knesset Committee for the Rights of Children, representatives of these organizations described the difficulty of absorbing growing numbers of asylum-seekers under existing conditions, and they noted that no assistance was being provided by local welfare authorities. The

arrest policy was reinstated in July 2007. According to data gathered by Tel Aviv University's Refugee Rights Program and the Hotline for Migrant Workers, 845 persons were being held in Prison Service facilities in mid-July. A short time later, a tent camp was constructed for the refugees near Ketziot. As of mid-October, the three encampments at the site housed (according to Hotline estimates) 400-500 asylum-seekers, 160 of them located in a women's and children's section.

In July, the Prime Minister announced his intention to send all of the refugees who had already infiltrated (or may infiltrate) across the border back to Egypt, apart from 500 Darfur refugees already residing in the country. In mid-August, Israel initiated the "hot return" procedure of turning away asylum-seekers immediately after they cross the Egyptian border into Israel. They are expelled before any authority examines their requests for asylum and before they have any opportunity to present their cases to the bodies responsible for ordering their deportation, to the UNHCR, or to human rights organizations. There is no verification of their claim that dangers await them if they are deported and no evidence that conditions in Egypt are stable enough to ensure their safety there. The "hot return" policy drew harsh criticism from human rights organizations, and in late August, a coalition of organizations petitioned the High Court of Justice in protest.⁷⁵ In late September, the Court instructed the government to provide a detailed description of the procedure, including an appropriate initial check to differentiate between asylum-seekers and infiltrators and a system for handling the

⁷⁵ HCJ 7302/07 *The Hotline for Migrant Workers vs. The Minister of Defense*.

cases of those claiming to be refugees. The government insists that its policy in this matter is legal. It has, however, only implemented the "hot return" procedure in one instance in mid-August.

Israel has a moral and legal obligation to assist individuals seeking asylum. While it is justified in examining requests for asylum, it has no right to shut its gates to those who are in mortal danger or to turn them away before even examining their claims. There is just cause, therefore, for legislation that, among other things, establishes procedures for determining the status of refugees, allows for the right to a hearing, grants the right to appeal and an opportunity for representation by an attorney, and guarantees that the rights of refugees are protected.

Human Rights in the Occupied Territories

June 2007 marked 40 years of Israel's occupation of the West Bank and the Gaza Strip: 40 years in which Israel has denied Palestinians the basic rights guaranteed in a democracy, and barred them from participating in decisions affecting their fate. Even the establishment of the Palestinian Authority in the mid-1990s and the Israeli withdrawal from the Gaza Strip in the summer of 2005 did not change the fundamental imbalance of power with which Israel controls the fabric of Palestinian life. In the reality of life under occupation, no rights are guaranteed: not the right to life or personal security –inside or outside one's home – not freedom of movement, not freedom to earn a livelihood, not property rights, and not the right to education.

Because of the brevity of this report, we will not elaborate on every human rights violation that took place in the Occupied Territories. From the beginning of 2007 until the end of October, 286 people were killed in the Territories by Israeli security forces.⁷⁶ Some 8,700 Palestinians are being held in custody by security forces, of whom more than 800 are in administrative detention.⁷⁷ The routine of checkpoints and roadblocks, permits and humiliation, home searches, settler violence, and harassment by security forces continues. This report focuses on three issues: restrictions on movement, which is the most pervasive problem in the lives of West Bank residents; the situation in Hebron, which is a microcosm of what happens in the Territories in general; and the harsh realities of life in the Gaza Strip.

Freedom of Movement

According to a World Bank estimate, some 50% of the West Bank is blocked to Palestinian residents.

Freedom of movement is a precondition for the exercise of other basic rights: the right to earn a livelihood and live in dignity, the right to education, the right to health, and the right to family life. For the past seven years or so, restrictions on Palestinian freedom of movement in the West Bank have made daily life practically impossible. These restrictions

include physical obstacles – checkpoints, roadblocks, and the Separation Barrier – as well as movement bans enforced by the security forces throughout the area. In general, these prohibitions are not anchored in written orders or regulations, but are based on oral instructions that are often open to different interpretations.

Most of the human rights violations in the Occupied Territories are byproducts of the establishment of settlements and outposts. Thus, the constraints placed on the movement of Palestinian residents are intended to ensure the free and secure movement of settlers and other Israeli citizens. A report published by the World Bank⁷⁸ in May 2007 asserts that freedom of movement in the Occupied Territories is the exception, not the rule, and that an estimated 50% of the West Bank (including East Jerusalem) is blocked to Palestinian residents. Since mid-2005, for example, security forces prohibited entirely the entry of Palestinians into the Jordan Valley, unless they

⁷⁶ See B'Tselem's Web site: http://www.btselem.org/english/Statistics/Casualties_Data.asp?Category=1

⁷⁷ See B'Tselem's Web site: http://www.btselem.org/english/statistics/Detainees_and_Prisoners.asp

⁷⁸ "Movement and Access Restrictions in the West Bank: Uncertainty and Inefficiency in the Palestinian Economy", Executive Summary, World Bank, May 9, 2007.

were registered as Jordan Valley residents. In late April 2007, the army began to allow the entry of Palestinians on foot, but only through some of the checkpoints.

The variety of restrictions on movement has split the West Bank into six major geographic units:⁷⁹ North, Center, South, the Jordan Valley, the northern Dead Sea, enclaves resulting from the Separation Barrier, and East Jerusalem. In addition to the restrictions on movement from area to area, Israel also severely restricts movement within the areas by splitting them up into subsections, and then controlling and limiting movement between them. The restrictions on movement have had a grave impact on efforts to conduct a normal economic life, and have thwarted any prospect for recovery of the Palestinian economy.⁸⁰

Checkpoints

According to data from B'Tselem, as of October 2007, the IDF operates 87 permanent checkpoints deep within the West Bank. Sixty-seven are staffed at all hours while 20 are staffed only during daytime or for part of the day.⁸¹ Palestinians who cross these checkpoints are subject to searches that often cause prolonged delays. The IDF also maintains 33 permanent and staffed checkpoints (for the passage of people, goods or both) that serve as the last control point between the West Bank and Israeli sovereign territory. Some of these checkpoints are located well within the West Bank, several kilometers from the Green Line. The UN Office for the Coordination of Humanitarian Affairs (OCHA) reports an average of approximately 130 more "surprise" or "flying" checkpoints each week in the West Bank. In addition to the checkpoints, the IDF has erected hundreds of physical obstacles to block roads that lead to Palestinian villages in the West Bank. These obstacles may be concrete blocks, earth mounds, or trenches, used to prevent access to the main roads and channel traffic to the staffed IDF checkpoints.⁸² In contrast with staffed checkpoints, roadblocks do not allow for the exercise of discretion about passage, particularly in emergency situations. They also prevent not just the passage of vehicles, but also of many pedestrians who find it difficult to circumvent them: the elderly, the ill, pregnant women, and small children.⁸³ The following data on checkpoints and roadblocks in the West Bank in 2007 were collected by OCHA⁸⁴:

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sep.
Manned	82	84	84	86	86	85	86	86	88
Unmanned	446	466	465	453	467	471	455	477	475
Total	528	550	549	539	553	556	541	563	563
Average weekly random or "flying" checkpoints	114	156	163	175	141	105	113	100	104

⁷⁹ Anat Barsella, "Ground to a Halt: Denial of Palestinians' Freedom of Movement in the West Bank", B'Tselem, August 2007, http://www.btselem.org/Download/2007_08_Ground_to_a_Halt_Eng_Executive_Summary.doc

⁸⁰ See for example, "Enduring Occupation: Palestinians under Siege in the West Bank", Chapter 9, Amnesty International, June 2007, <http://web.amnesty.org/library/Index/ENGMDE150332007?open&of=ENG-ISR>.

⁸¹ Details about the various checkpoint types can be found on the B'Tselem Web site: http://www.btselem.org/english/Freedom_of_Movement/Statistics.asp.

⁸² OCHA's Web site: <http://www.ochaopt.org/>

⁸³ "Ground to a Halt: Denial of Palestinians' Freedom of Movement in the West Bank", see fn. 79.

⁸⁴ The Humanitarian Monitor, No. 17 – September 2007, http://www.ochaopt.org/documents/HM_Sep07.pdf.

Prohibited Roads

On 311 kilometers of main roads in the West Bank, Israel forbids or restricts the passage of Palestinian vehicles, but allows the passage of Israeli vehicles.⁸⁵ For example, the Beit 'Awwa junction – a crossroads in the western Hebron Hills region – was closed to Palestinian vehicles for five years and opened following ACRI's petition to the High Court of Justice,⁸⁶ while part of the nearby road is still off-limits to Palestinians, but open to the few settlers who live in the Negohot settlement and the unauthorized outpost nearby; Route 443 – the main artery connecting Ramallah with the surrounding villages – is closed to Palestinian traffic and open only to Israeli vehicles;⁸⁷ a segment of Route 60 – the main north-south thoroughfare in the West Bank – has been closed for six years to the 60,000 Palestinian residents of the area, but open to the 1,400 settlers who live nearby.

Sweeping Prohibitions on Movement

A sweeping prohibition on freedom of movement is imposed on population groups⁸⁸ that are defined by the General Security Services (GSS) according to gender, age, or place of residence. These prohibitions are generally imposed on males aged 16-30 and sometimes up to age 35, without examining each case individually, based on its merits. A prohibition like this, whose scope changes periodically, is often imposed on Nablus and the northern West Bank, especially Jenin and Tulkarm. A petition filed by ACRI against collective restrictions on the movement of specific groups from the Nablus area is pending.⁸⁹

Blacklists of the “Refused”

The names of tens of thousands of Palestinians in the Occupied Territories appear on “black lists” called “Police Refused” or “GSS Refused”, which means severe restrictions on their freedom of movement within the Territories, or when attempting to leave.⁹⁰ The “refused” status is assigned without any semblance of proper administrative procedures: The individual is not informed of the status, the criteria are not made public, decisions are based on suspicions or evidence to which the individual is not privy, there is no opportunity to challenge the status, irrelevant considerations are applied, no hearings are held, and the authorities are under no obligation to provide reasons. Thus, for example, a resident of the Territories could discover only when he reached the Allenby Bridge that he is prohibited from going abroad, and there is no way to overturn this decree. These labels, often groundless and arbitrary, are not examined periodically to confirm their validity. Indeed, in a large percentage of cases, people labeled “GSS Refused” are given the requested permits after intervention by human rights organizations or appeals to the High Court of Justice. Recently, in response to a petition

⁸⁵ “Ground to a Halt: Denial of Palestinians' Freedom of Movement in the West Bank”, cited in fn. 79.

