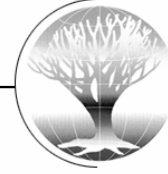


الشبكة الأوروبية المتوسطية لحقوق الإنسان  
Réseau euro-méditerranéen des droits de l'Homme  
Euro-Mediterranean Human Rights Network



# Israel's Human Rights Behaviour

July 2004-July 2005

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# Table of Contents

<b>EXECUTIVE SUMMARY</b> .....	<b>3</b>
<b>I. INTRODUCTION</b> .....	<b>5</b>
<b>II. ISRAEL'S VIOLATIONS OF INTERNATIONAL HUMANITARIAN AND HUMAN RIGHTS LAW IN THE OCCUPIED PALESTINIAN TERRITORIES</b> .....	<b>7</b>
<b>a. Settlement policy</b> .....	<b>7</b>
<b>b. The Separation Wall</b> .....	<b>8</b>
<b>c. Restrictions on Movement</b> .....	<b>10</b>
<b>d. Humanitarian and Human Rights Situation in Gaza</b> .....	<b>11</b>
The Disengagement Plan: The Reality behind Disengagement .....	12
<b>e. Other Violations</b> .....	<b>13</b>
Palestinian Prisoners and Detainees .....	13
Torture and Inhuman Treatment.....	14
Targeted Killings .....	14
House Demolitions .....	15
<b>III. ISRAEL'S HUMAN RIGHTS VIOLATIONS AGAINST ITS PALESTINIAN MINORITY CITIZENS</b> .....	<b>15</b>
<b>a. Nationality and Entry into Israel Law (Temporary Order)</b> .....	<b>16</b>
<b>b. Institutional Discrimination in Education, Employment, and Welfare</b> .....	<b>16</b>
<b>c. Discriminatory Demographic Policy</b> .....	<b>17</b>
<b>d. The Naqab/Negev</b> .....	<b>18</b>
<b>IV. VIOLATIONS DURING THE DUTCH EU PRESIDENCY</b> .....	<b>19</b>
<b>a. Occupied Palestinian Territories (OPT)</b> .....	<b>20</b>
<b>b. Inside the Green Line</b> .....	<b>21</b>
<b>V. CONCLUSION AND RECOMMENDATIONS</b> .....	<b>22</b>
<b>ANNEX 1 PRESENTATION OF THE AUTHORS</b> .....	<b>24</b>

## EXECUTIVE SUMMARY

The report "Israel's Human Rights Behaviour, July 2004 – July 2005" by the Euro-Mediterranean Human Rights Network summarises humanitarian law and human rights violations committed by Israel against residents of the Occupied Palestinian Territories (OPT) and against Palestinian minority citizens of Israel between July 2004 and July 2005.

Respect and promotion of human rights and democratisation have become a central pillar of international relations, as manifested in international law and custom and in the bilateral treaties between the EU and Israel. With the launch of the Euro-Mediterranean Partnership, or "the Barcelona Process", in 1995, 27 countries including Israel agreed that their cooperation should be based upon the respect for human rights and democratic principles.

However, Israel continued its grave violations of international humanitarian law and human rights against Palestinian residents of the Occupied Palestinian Territories and Palestinian citizens of Israel in 2004 and 2005. Israel abuses its right to defend its citizens and territory by applying state security measures that either lack correlation to the stated security risks or that are carried out in a disproportionate manner.

While the geographical scope of this report includes both Israel and the OPT, the report will focus only on Israel as a state actor subject to the EU-Israel Association Agreement. Human rights violations committed by the Palestinian Authority and other non-state actors are not a topic of this report.

This is not to say that the latter violations are not of concern. Indeed, they are and they must be addressed. Yet, in the current situation this report focuses on Israel's human rights behaviour in the light of four factors: a) the gravity of Israel's violations of international humanitarian and human rights law and their serious humanitarian and political impact, b) Israel's clear legal obligations as the Occupying Power in the OPT and the other obligations it has subscribed to as a state actor, c) the exercise of jurisdiction by Israel in both Israel and the OPT, and d) the absence of effective international intervention to date, aimed at bringing to an end violations by Israel of international humanitarian and human rights law.