⁸⁶ HCJ 3969/06, *al-Kharub vs. Commander of IDF Forces in the West Bank*.

⁸⁷ ACRI's petition against closing the road is still pending, HCJ 2150/07, *Abu Tsafya vs. Minister of Defense*.

⁸⁸ “Ground to a Halt: Denial of Palestinians' Freedom of Movement in the West Bank”, cited in fn. 79.

⁸⁹ HCJ 7577/06, *The Association for Civil Rights in Israel vs. Commander of IDF Forces in Judea and Samaria*. Prior to the submission of the petition in September 2006, a permanent prohibition on movement in Nablus was imposed on this age group for nine months. About two months after the petition was filed, the permanent prohibitions were rescinded; today they are imposed periodically, but not on a permanent basis.

⁹⁰ “Police Refused” Palestinians are denied entry permits into Israel; “GSS Refused” Palestinians are automatically denied requests to enter land located on the other side of the Separation Barrier or to enter Israel, to prevent their travel abroad.

filed by ACRI about "GSS Refused,"⁹¹ the State declared its intention to establish a mechanism that would enable residents of the Territories to find out in advance whether there are restrictions against their travel abroad, and to appeal such restrictions before the planned departure date.

Separation Barrier

The declared aim of the Separation Barrier, established by government decision in June 2002, is to prevent the entry into Israel of terrorists from the Occupied Territories. In actuality, however, some 80% of the Barrier is located on Palestinian land within the

Some 80% of the Separation Barrier is located on Palestinian land within the West Bank. The route of the Barrier severely harms all aspects of Palestinian life and violates fundamental rights.

West Bank – hence, the Barrier does not separate Palestinians from Israelis, but rather Palestinians from other Palestinians. The route of the Separation Barrier severely harms all aspects of Palestinian life and violates fundamental rights: It separates Palestinian cities, villages, communities, and families from each other; it cuts off Palestinian farmers

from their lands; it impedes access to educational institutions, health facilities, and other vital services; and it obstructs access to sources of clean water.⁹² According to B'Tselem data, the planned route of the Separation Barrier is 780 km. By October 2007, construction was completed on 409 km, and another 72 km are now being built.⁹³ As of May 2007, there are 65 gates in the Separation Barrier, but the IDF allows Palestinians to pass through only 38 of the gates, open only some hours of the day.⁹⁴

In the area surrounding Jerusalem, the planned route of the Barrier is 171 km; by the end of June 2007, half of that route – 86 km – had been completed, and 32 km were under construction.⁹⁵ The Barrier cuts off Palestinians who live in the eastern neighborhoods of Jerusalem from the West Bank, and cuts off Palestinian residents of the villages surrounding Jerusalem and some Palestinian East Jerusalemites from the center of their lives and livelihoods in Jerusalem; those who seek to enter Jerusalem from the West Bank are forced to endure long delays at the entry points.⁹⁶ Sometimes the Barrier passes inside urban areas, dividing communities and neighborhoods.

As a result of construction of the Separation Barrier, two types of Palestinian enclaves were created or will soon come into being.⁹⁷

⁹¹ HCJ 8155/06, *The Association for Civil Rights in Israel vs. Commander of IDF Forces in Judea and Samaria*.

⁹² "Enduring occupation: Palestinians under siege in the West Bank", Amnesty International, June 2007, [http://web.amnesty.org/aidoc/aidoc_pdf.nsf/d45725da5fa95f1f80256a2b00642199/6e4150952f723d4e802572ec005674aa/\\$FILE/MDE1503307.pdf](http://web.amnesty.org/aidoc/aidoc_pdf.nsf/d45725da5fa95f1f80256a2b00642199/6e4150952f723d4e802572ec005674aa/$FILE/MDE1503307.pdf).

⁹³ Based on OCHA data provided in the B'Tselem Web site, http://www.btselem.org/english/Separation_Barrier/Statistics.asp. See also the map of the Barrier route from June 2007 on the OCHA Web site, in which the areas already built or under construction are marked: <http://www.ochaopt.org/documents/WB-Barrier-03072007.pdf>.

⁹⁴ According to OCHA data provided on the B'Tselem Web site.

⁹⁵ Ibid.

⁹⁶ See, for example, "The Humanitarian Impact of the West Bank Barrier on Palestinian Communities: East Jerusalem", United Nations – Office for the Coordination of Humanitarian Affairs (OCHA), June 2007, <http://www.ochaopt.org/documents/Jerusalem-30July2007.pdf>.

⁹⁷ Nir Shalev, "Between the Fences: Enclaves Created by the Separation Barrier", Part 2, Bimkom: Planners for Planning Rights, October 2006 (Hebrew), <http://www.bimkom.org/publicationView.asp?publicationId=100>.

- Villages or agricultural lands that remained on the “Israeli” side of the Barrier – between the Barrier and the Green Line – in what is called the “seam zone”. The seam zone was declared a closed military zone in which the permit regime applies, which severely disrupts the lives of Palestinians: The right of Palestinian residents of the seam zone to live in their homes or work their lands is dependent upon receipt of a permit from the army. These permits are given for short periods, if at all, after which the residents are forced to file repeated requests to the Civil Administration in the hope that the permits will be renewed. The permit regime, which has made some residents “illegal persons” in their own homes, applies only to Palestinians: Israelis, Jews who are not Israeli citizens, and even tourists are all allowed to enter and stay in this zone without any constraints. A petition⁹⁸ filed by ACRI in January 2004 against the permit regime is still pending.
- Villages that remained on the “Palestinian” side of the Separation Barrier, but are blocked on three or more sides due to twists in the route or the intersection of the Barrier with physical roadblocks or roads on which Palestinian vehicles are prohibited. In northwest Jerusalem, for example, the Barrier creates the Bir Nabala enclave, which fences in five villages in which more than 15,000 Palestinians live.⁹⁹ The only way into or out of this enclave is through a tunnel that leads to Ramallah and passes under a road exclusively for Jewish vehicles.¹⁰⁰ A petition against this stranglehold was rejected.¹⁰¹

The High Court of Justice ruled this past year on several petitions filed by human rights organizations and Palestinian residents of the Occupied Territories against the route of the Separation Barrier,¹⁰² and other petitions are still pending. Nevertheless, the changes in the route that were carried out as a result of High Court of Justice rulings affect less than 10% of the route. Some of the changes have not yet been implemented, and in some cases the changes will reduce the damage to the Palestinians only

⁹⁸ HCJ 639/04, *Association for Civil Rights in Israel vs. Commander of IDF Forces in Judea and Samaria*.

An amended petition was filed in March 2006.

⁹⁹ “Between the Fences: Enclaves Created by the Separation Barrier”, see fn. 97.

¹⁰⁰ “The Humanitarian Impact of the West Bank Barrier on Palestinian Communities: East Jerusalem”, cited in fn. 96.

¹⁰¹ HCJ 4289/05, *Local Council Bir Nabala vs. Government of Israel*, and other petitions,

<http://elyon1.court.gov.il/Files/05/890/042/a53/05042890.a53.HTM> (Hebrew).

¹⁰² Among others, the petition against the route of the Separation Barrier on the lands of the village Dir Kadis was rejected (HCJ 2645/04, *Nasser vs. The Prime Minister*,

<http://elyon1.court.gov.il/Files/04/450/026/n54/04026450.n54.HTM>), however this was after the route was significantly altered and its harm to the residents was reduced. In parallel, the High Court of Justice rejected petitions filed by the nearby settlement of Modi'in Illit and real estate companies who argued that the route harms the possibility of building additional neighborhoods in the settlement; the Court instructed the State to alter the route of the Barrier that passed between the village Na'alim and the adjoining settlement (HCJ 2577/04, *al-Khawaja vs. The Prime Minister*,

<http://elyon1.court.gov.il/Files/04/770/025/n56/04025770.n56.HTM>) and the route in the area of Bil'in (HCJ 8414/05, *Yasin vs. State of Israel*, <http://elyon1.court.gov.il/Files/05/140/084/n25/05084140.n25.HTM>) to one

in which the harm to the villagers would be lessened; a petition filed by Palestinian owners of agricultural land against the route of the Barrier in the area of the Efrat settlement was rejected (HCJ 834/07, *Takatka vs. Government of Israel*, <http://elyon1.court.gov.il/Files/07/340/008/n07/07008340.n07.HTM>); the Court ordered the State to implement its decision of seven months earlier to dismantle an internal barrier 40 km long that had been erected west of the Separation Barrier in the southern Hebron Hills region – a decision that had not been implemented by the State (HCJ 1748/06, *Mayor of Dahariya vs. Commander of the IDF Forces in the West Bank*; HCJ 1845/06, *Yunis vs. Commander of the IDF Forces in the West Bank*; HCJ 1856/06, *Municipality of as-Samu' vs. Military Commander in the West Bank Territories*,

<http://elyon1.court.gov.il/Files/06/480/017/n26/06017480.n26.HTM>). This barrier was dismantled about two weeks after the State was found in contempt of court for failing to honor the Court's ruling.

partially.¹⁰³ In general, court rulings about the Barrier seek a balance between security considerations and violation of the rights of the Palestinian residents; the High Court prefers not to deliberate issues concerning the legality of the settlements.¹⁰⁴ It accepts Israeli policy that the security of the residents of settlements is a legitimate consideration in determining the route of the Barrier.

The United Nations Committee on the Elimination of all forms of Racial Discrimination, which published its recommendations concerning Israel in March 2007,¹⁰⁵ expressed concern that the severe restrictions on freedom of movement in the Occupied Territories that target “a particular national or ethnic group...have had a highly detrimental impact on the enjoyment of human rights by Palestinians, in particular their rights to freedom of movement, family life, work, education and health.” The Committee asserts that “the wall and its associated regime...gravely infringe a number of human rights of Palestinians residing in the territory occupied by Israel. These infringements cannot be justified by military exigencies or by the requirements of national security or public order.”