The report distinguishes between Israel's different legal obligations to residents of the OPT and to Palestinian citizens of Israel and presents the two legal situations in separate chapters. The chapter on the OPT discusses Israel's settlement policy; the separation wall and the related advisory opinion issued by the International Court of Justice (ICJ); the regime of movement restrictions; the humanitarian crisis in Gaza and concerns arising from the Disengagement Plan and other violations such as the mistreatment of prisoners, detention of children, targeted killings and house demolitions. The chapter that deals with the human rights situation inside Israel highlights the discriminatory nature of the Nationality and Entry into Israel Law (Temporary Order), institutional discrimination against Palestinian Arab minority citizens in education, employment and welfare, discriminatory demographic policy and the situation in the Naqab/Negev.

The report points out that during the Dutch EU Presidency, Israel committed serious breaches of international law, most notably: Israel's ongoing construction of the separation wall; increased settlement activities in the West Bank, especially in the Greater Jerusalem area; suffocation of social and economic life in the OPT by extensive movement restrictions; the use of excessive force against civilians, particularly during Days of Penitence in Gaza, extra-judicial and confirmed killings, including children; house demolitions in the OPT and inside the Green Line; the extension of the Nationality and Entry into Israel Law (Temporary Order); and the ongoing institutional discrimination against Palestinian citizens of Israel.

The report concludes with the following recommendations for action on the part of the European Union and its member states:

- As contracting parties of the Fourth Geneva Convention, the EU member states are obliged to "ensure respect" of this Convention "in all circumstances". This obligation was reinforced by the ICJ's Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. The EU member states should take steps to fulfil this obligation in a more effective manner;
- While reaffirming Israel's right to defend its citizens and territory, the EU should continue to clearly condemn violations of international humanitarian law and human rights by Israel;
- In addition to the critical declarative diplomacy, the EU's operative diplomacy should be linked to the declared criticism, e.g. the provision and extension of economic privileges and trade agreements should be made dependent on Israel's human rights behaviour;
- In order to link the operative diplomacy to the human rights situation in a transparent fashion, clear benchmarks need to be defined and followed up over time;
- The process of benchmarking should include increased consultation with Palestinian, Israeli and European civil-society organisations;
- To achieve an institutionalisation of the human rights dialogue between Israel and the EU, a specialised authority needs to be established within the framework of the Association Agreements;
- The provisions of the Action Plan related to an annual review of the situation in Israel and the occupied Palestinian Territories and to the establishment of sub-committees on special issues should be realised as soon as possible; a sub-committee on human rights needs to be set up;
- Finally, the European Union needs to monitor its own relations with Israel in order to make sure that it does not indirectly contribute to human rights violations, e.g. by financing discriminatory projects such as the Negev and Galilee Development Plan or by selling weapons, which (may) contribute to the violation of human rights in the Occupied Palestinian Territories.

In order to promote human security in both Israel and the OPT for all citizens and residents, it is of paramount importance that the European Union and its member states adopt a more rights-based approach in their relations with Israel and pursue a policy of political conditionality with regard to Israel's human rights behaviour.

## I. Introduction

In recent decades, the respect and promotion of human rights and democratisation have become a central pillar of Dutch and European foreign policy in particular and of international relations in general, as manifested in international law and custom and in the bilateral treaties between the EU and Israel. The following international conventions are of particular relevance: the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949) that applies to the Occupied Palestinian Territories (OPT), the Universal Declaration of Human Rights (1948), the International Covenant of Civil and Political Rights (ICCPR, 1966), and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966). Moreover, the Convention on the Elimination of all Forms of Racial Discrimination (CERD, 1969), the Convention of the Rights of the Child (CRC, 1990), the Convention on the Elimination of Discrimination against Women (CEDAW, 1981), and the Convention against Torture, and other Cruel, Inhuman and Degrading Treatment and Punishment (1987) do also apply.

With the launch of the Euro-Mediterranean Partnership, or "the Barcelona Process", in 1995, 27 countries including Israel agreed that their cooperation should be based upon the respect for human rights and democratic principles. The EU's commitment to promoting and protecting human rights was confirmed in the Commission's Communication of May 2003 on "Reinvigorating EU Actions on Human Rights and Democratisation with Mediterranean Partners", the European Commission highlighted the application of political dialogue and cooperation reinforced by positive conditionality in relation to the human rights practices of partner countries. The Communication was warmly welcomed by all EU member states in June 2003.

Israel is a signatory to all above-mentioned international humanitarian and human rights instruments and is closely affiliated with the European Union. When the EU-Israel Association Agreement entered into force in 2000, both Israel and the EU committed themselves to the principles of human rights as stated in Article 2 of the Association Agreement:

"Relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles, which guides their internal and international policy and constitutes an essential element of this Agreement."

In December 2004, EU-Israel relations were further intensified by the launch of the EU-Israel Action Plan within the framework of the European Neighbourhood Policy (ENP). Israel is among the first Mediterranean and Eastern European countries that have concluded negotiations on an Action Plan.<sup>1</sup> In light of these declarative and legal commitments to human rights, however, between July 2004 and July 2005, Israel continued to grossly violate international humanitarian and human rights law in the Occupied Palestinian Territories (OPT) and disregard international law and domestic legislation concerning the human rights of its own citizens – particularly the Palestinian Arab minority inside Israel.<sup>2</sup>

This dynamic exposes a lack of political conditionality in bilateral relations between the EU and Israel, a concept which can be defined as "the linking, by a state or an international organisation, of perceived benefits to another state (such as aid), to the fulfilment of conditions relating to the protection of human rights and the advancement of democratic principles."<sup>3</sup> Moreover, with special regard to the OPT, the

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1 Action Plans intensify and define the EU's relations to its neighbours. On 9 December 2004, the European Commission presented draft action plans for Israel, Jordan, Moldova, Morocco, the Palestinian Authority, Tunisia and Ukraine. According to the EU-Israel Action Plan, "The EU and Israel share common values of democracy, respect for human rights and the rule of law and basic freedoms. [...] The level of ambition of the EU/Israel relationship will depend on the degree of commitment to common values..."

2 Other groups and communities in Israel, such as migrant workers, new immigrants, especially of Ethiopian origin, single parents and sexual minorities, suffer serious human rights violations as well. However, the author of this shadow report, the EMHRN Working Group on Palestine, does not have sufficient expertise to discuss these topics.

3 Schmid, Dorothée, "The Use of Conditionality in Support of Political, Economic and Social Rights: Unveiling the Euro-Mediterranean Partnership's True Hierarchy of Objectives?". In *Mediterranean Politics*, Vol.9, No.3 (Autumn 2004), pp.396–421.

EU member states are as contracting parties to the Fourth Geneva Convention obliged to "undertake to respect and to ensure respect for the present Convention in all circumstances".<sup>4</sup> This obligation for third states was reinforced by the International Court of Justice's (ICJ) advisory opinion on the legal consequences of the construction of a wall in the Occupied Palestinian territory.<sup>5</sup>

While the geographical scope of this report includes both Israel and the OPT, the report will focus only on Israel as a state actor subject to the EU-Israel Association Agreement. Human rights violations committed by the Palestinian Authority and other non-state actors are not a topic of this report.

This is not to say that the latter violations are not of concern. Indeed, they are and they must be addressed. Yet, in the current situation this report focuses on Israel's human rights behaviour in the light of four factors: a) the gravity of Israel's violations of international humanitarian and human rights law and their serious humanitarian and political impact, b) Israel's clear legal obligations as the Occupying Power in the OPT and the other obligations it has subscribed to as a state actor, c) the exercise of jurisdiction by Israel in both Israel and the OPT, and d) the absence of effective international intervention to date, aimed at bringing to an end violations by Israel of international humanitarian and human rights law.