Hebron: A Ghost Town

The situation in Hebron – the existence of a Jewish settlement in the heart of a Palestinian city – provokes ongoing friction between the two populations, and reflects all that is wrong about the occupation, the settlements, and Israel’s policies in the Occupied Territories. Because of the existence of settlement points in the city and army activities carried out in the name of protecting them, the Palestinians who live in the Hebron city center have suffered for years from severe violations of their most basic human rights. These include harsh restrictions on their movement – the closing of main roads to Palestinian vehicles and pedestrians; blocking their entry to homes; the shutting down of stores; violence by settlers under the protection of the security forces; and harassment, abuse, and violence by the security forces, including the confiscation of homes, arbitrary searches, detentions, and humiliation. All this has choked commerce in the area, and led to economic collapse and the massive emigration of the residents. Hebron’s city center, which in the past had been a bustling commercial hub, is now a ghost town. A survey conducted by B’Tselem and ACRI¹⁰⁶, published in May 2007, reveals the extent to which Palestinians have abandoned areas near the settlement points in Hebron. The data from December 2006 reveal that at least 1,014 Palestinian housing units – 41.9% of the total housing in the area surveyed – had been abandoned by their occupants over the years, most during the second Intifada. Similarly, 1,829 Palestinian businesses – 76.6% of the total businesses in this area – now stand empty, of which 1,141 (62.4%) were closed during the second Intifada. At least 440 stores were closed by military order.

Hundreds of complaints filed by residents in recent years, as well as many appeals by human rights organizations to IDF commanders and the police, the Attorney General,

¹⁰³ “Enduring occupation: Palestinians under siege in the West Bank”, cited in fn. 92.

¹⁰⁴ For example in the ruling about the Barrier in the area of the settlement Efrat:

<http://elyon1.court.gov.il/Files/07/340/008/n07/07008340.n07.HTM>.

¹⁰⁵ Concluding Observations of the Committee on the Elimination of all forms of Racial Discrimination, <http://daccessdds.un.org/doc/UNDOC/GEN/G07/424/79/PDF/G0742479.pdf?OpenElement>, see fns. 31 and 51.

¹⁰⁶ Ofir Feuerstein, “Ghost Town: Israel’s Separation Policy and Forced Eviction of Palestinians from the Center of Hebron”, B’Tselem and the Association for Civil Rights in Israel, May 2007, http://www.btselem.org/Download/200705_Hebron_eng.pdf.

and the Chair of the Knesset Constitution Committee have so far not led to any amelioration in the situation. Indeed, in March 2007 a new settlement point was established in Hebron following the occupation by settlers of a building in the a-Ras neighborhood. Although the procedure for evacuating them has begun, this has been in process for several months already, and the end is not in sight. Since the founding of the new settlement, attacks on the Palestinian residents of the neighborhood by settlers and security forces have significantly escalated.¹⁰⁷

Gaza: Imprisoned

More than 80% of the population in Gaza lives below the poverty line.

Israel's disengagement from the Gaza Strip in the summer of 2005 ostensibly ended the occupation of this region and Israel's responsibility toward the Palestinian population in Gaza. In effect, however, Israel still maintains control of the movement into and out of Gaza through the land crossings, the air space, and the territorial waters of Gaza. This control over freedom of movement and the passage of goods into and from Gaza, whose repercussions will be described below, places a moral and legal responsibility on Israel toward the population that lives there.

Even before Hamas took over the Gaza Strip, it was described as "one big prison" because of the tight Israeli control over movement into and out of Gaza.¹⁰⁸ A report¹⁰⁹ issued by Gisha in January 2007 notes that Israeli actions since September 2005 – including the imposition of a stringent closure and refusal to transfer tax monies – have contributed to an economic and humanitarian crisis in Gaza not seen in the 38 years of Israeli control that preceded the disengagement. More than 80% of the population is living below the official poverty line, and approximately 1.1 million Gazans receive food aid from international agencies.¹¹⁰ In March 2007, a petition¹¹¹ filed by human rights organizations demanding the regular opening of crossings to Gaza was rejected. The struggle between Fatah and Hamas in the Gaza Strip peaked in June 2007 with the Hamas takeover of Gaza, and since then the situation has further deteriorated. Since mid-June, the Gaza crossings that remain almost entirely closed are Rafah (serving those entering and leaving Egypt), Erez (serving those traveling to and from Israel and the West Bank), and Karni (which is the only passageway for goods into and out of Gaza). Instead of Karni, the Sufa and Kerem Shalom crossings have been opened to transport goods and humanitarian supplies, but these function only partially.¹¹² Sealing off the crossings disrupts all areas of life and violates the fundamental rights of the Palestinian residents of Gaza.

¹⁰⁷ "Hebron: The Israeli Settlement in the a-Ras Neighborhood, A Follow-up Document", October 2007, B'Tselem (based on monitoring carried out by B'Tselem and ACRI), http://www.btselem.org/english/hebron/20071015_new_settlement.asp

¹⁰⁸ See for example, "The Gaza Strip: One Big Prison", B'Tselem, May 2007, http://www.btselem.org/Download/200705_Gaza_Insert_eng.pdf

¹⁰⁹ "Disengaged Occupiers: The Legal Status of Gaza", Gisha: Legal Center for Freedom of Movement, June 2007, <http://www.gisha.org/UserFiles/File/Report%20for%20the%20Web%20site.pdf>

¹¹⁰ "Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard", January 2007, on the Web site of the UN Human Rights Council, <http://www.ohchr.org/english/bodies/hrcouncil/docs/4session/A.HRC.4.17.pdf>

¹¹¹ HCJ 5841/06, *Association for Civil Rights in Israel vs. Minister of Defense*.

¹¹² Detailed information about the opening and closing of these passageways can be found in the periodic publications and Web site of OCHA: www.ochaopt.org

Economic collapse:¹¹³ Since June 12, 2007, the entry into Gaza of all raw materials and goods not defined as humanitarian has been prohibited. The Karni crossing, which is the main artery through which hundreds of truckloads of goods a day used to enter and leave Gaza was closed and never reopened. The moment these crossings were closed to the import and export of goods, the economy in Gaza almost entirely collapsed, together with the subsistence capacities of the Gaza residents. The great majority of Palestinian industry in Gaza is paralyzed: Three weeks after the ban on importing commercial goods was imposed, 75% of the Gaza factories were closed due to insufficient raw materials. There was a 15-34% increase in the price of basic products for industry and households.¹¹⁴ By mid-July, Palestinians¹¹⁵ were reporting that some 80% of the industrial institutions had closed down, the others were operating at 60% output only, and at least 65,800 workers were fired in the private sector. In September, OCHA reported shortages in various food products.¹¹⁶ A petition filed by Adalah to open the Karni crossing is pending.¹¹⁷

The right to medical care:¹¹⁸ Many vital medical services are not available within the borders of the Gaza Strip. Therefore, realization of the right to health for some Gazans is dependent upon their ability to leave Gaza and access medical services in Israel or abroad. Sealing off the crossings prevents patients and the wounded from obtaining medical treatment that is not available in the Gaza Strip. After deliberations in the High Court of Justice regarding a petition¹¹⁹ filed by Physicians for Human Rights and Gisha, the Erez crossing began to operate partially, but the criteria for authorizing medical entry permits to Israel were made more stringent. Israel claims that it has no obligation toward the residents of Gaza, and that allowing the ill and wounded to enter would be allowed as a humanitarian gesture only. In addition, the State for the first time made a distinction between threatening "life" and threatening the "quality of life," which the High Court of Justice accepted.¹²⁰ The significance is that patients in danger of losing a limb do not meet the criteria that allow entry into Israel for treatment. According to reports by Physicians for Human Rights, as of August 2007, the permit regime began to operate more regularly, through it is still clear that triage is not based on medical criteria. In the last two weeks of September, after declaring the Gaza Strip a "hostile entity" (see below), the number of patients allowed to leave was significantly curtailed.¹²¹

¹¹³ Press release of Gisha and Oxfam from 15 July 2007. Press releases on the Gisha Web site: <http://www.gisha.org/index.php?intlLanguage=2&intlItemId=498&intSiteSN=113&OldMenu=113>.

¹¹⁴ "Commercial Closure: Deleting Gaza's Economy from the Map", Gisha, July 2007, http://www.gisha.org/UserFiles/File/publications_english/Publications%20and%20Reports_English/Formatted-Deleting%20Gaza%20Economy%20from%20the%20Map.doc.

¹¹⁵ Press releases by Gisha and Oxfam, note 118 above, bring reports of the Palestine Trade Center (Paltrade) and the Palestinian Federation of Industries (PFI).

¹¹⁶ The Humanitarian Monitor, No. 17 – September 2007, Cited in fn 88.

¹¹⁷ HCJ 5523/07, *Adalah vs. The Prime Minister*, http://www.adalah.org/eng/pressreleases/pr.php?file=07_07_19

¹¹⁸ According to "Israeli Policies at Erez Crossing, Gaza: Medical-Ethical Position Paper", Physicians for Human Rights, August 2007, <http://www.phr.org.il/phr/article.asp?articleid=480&catid=42&pcat=42&lang=ENG>.

¹¹⁹ HCJ 5429/07, *Physicians for Human Rights vs. Minister of Defense*.

¹²⁰ HCJ 5429/07, *Physicians for Human Rights vs. Minister of Defense*.

¹²¹ "Implementation of the Agreement on Movement and Access (AMA)" – Report No. 49, from September 19 to October 2, 2007, OCHA. [http://www.reliefweb.int/rw/RWFiles2007.nsf/FilesByRWDocUnidFilename/THOU-7849GT-Full_Report.pdf/\\$File/Full_Report.pdf](http://www.reliefweb.int/rw/RWFiles2007.nsf/FilesByRWDocUnidFilename/THOU-7849GT-Full_Report.pdf/$File/Full_Report.pdf).

Entering and leaving Egypt:¹²² Following the shutdown of the Rafah crossing, thousands of Palestinians found themselves “stuck” on the Egyptian side with no chance of returning home to Gaza. In the last week of July 2007, Israel allowed the return of 6,000 Gaza residents through the Nitzana and Erez crossings who had been stuck in Egypt. Since then, there has been no regulated entry to Gazans who wish to return home, apart from exceptional cases.

For months, thousands of Gazans – foreign residents, university students, those who work abroad, and sick people who need medical treatment – have been unable to leave Gaza for Egypt. During June-August 2007, Israel allowed a limited number to leave the Gaza Strip through the Erez crossing, and continue to the West Bank and Allenby Bridge (and thus enter Jordan) or the Ben-Gurion Airport. In the last week of August and the first of September, Israel operated a fleet of vehicles to transport Palestinians via the Erez and Nitzana crossings – used by approximately 550 people to leave Gaza for Egypt.¹²³ Since then (as of late October), this transport system was not resumed. In mid-October, 6,395 people were registered with the Palestinian Civil Committee as requesting to leave Gaza. This number does not include the sick, who are not allowed to leave Gaza via the transport system.