The authors recognise Israel's right to securing its territory and are aware that human rights violations committed by others against Israeli citizens do influence Israel's state security measures. However, the grave infringements of the human security of residents of the OPT and Palestinian citizens of Israel lack proportion to the objective of safeguarding the Israeli state and its citizens. This conclusion is reflected in resolutions and statements of various international organisations, most prominently the UN human rights committees and in the ICJ's advisory opinion on the separation wall.<sup>6</sup>

This report distinguishes between Israel's obligations to residents of the OPT and to Palestinian citizens of Israel. The two different legal situations are therefore presented in separate chapters. This report adopts the position, taken by the majority of the international community including UN bodies and the European Union, that Israel has obligations towards residents of the OPT under both international humanitarian and human rights law because it has had effective control over the OPT since 1967. Its obligations towards its own citizens are derived from international human rights treaties Israel ratified and from domestic legislation. Although international law is not automatically integrated into Israel's domestic legal system, the state subscribes to international human rights norms both as a state party of the conventions themselves and as signatory of the EU-Israel Association Agreement.

The next chapter introduces the main humanitarian law and human rights issues in the OPT between July 2004 and July 2005 – settlement policy, the separation wall, movement restrictions, the humanitarian situation and disengagement from Gaza, and other violations. Chapter three discusses internal human rights violations, namely the Nationality and Entry into Israel Law (Temporary Order), institutional discrimination in education, employment and welfare, demographic policy, and the situation in the Naqab/Negev. The report concludes with a short summary of the events that occurred under the Dutch EU Presidency and recommendations for the conduct of relations between the European Union and Israel.

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4 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949), Article 1.

5 International Court of Justice (ICJ), "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory", Advisory Opinion of 9 July 2004, paragraph 159: "In addition, all the States parties to the Geneva Convention relative to the Protection of Civilian Persons at Time of War of 12 August 1949 are under an obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention".

6 ICJ, "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory", Advisory Opinion of 9 July 2004, paragraph 137: "To sum up, the Court, from the material available to it, is not convinced that the specific course Israel has chosen for the wall was necessary to attain its security objectives".

## II. Israel's Violations of International Humanitarian and Human Rights Law in the Occupied Palestinian Territories<sup>7</sup>

Since 1967 Israel has exercised effective control over the Occupied Palestinian Territories (OPT) of Gaza and the West Bank, including East Jerusalem. The occupation has resulted in numerous violations of customary international law, international human rights law, and international humanitarian law, as expressed in instruments such as the Fourth Geneva Convention, the ICCPR, and the ICESCR, among others. These violations have occurred at an increased rate since the beginning of the second Intifada in 2000, and have continued at an elevated level during the period relevant to this report, July 2004-July 2005. This section will highlight and summarise Israel's human rights violations in the OPT during this period, using international humanitarian and human rights law as an analytical benchmark. These violations will be divided into five sections: Israel's settlement policy in the OPT, the separation wall, movement restrictions, the humanitarian situation in Gaza, and other violations. In each section, specific examples of human rights violations will be discussed in greater detail.

Two points must be clarified before proceeding. The first is the question of applicable legal standards. Israel claims that neither the Fourth Geneva Convention nor human rights conventions to which it is a party apply to its behaviour in the OPT. Almost the entire international community, however, including the United Nations (UN), the International Court of Justice (ICJ), the International Committee of the Red Cross (ICRC), and many international law experts, have consistently held that these agreements do in fact apply to Israel's effective control over its extra-territorial holdings in the OPT.<sup>8</sup> The second point is that during period relevant to this report, Israel has promised to cease some practices, such as the extra-judicial killing of militants and the demolition of houses belonging to people who have committed acts of violence against Israel, that have in the past resulted in human rights violations. Gross human rights violations such as killings of civilians and punitive house demolitions have indeed decreased in the first half of 2005. In June 2005, however, Israel officially readopted the policy of targeted killings. The UN Special Rapporteur John Dugard concurs, noting his most recent report on the situation of human rights in the OPT (March 2005) that "important as these changes or reforms may be, they fail to address the principal institutions and instruments that violate human rights and humanitarian law in the Occupied Palestinian Territory—settlements, the Wall, checkpoints and roadblocks, the imprisonment of Gaza and the continued incarceration of over 7,000 Palestinians."<sup>9</sup>

### a. Settlement policy

Settlements first appeared in the OPT in September 1967, a few months after the six-day war. The initial official justification for the settlements was to make Israel's borders easier to defend. Within a few years, however, settlements were set up throughout the OPT in order to control and take over the land. From the beginning East Jerusalem received separate treatment via *de facto* annexation, intense colonisation, and separation from the rest of the West Bank. Every Israeli government since 1967 has actively encouraged settlement in the OPT, including during the period of July 2004 to July 2005.