Vital infrastructure: In early September, the media reported that Israel was weighing punitive measures in response to the shelling of Qassam missiles from Gaza into Israel, including cutting off electricity and water to Gaza residents. On September 19, 2007, Israel’s political-security cabinet declared Gaza to be a “hostile entity”¹²⁴, and decided to cut back on the electricity and fuel delivered to the Gaza Strip, and curtail even more stringently the passage of people into and out of Gaza. Despite Israel’s promise to take into account the humanitarian situation in Gaza, the vague formulation of the decision, the motivation for it – punishment and revenge – and past experience suggest that the danger of harm to innocent civilians looms large. In deliberations in November 2007 on a petition¹²⁵ against this decision submitted by human rights organizations to the High Court of Justice, the Court instructed the Prime Minister and Defense Minister to present it with data to substantiate its claim that cutting fuel and electricity to Gaza would not lead to a humanitarian crisis.

Punitive measures directed against a civilian population are absolutely prohibited by international humanitarian law. Clearly the State of Israel must act to protect its citizens from harm to their lives, property, and security. At the same time, even under duress, Israel is obliged to adhere to the standards of international humanitarian law that articulate a humane and legal minimum that must never be breached.

¹²² According to a petition filed by Gisha on 22 October 2007 in the name of seven students who asked to leave Gaza to study abroad, HCJ 8861/07, Mudallal vs. Minister of Education, http://www.gisha.org/UserFiles/File/publications_english/Publications%20and%20Reports_English/Appendix%20to%20Press%20Release%202022.10.07_eng.pdf.

¹²³ Estimate by Gisha.

¹²⁴ Press release on the Web site of the Prime Minister’s Office, September 2007, <http://www.pmo.gov.il/PMOEng/Communication/Spokesman/2007/09/spokecab190907.htm>.

¹²⁵ HCJ 9132/07, *Jaber al-Basyouni Ahmed vs. The Prime Minister*. The petitioning organizations: Adalah, Gisha, Hamoked: Center for the Defense of the Individual, al-Hak, al-Mezan Center for Human Rights, Public Committee Against Torture in Israel, Gaza Community Mental Health Program, and B’Tselem. The petition (in Hebrew) is on the Adalah Web site: <http://www.adalah.org/features/occupied/gaza-electricity-p.pdf>; a press release (in English) is on the B’Tselem Web site: http://www.btselem.org/english/Press_Releases/20071028.asp.

Neglect and Discrimination in East Jerusalem

The population of Jerusalem at the end of 2006 stood at 732,100. Thirty-four per cent of its residents (251,400 persons) are Palestinian Arabs living in East Jerusalem who were given "permanent resident" status following annexation of the city by the Israeli government in 1967. Given its control over East Jerusalem and the status it granted to residents there, the Israeli government is obligated to act equitably toward this population. Israeli law stipulates that East Jerusalem residents are entitled to all services and rights granted to Israeli citizens, apart from the right to vote in national elections. Nevertheless, since 1967 the Israeli government has not budgeted resources for strengthening and developing East Jerusalem – resources that are essential for meeting the physical needs of the area and the needs of the population at its natural growth rate. Israel's policy for the past four decades has taken concrete form as discrimination in planning and building, expropriation of lands, and minimal investment in physical infrastructure and government and municipal services. The aim of this policy is to secure a Jewish majority in the city and push Palestinian residents of Jerusalem outside its borders. As a result, East Jerusalem residents suffer severe distress, and their conditions are worsening. According to 2003 Central Bureau of Statistics data, 64% of the Palestinian families in Jerusalem live below the poverty line, as opposed to 24% of the city's Jewish families, and 76% of the children in East Jerusalem (over 80,300 in number) live in poverty, compared with 38% of the city's Jewish children.

Discrimination in Planning and Building

For decades, the legal possibility of issuing building permits for new construction in East Jerusalem has been practically non-existent. The complex interplay of factors that have

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led to this situation include: the expropriation of lands (most of which were used to establish Jewish neighborhoods); problems concerning arranging the planning for the remaining lands;¹²⁶ and a protracted and exhausting series of bureaucratic procedures and requirements – which include high fees charged by the authorities for any request for a building permit in East Jerusalem. For various reasons, some of these fees are charged to Palestinian residents only; others are identical to those required of West Jerusalem residents. Given their economic distress, however,

most Palestinian residents are unable to afford any of the permit fees. Moreover, the building percentages (the percentage of land on which construction is permitted, including building height) for most East Jerusalem neighborhoods are set at 25%-75%, as opposed to 75%-125% for West Jerusalem.

¹²⁶ Of the 46,000 dunams that remained under the ownership of East Jerusalem residents, only 24,700 dunams (53.7%) have undergone re-planning over the years. Approximately 35% of this land has been categorized as open landscape areas (or "green areas") where no residential construction is allowed. Marom, Nati, "Planning Trap: Planning Policy, Land Arrangements, Construction Permits, and Home Demolitions in East Jerusalem", Bimkom – Planners for Planning Rights and Ir Shalem, Jerusalem, 2004, <http://www.bimkom.org/dynContent/articles/Deadlock%202.1.pdf>.

The residents of Jerusalem's Jewish neighborhoods enjoy wide-scale construction and enormous investment. The discrimination is clear, its purpose being to limit legal construction in the Palestinian areas and constrict the space available for the development of Arab neighborhoods. The local Outline Plan, "Jerusalem 2000," approved by Jerusalem's Local Committee for Planning and Building in 2006, perpetuates the discriminatory policies by failing to provide adequate housing units, employment sources, and infrastructure in East Jerusalem. This discrimination in planning has brought about a situation in which most of the buildings in East Jerusalem were built (and are still being built) without a permit. They are densely crowded, and their occupants live in constant fear of having their homes demolished. The high rate of unauthorized building is not testament to an unwillingness to comply with the law on the part of the residents; rather, it proves that the planning system, which fails to address the real needs of the Palestinian residents of East Jerusalem, has become irrelevant for them. Despite the clear responsibility of the municipality and of the planning and building authorities for this situation, the enforcement of planning and building regulations (including house demolitions and imposition of fines) are also implemented in a discriminatory manner between East and West Jerusalem. In 2001, for example, 85% of the overall recorded building violations in Jerusalem were located in the western part of the city, while 91% of all administrative demolitions orders were for buildings in East Jerusalem.¹²⁷

Blatant Neglect of Services and Infrastructure

One of the most prominent features of East Jerusalem is the piles of trash in the streets and the numerous illegal garbage dumps – a necessary recourse because of the chronic shortage of sanitation facilities. Roads are studded with potholes, and the few sidewalks that exist are in serious disrepair and, as such, cause damage to persons and property. Public parks and other recreational facilities are a rare sight. The postal service barely functions; two post offices and five postal agencies serve over 250,000 residents, as opposed to more than 50 postal facilities that serve the 500,000 residents of West Jerusalem. Since only ten postal workers are assigned to deliver mail within East Jerusalem, it is no wonder that mail sent there takes an unreasonably long time to reach its destination, if at all.

Water

One direct outcome of the discrimination in the field of planning between Jewish and Arab neighborhoods is the lack of a fresh water supply – a vital resource for human life.

***Over 100,000
Palestinian residents
of East Jerusalem are
denied legal access to
the water supply.***

Since Israel's Planning and Building Law prohibits the connection of unauthorized buildings to the municipal water network, tens of thousands of East Jerusalem residents suffer from the lack of a regular water supply. It is estimated that over 100,000 residents are denied legal access to the water supply. They are left no choice but to rig makeshift connections to water mains or to homes that are legally connected to the water network, or to

suffice with stored containers of fresh water. These temporary measures carry a heavy price: the water pressure is weak and the supply irregular; stored water is exposed to a range of pollutants, from bacteria that thrive in standing water to vermin and dead birds and fowl. The lack of fresh water reduces the hygiene level (since showers, dish-

¹²⁷ Ibid.

washing, and house-cleaning become luxuries), creating ideal conditions for the spread of infectious diseases.¹²⁸ This situation severely undermines the East Jerusalem residents' rights to adequate living conditions, to dignity, and to health.

Sewage System

The infrastructure for sewage and drainage throughout East Jerusalem has suffered from many years of neglect. Some neighborhoods that have no connection to the municipal sewage system still make use of cesspits. In other neighborhoods, the municipal sewage system is antiquated or poorly maintained. According to official estimates by Gihon, the independent corporation responsible for Jerusalem's water, sewage, and drainage system, East Jerusalem currently lacks seven kilometers of sewage lines. Installation of these lines is contingent on the payment of high fees and development taxes that residents cannot afford. Frequent sewer flooding creates dangerous sanitary conditions: sewer water sometimes flows close to homes and children's play areas, and severe weather exacerbates the already unfavorable conditions and further endangers the health of residents.

Education

Today, there is a shortage of 1,500 classrooms in East Jerusalem; it is estimated that that number will reach 1,900 by the year 2010.

The most pressing of the many serious problems in education in East Jerusalem is the shortage of classrooms. The population of the area has grown by more than three and a half times its size in 1967, but the educational system has not kept pace with the changing needs and has built very few new classrooms. Today, there is a shortage of 1,500 classrooms in East Jerusalem; it is estimated that that number will reach 1,900 by the year 2010. Because of the enormous lack of facilities, only half of all school-age children, 39,400 out of 79,000,¹²⁹ are enrolled in municipal schools in Jerusalem, often in crowded and unsafe conditions. To fill the gaps in the shortage of classrooms, alternative facilities, not designed for educational purposes, are being used, and "second shifts" in the existing classrooms have been organized to accommodate more students. Tens of thousands of children are not accepted into the public school system. These children, who are entitled to receive a free education from the State, are forced to find educational solutions, outside of the public school system, such as in schools run by the Wakf [Islamic Foundation], for instance, or private schools in Jerusalem or the West Bank. This imposes a great financial burden on their families. Other children remain at home: the Coalition for the Advancement of Arab Palestinian Education in East Jerusalem estimates that 9,000 children are not enrolled in any educational framework.¹³⁰

¹²⁸ On July 25, 2007, for example, the Jerusalem district health office reported an anticipated outbreak of viral jaundice in the Arab neighborhoods of East Jerusalem, following diagnosis of 27 cases of the disease in children.

¹²⁹ Rodogovsky, Adva, "The Scandal Continues: An Assessment of the Arab-Palestinian Educational System in East Jerusalem in the 2007-2008 School Year", Coalition for the Advancement of Arab Palestinian Education in East Jerusalem, September 2007. English translation posted on the Ir Amim Web site: <http://www.ir-amim.org.il/Eng/Uploads/dbsAttachedFiles/EducationReport2007Eng.doc>.

¹³⁰ Ibid.

The Jerusalem Municipality and the Ministry of Education have long been aware of the drastic shortage of classrooms, and the issue has been the subject of several petitions to the High Court of Justice. In the framework of deliberations on an HCJ petition in February 2007,¹³¹ the State made a commitment to build 400 classrooms in East Jerusalem over the next five years, at a cost of NIS 400 million. In September 2007, the Municipality announced that efforts were underway, but in fact, very little progress has been made.¹³² Moreover, the building of these classrooms is designed to keep pace with the natural population growth, but does not take into account the existing shortage of classrooms. In March 2007, the government presented a five-year plan for addressing the nationwide shortage in classrooms. According to this plan, 8,000 classrooms will be built across the country by the year 2011, at a cost of NIS 4.64 billion. Despite explicitly stating in the decision that some of these classrooms would be built in East Jerusalem, August 2007 saw the government renege on this commitment due to budget preferences for classroom construction in other parts of the country.¹³³

Lack of Pre-school Educational Facilities

Approximately 15,000 three- and four-year-old children live in East Jerusalem, however nearly 90% of them are not enrolled in any pre-school education facility. Despite the importance of early education and its clear influence on child development, the authorities charged with providing this service to East Jerusalem have failed to do so. There are currently only two municipal preschools in East Jerusalem, with a combined enrollment of 55 children. Another 1,900 children attend a few dozen private facilities, whose annual tuition ranges between \$1,400 and \$1,800 and is beyond what the large majority of parents can afford.

Welfare Services

Life in East Jerusalem can thus be described as a continuing cycle of neglect, poverty, and shortages. The severe socioeconomic distress has also created a range of social problems, such as: damage to family relationships; an increase in the rate of family violence; high school dropout and early entrance into the job market; crime; drug use; and health and nutritional problems. Twenty-two percent of East Jerusalem residents – approximately 31,000 persons – receive welfare services. Given this figure, one would expect the Jerusalem Municipality and the Ministry of Welfare and Social Services to take a special interest in the East Jerusalem population; however, welfare services, like other services, suffer from under-funding and ongoing discrimination in East Jerusalem compared with West Jerusalem.

Welfare services in East Jerusalem are on the brink of collapse. Municipal welfare offices in East Jerusalem, which cover an area that includes about a third of Jerusalem's population, are allocated only 15% of the total number of welfare worker positions in the city. Insufficient human resources creates an overwhelming workload for the social workers assigned to East Jerusalem: 2005 data indicated that each social worker working in West Jerusalem was handling, on average, the cases of 165 households (442

¹³¹ HCJ 5085/01 *Fahdi Badriya et al vs. the Jerusalem Municipality and the Ministry of Education*.

¹³² Rodogovsky, Adva, "The Scandal Continues." See fn. 130.

¹³³ HCJ 5185/01, 3843/01 *The Beit Hanina Community Development Corporation et al. vs. the Jerusalem Municipality and the Ministry of Education*, Supplementary response by the Ministry of Education, August 15, 2007.

persons), while their counterparts in East Jerusalem were handling 282 households each (1,051 persons). In 2006, the situation further deteriorated, with each social worker in East Jerusalem handling the cases of 360 households on average. The Jerusalem Municipality claims that "there is a continuing process, accelerated in recent years, of affirmative action in East Jerusalem,"¹³⁴ and, indeed, in the second half of 2007 a number of social worker positions were added for welfare offices in East Jerusalem. However, these additional positions are not enough to fundamentally improve the situation.

Thousands of children and youth in East Jerusalem are in acute distress and are at high risk. 14,737 children and youth at risk are registered in the East Jerusalem welfare offices.¹³⁵ Since the lack of welfare personnel and infrastructure does not allow for comprehensive mapping of the community, the actual figure is probably higher. Approximately 1,600 children between the ages of three and four, most of whom are not enrolled in any type of educational facility, have been labeled at risk and in need of day care; only 80 children, however, are enrolled in one of the two existing day care facilities funded by the welfare department of the Jerusalem Municipality.

In the framework of a program initiated by the Prime Minister's Office and launched at the start of 2007, NIS 200 million will be invested annually for the care of 140,000 at-risk children and youth throughout Israel. The plan will also be partially implemented in East Jerusalem. According to the Social Welfare and Services Department and the Jerusalem Municipality, the plan will only apply to at-risk children between the ages of 0 and 6 years old in East Jerusalem.¹³⁶

Police Brutality and the Abuse of Authority

Every two or three weeks, the Tax Authority or National Insurance Institute, with police assistance, set up "debt collection" checkpoints in the Palestinian neighborhoods of East Jerusalem. Every passing vehicle is stopped, and if the driver or anyone in his or her family is found to have an outstanding debt, the sum must be paid on the spot. If not, the vehicle is immediately impounded. This method of debt collection, employed almost exclusively in East Jerusalem, is not sanctioned in any law or regulation. According to Israeli law, the only legal means of collecting debts is to issue a power of attorney to the tax collectors, who are then authorized to enter the home of the debtor to confiscate property. The law does not allow the authorities to impound vehicles in the middle of the street as a means of collecting debts; nor does it permit the use of police check points for this purpose. A petition to the High Court of Justice against this illegal practice was submitted by ACRI in August 2007, and is currently pending.¹³⁷

ACRI receives regular complaints from Palestinian East Jerusalemites about violence and harassment perpetrated by border patrol and police officers stationed in the area. Tension between residents and security forces mounted with the construction of the Separation Barrier in Jerusalem. In late 2006, for example, construction of the Barrier was completed in an area near the village of Anata. The border patrol, however, continued to position itself adjacent to three Palestinian schools with a total number of

¹³⁴ Letter from the director of the Jerusalem Municipality's welfare department to ACRI, December 26, 2006.

¹³⁵ Data provided to ACRI by the director of the Jerusalem Municipality's welfare department in a letter dated February 8, 2007.

¹³⁶ ACRI received this information in a June 5, 2007, letter from the Ministry of Industry, Trade, and Labor and in a telephone conversation with the Prime Minister's Office appointee for implementing the program.

¹³⁷ HCJ 6824/07 *Manna vs. The Tax Authority*.

2,500 students. The patrol's presence in the area, viewed by local residents as provocation, led to some incidents of rock-throwing at officers, who responded by firing shock grenades, teargas grenades, and rubber bullets. On January 16, 2007, this practice ended in disaster: patrol officers fired rubber-coated metal bullets that critically wounded Abir Aramin, a ten-year-old schoolgirl who was walking with her friends next to the school grounds. Abir died of her wounds two days later. The Jerusalem District Attorney later decided to close the investigations file against the officers who fired the bullets due to lack of evidence. The border patrol discontinued its regular presence in the Anata area in late March 2007, following agreements reached with residents¹³⁸ to end the rock-throwing and arrange for direct contact between parents committee representatives, village leaders, and border patrol commanders.

Another source of friction is the Atarot (Kalandia) checkpoint north of Jerusalem. Some 100,000 residents of East Jerusalem who were cut off from their center of life in Jerusalem by the Separation Barrier are forced to pass through this checkpoint each day to reach their workplaces, schools, health services, religious facilities, families, and so on. Following a stabbing incident at the location at the start of 2007, security checks were stiffened. Persons passing through the checkpoint complain of physical and verbal abuse by soldiers, extensive delays, and random and unannounced closings of the checkpoint to vehicular traffic. Many of the complaints are against employees of a private security firm that supplies additional manpower at the checkpoint. These contracted workers intervene in the work of the soldiers, use unreasonable judgment in determining the manner of the security checks, and humiliate people waiting to pass through the checkpoint.

¹³⁸ With mediation by ACRI.

Freedom of Expression: New Challenges

The Internet opened up a whole new world of communication and information, culture and creativity, and created an open and democratic forum for the exchange of ideas, opinions, and experiences. Beyond promoting freedom of expression, the Internet contributes significantly to the development of individual autonomy, the formation of identities and communities, and the promotion of a spectrum of other human rights. This enormous and rapid technological development, however, has given rise to new dilemmas and clashes between freedom of expression and information and other rights and interests – such as child safety, the right to privacy, the right to dignity, intellectual property rights and copyright protection, and the right to reputation.

Restricted Access to Adult Web sites

If the proposed legislation is enacted, it will entail infringements by the State of the rights to freedom of expression, information, and privacy, as well as the public's right to know and to make personal choices.

In July 2007, the Knesset Economic Affairs Committee discussed a draft bill designed to restrict access to adult Web sites.¹³⁹ Internet servers would be required to completely block access to any Web site whose primary feature is sex, violence, or gambling. Access to these types of Web sites would be permitted only to adults who expressly indicate that they are not interested in such screening mechanisms.

If this proposed legislation is enacted, it will entail unlawful intrusion by the State into the rights to freedom of expression, information, and privacy, as well as the public's right to know and to make personal choices. Like in repressive states, government ministers and civil servants will be those who determine for the public which activities or words are "immoral," what is defined as "profane" or "violent," and what is, or is not, permissible to view. One of the most severe effects of such a law would be the creation of a database of all persons who declare that they are not interested in the governmental screening mechanism – a blatant violation of their right to privacy.

There is no question that parents, educators, and others have the right to protect minors from undesirable online content, such as pornography, violence, and gambling. There is reasonably priced, even free, screening software available to the public through retail outlets or Internet servers, and their use should be permitted and remain a matter of individual choice. The way to protect minors and combat pornography and other forms of humiliation of women is through education and information. Parents and educators should be made aware of the risks of Internet use by minors, as well as the available means of eliminating these risks. There is no place, however, for wide-spread and sweeping government censorship.

¹³⁹ Communications Law Draft Bill (Bezeq and Broadcasts), 2007.