Israel's settlement policy violates article 49 of the Fourth Geneva Convention, which states that "the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies."<sup>10</sup> Nonetheless, Israel continued to expand its settlements during 2004 and 2005.<sup>11</sup> According

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7 Chapter II was prepared by the Arab Association for Human Rights (HRA). Al-Haq, the Palestinian Center for Human Rights in Gaza and the Public Committee against Torture in Israel provided their research and expert knowledge. Some of the material used in the following sections will be published in al-Haq's Annual Report 2004.

8 Since 1967, the UN Security Council and General Assembly have issued hundreds of resolutions upholding the applicability of the Fourth Geneva Conventions. In 2004 the ICJ held that the Fourth Geneva Conventions, as well as the ICCPR and the ICESCR, apply to the OPT, International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 9 July 2004, available at [http://www.icj-cij.org/icijwww/idoCKET/imwp/imwp\\_advisory\\_opinion\\_20040709.pdf](http://www.icj-cij.org/icijwww/idoCKET/imwp/imwp_advisory_opinion_20040709.pdf). The UN General Assembly issued a resolution shortly thereafter upholding this position, ES-10/15. See also Ardi Imseis, On the Fourth Geneva Convention and the Occupied Palestinian Territory, 44 Harvard Int'l Law Journal. 65, 95-100 (2003).

9 E/CN.4/2005/29/Add.1 Question of the Violation of Human Rights in the Occupied Arab Territories, Including Palestine.

10 Fourth Geneva Convention, article 49, para. 6.

11 The sources in this section, unless otherwise indicated, are from FMEP, "Report on Israeli Settlement in the Occupied Territories," from volume 14, no. 3, May 2004, until Volume 15, no. 2, April 2005. Available at <http://www.fmep.org/reports>.

to the most recent UN data, there are currently 400,000 settlers living in over 100 settlements in the OPT, including East Jerusalem.<sup>12</sup> In August 2004 the Ministry of Defence announced the approval of 600 new housing units in the Ma'ale Adumim settlement, and the Ministry of Housing published tenders to build approximately 1,000 new homes in Betar Ilit, Ma'ale Adumim, Ariel, and Karne Shomron. There is reason to believe that these figures are not comprehensive, because not all new construction is announced so publicly.<sup>13</sup>

The settlements also threaten the Palestinian people's right to self-determination as guaranteed in article 1 of the ICCPR and ICESCR. As a *de facto* annexation of Palestinian territory, they may preclude the Palestinians from freely negotiating the borders of their future state. This is exacerbated by the planned route of the separation wall, which currently places 76% of the settler population on the Israeli side of the wall.<sup>14</sup>

Another effect of the settlement process is the long pattern of settler violence against Palestinians in the OPT that often goes unpunished by Israeli authorities, continuing in 2004-2005 at the high level that has marked the current Intifada. During the fall olive harvesting season, for example, settlers prevented Palestinians from accessing their crops,<sup>15</sup> in at least one case through the use of gunfire.<sup>16</sup> Two Palestinians were also killed by settlers, in September and October 2004, respectively. In neither case were criminal charges brought against the settlers involved.<sup>17</sup> Since it exercises effective control over the OPT, Israel is responsible for ensuring the respect of international human rights law in this territory, including the right to life promised in Art. 6 and the right to security of person in article 9 of the ICCPR. As the UN Special Rapporteur on the situation of human rights in the OPT wrote in 2005, "as settlers are present in the OPT with the Government's approval and as inadequate steps are taken to curb their actions, the Government of Israel must accept responsibility for their actions."<sup>18</sup> Israel's failure to adequately punish settler assailants, especially in light of its treatment of Palestinians accused of violence against Israelis, violates article 5(b) of the International Convention on the Elimination of All Forms of Racial Discrimination in two ways. First, Palestinians accused of violence against Israelis do not enjoy "equality before the law" as compared to their Jewish counterparts. Second, because settler assailants are not pursued as intensely as Palestinian assailants, Palestinian victims of settler violence do not enjoy the same "right to security of person and protection by the State against violence of bodily harm." Settler security is also the underlying rationale for many restrictions on Palestinian movement. Human rights violations arising from these policies will be discussed in the section below on movement restrictions.