Digital Rights Management of Copyrighted Material

Digital Rights Management (DRM) systems are technologies that permit copyright holders of digital material – music, films, and books – to determine the use of their materials by others. The producer or distributor, for example, can limit the number of times or length of time that the consumer has access to a song or movie, or prevent the consumer from copying material or forwarding it to others. These technological systems are relatively easy to crack or bypass, and the content owners are thus demanding that DRM violations be defined as criminal offences. In Israel, the Federation for Israeli and Middle Eastern Music has been lobbying for the inclusion of DRM protection within the Copyright Law, which would allow criminal sanctions to be imposed on those who abuse the system.

DRM systems were originally designed to protect the rights of copyright holders and to make it difficult to copy content. Today, however, they also enable the culture industry to rake in profits, at the expense of the users' rights. DRM systems limit freedom of expression while preventing the legitimate, private, and fair use of creative content – use which is permitted under intellectual property law, such as use for educational purposes. The systems violate the right to privacy, since information can be gathered about users and the uses made of protected digital content, and they limit the users' freedom to operate in their own personal space, one which encourages expression and creativity.

It is sometimes necessary to limit the degree to which certain rights are protected in order to promote social values and interests that conflict with those rights. However, such restrictions must only be imposed for the sake of important objectives that seek to benefit society as a whole, and must not extend beyond what is absolutely necessary to achieve these objectives. In the case of DRM systems, in order to protect the economic interests of a few, there are demands to restrict basic rights that far exceed that which is necessary to protect copyrighted material.

The Right to Privacy

Invasions of Privacy in Police Investigations

Wiretapping

The right to privacy is anchored in the Basic Law: Human Dignity and Liberty. Section 7 (D) of the law states that, "there shall be no violation of the confidentiality of conversation." Data indicating the scale of police wiretapping in Israel indicate widespread violations of the right to privacy. According to figures presented by the Internal Security Minister to the Knesset Constitution, Law, and Justice Committee in February 2007, the police conducted 1,128 wiretaps in Israel in 2006 – an increase of 25% over previous years. By way of comparison, 1,839 wiretaps were conducted throughout the United States in 2006.

The police are required, by law, to submit a request for a court order before performing any wiretap. Records show that the overwhelming majority of these requests are granted. Of the 1,255 requests submitted by the police in 2006, only seven were refused. Similar figures were reported by the Internal Security Minister to the Knesset Constitution committee in previous years. These figures give rise to the suspicion that the current judicial review of wiretapping is insufficient.

In 2007, a parliamentary investigative committee (working under the auspices of the Knesset Constitution committee) began examining the wiretapping issue. Its task is to clarify all steps currently taken when wiretaps are performed: the request for a court order, the court procedures, the formal process of the wiretap itself, storage of the material gathered, etc. The committee's work could be the first step in striking the proper balance between preserving the rule of law and fighting crime on the one hand, and protecting the basic right to privacy on the other.

Draft Communications Data Bill

In November 2007, the Knesset Constitution, Law, and Justice Committee approved the new formulation of a draft bill¹⁴⁰ concerning

The potential for violations of the right to privacy entailed by the proposed communications data bill is enormous. Such an extensive database of communications data is unprecedented in the Western world.

the transfer of data from communications companies to the police for use in criminal investigations and the fight against crime. According to the proposed legislation, the police will be allowed to search the databases of the companies after receiving a court order; in urgent cases, they will be allowed to do so without receiving a court order, but with authorization from a senior police commander. In addition, the police will be

allowed to maintain a communications details database.

The original version of the draft bill permitted the police to track any form of communication – by phone, fax, or computer; it also enabled the police to receive

¹⁴⁰ Draft bill for amending the Criminal Procedures Law (arrest and search) (No.13) (receipt of communications data and database information from Bezeq license holders), 2006.

communications data concerning a person who is not suspected of any type of criminal activity. Moreover, the police are also demanding to be allowed to gather data on end-user equipment, such as regular and cellular telephones and computer modems, and on cellular antenna locations – which, under certain circumstances, allow them to monitor a person's location. Given the multitude of communications devices today, the proposed legislation carries great potential for violating privacy rights. The Ministry of Justice conducted a comparative study and found that such an extensive database of communications data is unprecedented in the Western world.

The original draft bill sparked ardent opposition by ACRI, the Israel Bar Association, and the Office of the Public Defender. Their intervention led to a number of important changes to the bill: Given the unique nature and importance of the issue, and fears about violations of privacy rights, the new bill will be proposed as a separate law rather than as an amendment to the Criminal Procedures Law, as was the case with wiretapping. In addition, the database will include communications data concerning telephones only, and not about computers. Police will be required to submit written requests for communications data on special forms whose wording will be determined through legislation. The forms will require detailed justification for the court order request and an assessment of the degree to which the right to privacy will be violated.

Violations of the Privacy of Employees and Job Applicants

In a labor market that tends to favor employers, workers and job seekers are likely to “agree” to violations of their rights in order to land new jobs or keep their current ones.

Employees and job applicants are particularly exposed to infringements of their right to privacy. Examples of invasion into the privacy of workers and job seekers abound, and include: the demand that during the process of being accepted for a position, the candidate signs a complete waiver of medical confidentiality; the demand that job applicants waive their right to examine the results of placement tests they took; employer surveillance of telephone conversations and e-mail correspondence;

compulsory polygraph tests for employees and job applicants; and the use of video cameras for workplace monitoring. Even if employees and job applicants agree to these violations, they are probably not doing so out of their own free will: since they are in an inferior position in a labor market that tends to favor employers, they are likely to “agree” to violations of their rights in order to land a new job or keep their current one. The existing legal framework only partially addresses this issue. In July 2007, the Tel Aviv District Labor Court ruled that an employer who monitored an employee's e-mail at work had not violated her right to privacy since the employer had informed his workers that he regularly scans e-mails to prevent computer viruses. An appeal on this ruling was submitted to the National Labor Court.¹⁴¹

¹⁴¹ Request for Appeal 570/07, *Issakov vs. Commissioner for the enforcement of the Women's Employment Law – The State of Israel, Ministry of Industry, Trade, and Labor*. ACRI and the Hotline for Migrant Workers filed a request to participate in the deliberations as friends of the court.

Compulsory Polygraph Tests

Many complaints by workers relate to the use of mandatory polygraph exams during the application process, during their employment, and in decisions regarding dismissal. These exams are liable to severely infringe the privacy and dignity of the examinees. Reliance on polygraph results in the decision-making process is problematic since their validity and reliability are highly questionable.

Last year, MK Zahava Gal-On was forced to withdraw a draft bill that she submitted which prohibited the use of polygraph testing in the framework of employment relations.¹⁴² Massive lobbying by employers and polygraph institutes brought about so many changes in the proposed legislation that it lost its original aim – to protect the privacy and dignity of workers. In fact, if passed the altered bill would have allowed employers even greater leeway in using polygraph tests and relying on their results in a wide range of circumstances.

Printouts of Criminal Data

The Israel Police Service holds two types of criminal data on individuals: the criminal record, which only contains information about previous convictions that have yet to expire or be revoked; and the police record, which contains information about criminal charges that have expired or were revoked, criminal cases that are pending, and closed cases. Certain bodies are authorized to appeal to the police to receive criminal data about an individual, in accordance with the provisions determined by law.¹⁴³ A problem arises when unauthorized parties, such as employers or employment agencies, exploit a person's right to view his or her own criminal records by asking job candidates to submit a printout of their records. The practice is especially damaging for citizens who have no criminal record but for whom police investigation files were opened and later closed, or who had criminal convictions that were revoked or that expired; this information remains stored in their police records.

From the start of 2007, following deliberations on a petition submitted to the High Court of Justice,¹⁴⁴ the police have instituted new procedures for printing out criminal data. In the new printouts, the criminal record and police record appear on separate pages. If individuals are asked, by any unauthorized party, to supply a copy of their criminal file, they can submit only the first page, which contains the standard introductory statement. The unauthorized party has no way of knowing whether the printout contains additional pages. The new procedure ensures freedom of information and protects the citizen's right to view his own criminal file while guaranteeing that the information will not reach unauthorized parties.

¹⁴² Draft Bill Forbidding the Use of Polygraph Exams in Employment Relations, 2007. One draft of the bill was debated in February 2007, and another draft in June 2007.

¹⁴³ The Criminal Record Law, Penitence Ordinance, 1981.

¹⁴⁴ HCJ 7477/05 *Anonymous vs. The State of Israel*.

Criminal Justice

Judicial Proceedings

Representation by an Attorney

The right to counsel is essential for anyone accused of a crime. Legal representation is a guarantee of fair and due process and has a direct effect on the outcome of the proceedings: "An unrepresented defendant is usually a losing defendant, and that is because the trial of an unrepresented defendant is not conducted as it should be, and the judge cannot help him in this."¹⁴⁵

The Public Defender's Law, enacted in 1995, stipulates that indigent detainees and defendants are entitled to State-funded defense counsel. Enactment of the law resulted in a significant increase in the percentage of detainees and defendants entitled to legal representation in the courts, and thus contributed to promoting justice and safeguarding human rights. However, the law limits the right to a public defender to persons charged with a crime that carries a maximum prison term of five years or more. On December 31, 2006, after a lengthy struggle by ACRI and the Office of the Public Defender that began with a 1999 petition to the High Court of Justice,¹⁴⁶ an important amendment to the Criminal Procedures Law went into effect, prohibiting the handing down of a prison sentence to an unrepresented defendant. According to the amendment, the prosecutor must inform the court at the time the indictment is filed, or at some other point before the start of the trial, of his intention to request that the defendant be sentenced to prison. If this request is made, the court will then appoint a public defender for the accused.

Despite this important achievement, it is important to emphasize that all indigent defendants should be entitled to legal representation, regardless of the severity of the anticipated sentence. A situation in which a person is more likely to be convicted or receive a heavier sentence because he or she could not afford the services of a defense attorney gravely violates the right to equality and must not be accepted.

A Defendant's Right to be Present in Court Hearings

A fundamental principle of the Israeli legal system is that suspects and defendants have the right to due process, which will enable them to make themselves heard and to respond appropriately to charges made against them. The right of a person to be present at a hearing regarding his or her case is a basic right; it is designed to ensure that individuals are not judged "behind their backs," and that they have the opportunity to prepare their defense against the charges leveled against them by the prosecutor. The guarantee of a fair trial is not in the defendant's interest alone; it is also a means of serving the public interest in ensuring that justice is upheld and truth revealed.

During the past year, this right has begun to erode. On January 15, 2007, the Knesset passed a temporary order permitting the use of video-conferencing in procedures concerning the extension of a detention period: the detainee is in a detention center while the judge is in the courtroom; the defendant and his attorney, who is also sitting in the courtroom, communicate by telephone. This system, which is due to have a one-year

¹⁴⁵ Supreme Court Justice Eliyahu Matza at a Bar Association conference in March 2007. Quoted on the Israel Bar Association Web site at http://www.israelbar.org.il/article_inner.asp?pgId=49525&catId=1242.

¹⁴⁶ HCJ 3823/99 *Association for Civil Rights in Israel vs. The Minister of Justice*.

trial period at the Tel Aviv Magistrate's Court, must meet certain conditions, among them the detainee's consent to use it. The purpose of the temporary order is to eliminate complications involved in transporting detainees from detention centers, such as difficult conditions in the vehicles used for transferring the detainees as well as in the detention cells in the court buildings, and to prevent the risk of escape. In its attempt to overcome these difficulties, the law disproportionately and unnecessarily violates the basic rights of the detainees, and its disadvantages thus outweigh its apparent advantages. Extending detention periods via video-conferencing greatly impedes communication between the detainee and his attorney, prevents the detainee from meeting with his family and receiving their emotional support and assistance in setting conditions for release, and gives the detainee the sense that he will never get his day in court – that he will never have eye contact with the judge and be able to make a personal impression. The result is that the detainee feels excluded and alienated from the procedure. The financial resources invested in the video-conferencing procedure could have been better allocated toward improving conditions for transporting the detainee to the courtroom while ensuring his rights and adhering to the fundamental norm that a person must not be judged unless he is physically present. The Israel Bar Association filed a petition against the Knesset's temporary order.¹⁴⁷

A law concerning the detention of persons suspected of security offences went into effect on June 29, 2006.¹⁴⁸ The law, enacted as a temporary order valid until December 2007, grants the interrogation agencies wider authority than they are given (under the Detention Law) for persons suspected of “ordinary” criminal acts. Among other things, the new law allows for a 96-hour delay in bringing security detainees before a judge – four times longer than the maximum period for detainees suspected of other types of offenses. The law also violates the right of a suspect to be present in hearings that concern him: it permits the detention of a suspect remanded by a court for a period of less than 20 days to be extended by the court in absentia for the rest of a period of up to 20 days from his original detention, if the original detention was ordered in his presence. The court can also decide to discuss a request to reconsider a detention-related decision, or an appeal of such a decision, without the detainee being present. Furthermore, the law permits a situation whereby the detainee is not informed of the decision reached regarding his case.

The temporary order generated strong opposition by human rights organizations, in Israel and abroad, as well as by many academics and public figures. The detainees' absence from the deliberations hampers his ability to defend himself against further detention, thereby violating his right to due process and liberty – even before he has been indicted and while he is still under the presumption of innocence. Excluding detainees from procedures that deal exclusively with their own cases is also a serious violation of their dignity and autonomy. Most often, in instances where the temporary order is in effect, detainees are also denied access to legal counsel. As a result, detainees can be interrogated for extended periods, cut off from the outside world, and the detention period itself could function as a form of pressure that causes them to confess to criminal acts they did not commit. Moreover, the existing criminal legislation already grants the necessary authority to ensure efficient and effective investigations into security offences in a manner that guarantees a proper balance between the needs of the investigation and the fundamental human rights of the detainee.

¹⁴⁷ HCJ 1548/07 *Israel Bar Association vs. The Minister of Internal Security*.

¹⁴⁸ Criminal Procedure Law (Detainees Suspected of Security Offenses) (Temporary Order), 2006.

The existing criminal legislation already grants the necessary authority to ensure efficient and effective investigations into security offences in a manner that guarantees a proper balance between the needs of the investigation and the fundamental human rights of the detainee.

In June 2007, the General Security Service (GSS) reported to the Knesset Constitution, Law, and Justice Committee on the first eleven months of the implementation of the law – from July 2006 to the end of May 2007. According to their data, various sections of the law were applied for 51 out of 153 detainees interrogated by the GSS in the latter half of 2006. In 22 of these instances, the GSS applied the section of the law allowing in absentia hearings,

and in five instances the detainee was not told that a hearing concerning his case was taking place. In the first five months of 2007, various sections of the law were applied for 21 out of 92 detainees. In seven of these instances, the detainees were not present during the hearings of their cases, and in three of these instances they were not even informed that the hearings were taking place. The Justice Ministry published a legal memorandum in September 2007¹⁴⁹ that seeks to extend the temporary order for an additional 18 months.

Conditions for Detention and Imprisonment

In June 2007 the Office of the Public Defender published a report on conditions for detention and incarceration in internment facilities of the Israel Police Service, the Prison Services, and the courts in 2006. As in previous years, the report contains alarming findings that indicate violations of the basic human rights of detainees and prisoners in Israel. Similar findings appear in a March 2007 report by the Israel Bar Association, which examined conditions at detention facilities between November 2005 and February 2007. The Bar Association report notes that the minimal standards stipulated in Israel's Detention Law are far below those of many Western countries, and even those are not met in some of the internment facilities.

Conditions at Detention Facilities (Located at Police Stations, under Police Jurisdiction)

In two-thirds of the detention facilities they examined, representatives of the Office of the Public Defender found severe overcrowding and highly restricted living space. The average area of some cells ranged between only one and two square meters. The extremely small size of most cells allowed no space for the most basic furniture for the detainees' use. The report notes that some detainees resorted to using cardboard boxes as makeshift tables and others were eating their meals off the floor. The Bar Association report notes that despite regulations permitting no more than four beds per cell and allowing each detainee a space of no less than 4.5 square meters, cells were found containing six, eight, and even ten detainees. A third of the facilities examined by the Office of the Public Defender, were found to contain highly deficient sanitary and hygienic conditions. The Bar Association report notes that ventilation at some facilities was inadequate and that some cells lacked windows or had windows that were completely sealed.

¹⁴⁹ Criminal Procedure Law Draft Bill (Detainees Suspected of Security Offenses) (Temporary Order) (Amendment), 2007.

Conditions in Prisons (Under the Responsibility of the Prison Service)¹⁵⁰

The 2006 Public Defender's report describes a situation of extreme overcrowding within prison cells: in some instances the living space per prisoner is only 1.6-1.7 square meters. Since some of this space is used for sleeping, on the floor or on mattresses, there is no remaining area that permits movement. In February 2007, the High Court of Justice ruled¹⁵¹ that an individual's right to dignity obligates the State to provide every prisoner with a bed on which to sleep, and the Prison Service pledged to do so by July 2007. According to reports received by ACRI in August 2007, it appears that the ruling has been adhered to and that the shameful phenomenon of having prisoners sleep on the floor has come to an end.

In six of the seven prisons examined by representatives of the Office of the Public Defender in 2006, sanitary and hygienic conditions were found to be substandard and appalling, to the point of being a health hazard: walls peeling and crumbling from dampness and mold; filthy and foul-smelling toilets and showers; and infestations of cockroaches, rats, and other vermin. Some facilities lacked minimal ventilation and lighting conditions; prisoners sat in dark, suffocating, and fetid cells. Some wings of the Ashmoret Prison are described in the Public Defender's report as unsuitable for human habitation. In four of the seven facilities examined, prisoners complained of violence at the hands of prison wardens, degrading treatment, and humiliating and invasive searches. There were also complaints of collective punishment.

Over the years, rulings issued by the High Court of Justice have repeatedly stressed that basic human rights in Israel also apply to persons who are in prison. "The prison walls need not separate a prisoner from his humanity. . . . A prison must not turn into an animal pen, and a cell must not turn into a cage."¹⁵² The ongoing violations of basic human rights in prisons prove that the Court's rulings have not yet been internalized. In July 2007, the Ministry of Internal Security informed ACRI that in response to the Public Defender's report, a team has been appointed within the Prison Service to implement the recommendations contained in the report.

Police Brutality

The police hold great power and authority that are sometimes put to unlawful use. To protect the basic rights of Israel's citizens and residents, there must be an efficient mechanism for monitoring police activities and handling complaints of police brutality. Citizens' complaints do not always receive an adequate response; in some instances, citizens who file a complaint of police brutality discover that a counter-claim has been filed against them for assaulting a police officer. The reasons behind the deficiencies in the handling of citizens' complaints lie in systemic problems within the Police Service, within the Police Investigations Department of the Ministry of Justice (PID), and within the coordination between the two bodies.

Established in 1992, the PID's mandate is to investigate complaints of offences by police officers that carry a maximum prison term of one or more years, as well as any suspicion

¹⁵⁰ By the end of 2007, responsibility for all prison facilities in Israel, including detention facilities, is due to be transferred to the Prison Authority.

¹⁵¹ HCJ 4634/04, *Physicians for Human Rights vs. The Minister of Internal Security*, <http://elyon1.court.gov.il/Files/04/340/046/r18/04046340.r18.HTM>. The petition was submitted by Physicians for Human rights and ACRI, through the Human Rights Program of Tel Aviv University Faculty of Law.

¹⁵² HCJ 540/84 *Yosef et al. vs. Director of the Central Prison in Judea and Samaria*, PD 40 (1) 567, 573.

of excessive use of force, even if it appears to only be a disciplinary offence. The Police are authorized to investigate complaints of offences that carry a prison sentence of less than one year, as well as disciplinary offences by police officers.

Only 3% of the complaints received by the Police Investigations Department in 2005 and 2006 resulted in a criminal prosecution.

Only a very small percentage of complaints filed with the PID result in the criminal prosecution of police officers. According to data in a report by the Knesset's Center for Research and Information that were provided to ACRI, of all complaints received by the PID in 2005 and 2006, only 3% resulted in a criminal prosecution. The majority of the complaints reaching the PID are never even investigated: in 2005 and 2006, investigations were initiated for only 35% of the complaints. The main reasons given for not conducting an investigation are lack of public interest (the explanation given for 57% of the uninvestigated complaints in 2006) and the fact that the complaint at hand does not come under the PID's authority (the reason given for 31.5% of the uninvestigated complaints in 2006). The closure of so many files on the grounds of "lack of public interest" could be interpreted by police officers as a sanction for unlawful behavior, and by the public as disregard for the seriousness of complaints about police brutality.

Part of the problem stems from the fact that PID investigators are, essentially, police officers who are "borrowed" from regular duty and are likely to return to it once they complete their duties within the PID. As police officers, they can be expected, naturally, to identify with their accused colleagues rather than with the complaining citizens. They may also be wary of upsetting their relations with other police officers, with whom they may be serving later in their professional careers. One solution would be to transfer the responsibility of handling complaints against police officers to civilian hands. The State Comptroller's 2005 report,¹⁵³ which examined the phenomenon of police brutality, the activities of the PID, and the systemic handling of complaints about police officers, notes that the issue of transferring PID investigations from police officers to civilians has been raised for the past 12 years and has yet to be settled.

In October 2005, following publication of the State Comptroller's report, the Ministerial State Comptroller Committee reached a series of decisions concerning the systemic handling of complaints against police officers and civilian responsibility for PID investigations. The PID announced in November 2006 that it had drafted a plan for a gradual transfer of the department's duties to civilian hands, to take place over the course of six years, and that the adoption of the plan was contingent on approval by the Civil Service Commission and the Finance Ministry's Budget Department. The target date for publication of the first tender for employment of civilian investigators was set for January 1, 2007, and the proposed 2007 budget includes funds for six civilian-held positions within the PID. Publication of the tender by the Civil Service Commission was delayed until November 2007,¹⁵⁴ when the openings for the six investigator positions were made public.

¹⁵³ State Comptroller, Annual Report for 2005, August 31, 2005.

¹⁵⁴ In a May 15, 2007 letter to ACRI, the PID wrote that the delay was needed to guarantee that civilian investigators would be paid a reasonable salary, one factor that would attract high-quality personnel.

The Destabilization of Democracy

Democratic Norms and Education for Democracy and Human Rights

The 2007 Israeli Democracy Index, published in June by the Israel Democracy Institute (IDI),¹⁵⁵ included some disturbing findings. While 78% of respondents to a survey agree with the statement, "All persons must have the same rights, regardless of their political views," percentages dropped for a series of statements relating to specific rights. For instance, less than half the respondents agree that public speakers should be allowed to harshly criticize the State of Israel, only 54% favor freedom of religion, and a mere 50% believe that Jews and Arabs should enjoy equal rights. In general, the results reveal an erosion of democratic values among the Israeli public since the IDI survey in 2003.

Such worrying statistics are proof of the need for education for democracy and human rights in Israeli schools. Commitment to democratic values and culture does not develop in a vacuum. It develops within our immediate cultural environment: from that the way social phenomena are viewed at home, within the family, at school, and in other social contexts, and from the learned skills of information-gathering, critical analysis, and independent thinking. The school system is the most natural setting for exposure to democratic culture and values and for the development of these skills. The school system can contribute to ensuring the stability of democracy by exposing students to values beyond those they encounter at home and in the media, which are influenced by consumer culture and encouraged by those who have economic interests. Education for democratic values, which acquaints students with a spectrum of views, promotes their respect and tolerance for other people's opinions and narratives and allows them to make educated and independent choices in forming their own views. One means of achieving this goal would be to expand the current Education Minister's decision to allow the term "Naqba" to be presented in textbooks, so that the term also appears in textbooks used in Jewish schools, to expose Jewish students to the Palestinian narrative regarding the events of the 1948 war.

One important step toward advancing education for democracy was the decision by the Ministry of Education to expand the Civics curriculum to two study units for every high school student beginning this year, and to add the subject to the 9th-grade curriculum beginning next year (2008/9).

If schools are expected to instill the values of human rights and democracy, resources must be allocated for suitable professional training for teachers. A compulsory framework should be defined for the serious study of democratic theory, and, early on, student teachers should be trained to deal with current events in the classroom as part of the process of educating individuals for living in a democratic society.

¹⁵⁵ "2007 Israeli Democracy Index: Cohesiveness in a Divided Society", Israel Democracy Institute, June 2007. For a draft of the English report, see: <http://www.idi.org.il/english/article.asp?id=31052007141057>.

The Declining Status of the High Court of Justice

In the past year, we have witnessed growing challenges to the status of the High Court of Justice through legislative efforts to bypass explicit Court rulings and, at the same time, trample on human rights.

Israeli courts have the authority to revoke a law on the basis of its violating the Basic Laws concerning human rights. Without a constitution, the importance of this authority in granting a significant constitutional protection for human rights in Israel cannot be overstated. Since the enactment of the Basic Law: Human Dignity and Liberty (1992) and the Basic Law: Freedom of Occupation (1994), the human rights enshrined in these basic laws have been entitled to special protection, and for the first time, important limits were placed on the power of the government and the Knesset to violate human rights. Although the

High Court of Justice has rarely used its authority to revoke laws,¹⁵⁶ we have witnessed growing challenges to its status over the past year through legislative efforts to bypass explicit Court rulings and, at the same time, trample on human rights. This trend is particularly threatening since it is not limited to individual draft laws proposed by various Knesset members, but is widely prevalent among the Knesset and the government. In February 2007, the Justice Minister initiated a draft bill that would allow a majority of 61 Knesset members to approve a law that was judged by the High Court of Justice to be unconstitutional because it contradicts Basic Laws regarding human rights. There are serious concerns that if this legislation is enacted, the Knesset will exploit its new authority to cancel every High Court of Justice decision that determines a particular law to be unconstitutional because it violates the human rights protected by the Basic Laws. The legislation would thus negate the partial constitutional protection that now exists for human rights in Israel.

Other examples of the trend toward diminishing the status of the High Court of Justice:

- Extending the period of validity of the Citizenship and Entry into Israel Law (temporary order): The law's severe violation of the right to family and right to equality are discussed in this report, in the chapter on citizenship and residency status. As mentioned earlier, the High Court of Justice (with a majority of six out of eleven justices) ruled against a petition to revoke the law in May 2006. Nevertheless, a majority of justices ruled that the law was unconstitutional due to its violation of basic rights; five of the justices agreed that due to this unconstitutional violation, the law should be cancelled within six months of the Court's decision. Since then, however, the law, in its original form, has been extended several times; in revised form, its current period of validity extends to July 2008. This means that the law will remain valid for two years following the High Court of Justice decision. The Court's criticism of the law as representing a severe violation of basic rights has fallen on deaf ears, and the legislature is renewing these violations repeatedly without taking into account the criticism of a majority of High Court justices on the panel.
- Entry into Israel Draft Bill (Amendment 19), 2006: The government is advancing this draft bill requiring any person residing in Israel illegally to leave the country

¹⁵⁶ In the past 15 years, there were only five instances in which the High Court of Justice ruled that sections of various laws contradicted the Basic Laws – in most cases it concerned a single section of a law.

for a "cooling-off period" of several years as a precondition for obtaining legal status in Israel. The High Court of Justice has twice examined the demand that family members leave Israel as a condition for formalizing their status in Israel, and found that this demand is invalid due to its disproportionate infringement of the rights of Israeli citizens and their families.¹⁵⁷ Through the draft bill, the government is requesting to "bypass" HCJ rulings and to establish through legislation an order that has been found to severely violate human rights.

- Draft bill for renewed legislation of an amendment to a law that was judged unconstitutional by the High Court of Justice: In December 2006, a nine-justice panel of the HCJ¹⁵⁸ unanimously struck down a draft bill that would deny Palestinians the right to claim compensation from the State of Israel for injury to their persons or property inflicted by Israeli security forces outside of the context of a military operation. The Court ruled that the proposed amendment contradicts the Basic Law: Human Dignity and Liberty since it violates basic human rights. Astonishingly, in June 2007, in response to a draft bill proposed by MK Michael Eitan for re-enactment of the amendment, Justice Minister Daniel Friedman directed his staff to prepare a government draft bill for legislating a new version of the amendment. In August 2007 it was published as the Civil Wrongs Law (Liability of the State) (Amendment 8), 2007,¹⁵⁹ which is, essentially, the same document in a new format.¹⁶⁰

The "Friedman Reforms"

Since assuming the role of Justice Minister in February 2007, Daniel Friedman has proposed a number of initiatives and reforms, some of which threaten to undermine the status of the legal system in general, and of the Supreme Court in particular. One of his proposals was to change the selection process for court justices, a move that would curtail the independence of the judiciary and intensify the involvement of the political system in the selection of justices. In August 2007, it was reported that the Justice Minister is preparing a government draft bill that aims to limit the possibility of public petitioners – particularly human rights organizations – to petition the High Court of Justice (the right of standing). In September 2007, the Justice Minister announced¹⁶¹ that his intention was not to limit the right of standing but to establish criteria for charging expenses to petitioners whose petitions are rejected. Such a measure is likely to discourage private and public petitioners of limited financial means from petitioning the High Court of Justice, thus furthering unequal access to the legal system.

Concern about the diminishing status of High Court of Justice is further strengthened in light of Israel's complex political and security climate. Human history demonstrates that parliaments tend to violate human rights in times of crisis. It is precisely at these moments, however, that it becomes of the utmost importance to preserve the judiciary's role in the system of checks and balances.

¹⁵⁷ HCJ 3648/97 *Stamka vs. The Minister of the Interior*, 53(2) P.D. 728; Appeal for Administrative Petition 4614/05 *The State of Israel vs Oren* (not yet published).

¹⁵⁸ HCJ 8276/05 *Adalah – The Legal Center for Arab Minority Rights in Israel vs. The Minister of Defense*, <http://elyon1.court.gov.il/Files/05/760/082/a13/05082760.a13.HTM>.

¹⁵⁹ <http://www.justice.gov.il/NR/rdonlyres/026022F7-08D6-4A2E-B925-E1EBF05DB3AE/0/NEZIKIMEZRACHIIM.pdf>

¹⁶⁰ A position paper on the newly drafted bill, published by the Hamoked Center for the Defense of the Individual, Adalah, and ACRI in September 2007, is posted on Hamoked's Web site: <http://www.hamoked.org.il/items/9081.pdf>.

¹⁶¹ At a meeting with representatives from various organizations, among them from ACRI.

Founded in 1972, the Association for Civil Rights in Israel (ACRI) is the country's oldest and largest human rights organization and the only one that addresses the entire spectrum of human rights and civil liberties in Israel and the Occupied Territories. Through litigation and legal advocacy, education, and public outreach, ACRI protects and promotes the fundamental rights of all, regardless of religion, nationality, gender, ethnicity, political affiliation, sexual orientation, or socioeconomic background.

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