## **b. The Separation Wall**

In June 2002 Israel began constructing a barrier, referred to in this report as the separation wall, to physically separate it from the West Bank. Described as a temporary measure to protect Israeli citizens from further Palestinian suicide attacks, 209 km of the wall has been constructed as of February 2005. If built as currently planned, the wall will be 670 km long, leaving 10% of the West Bank and East Jerusalem trapped between the Green Line and the wall.<sup>19</sup> The construction of this structure violates numerous provisions of international humanitarian and human rights law, many of which were discussed in the International Court of Justice's (ICJ) July 2004 advisory opinion that declared the wall illegal.

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12 E/CN.4/2005/29/Add.1, at 2.

13 In 2004, for example, Ariel Sharon attempted to suppress reports of a new settlement being planned between Ma'ale Adumim and Jerusalem. See Conal Urquhart, "Israel flouts road map with new settlement," *The Guardian*, 6 August 2004, available at <http://www.guardian.co.uk/print/0,3858,4987147-103552,00.html>.

14 UN, *The Human*

15 E/CN.4/2005/29, at 14.

16 Al-Haq affidavit.

17 Al-Haq affidavit.

18 E/CN.4/2005/29, at 14.

19 United Nations Office for Coordination of Humanitarian Affairs (OCHA), *The Humanitarian Impact of the West Bank Barrier on Palestinian Communities*, March 2005, at 3.



In July 2004 the ICJ delivered an advisory opinion on the legal status of the wall in the West Bank. After concluding that it did have jurisdiction to hear the case, the court "reached the conclusion that the construction of the wall by Israel in the Occupied Palestinian Territory is contrary to international law."<sup>20</sup> The court particularly noted that the Israeli settlements around which the wall was being built violated article 49 of the Fourth Geneva Conventions prohibiting the Occupying Power from transferring its civilian population into occupied territory,<sup>21</sup> and that the wall itself threatened the Palestinian right of self-determination.<sup>22</sup> With respect to the wall's impact on Palestinian life, the court noted that it impeded Palestinian freedom of movement, and access to health, work, education and an adequate standard of living, which are guaranteed in the ICCPR and ICESCR, respectively.<sup>23</sup> In reaching these conclusions, the court also took note of Israel's justification for the wall, that it is a necessary measure to protect the security of Israel, and concluded that "the wall, along with the route chosen, and its associated regime gravely infringe a number of rights of Palestinians residing in the territory occupied by Israel, and infringements resulting from that route cannot be justified by military exigencies or by the requirements of national security or public order."<sup>24</sup>

Although Israel claims that the wall is only a temporary measure and does not represent formal annexation of territory, the ICJ has declared that because the route of the wall may "prejudge the future frontier between Israel and Palestine and...create a "fait accompli" on the ground that could well become permanent," and it "thus severely impedes the exercise by the Palestinian people of its right to self-determination, and is therefore a breach of Israel's obligation in that respect."<sup>25</sup> This violates the right to self-determination articulated in Article 1 of the ICCPR and ICESCR. It also violates the Fourth Geneva Convention's prohibition of annexation of territory acquired through war.

Because most of the wall is built inside Palestinian territory, its construction requires the confiscation of Palestinian land and destruction of the property on it, violating Article 17 of the Universal Declaration of Human Rights, which states that no one shall be arbitrarily deprived of his property, and Article 53 of the Fourth Geneva Convention, which forbids an Occupying Power from destroying any property, unless "rendered absolutely necessary by military operations." From January to May 2005 alone over 1900 acres of Palestinian land were requisitioned for the wall's construction.<sup>26</sup> The World Bank estimated in December 2004 that economic losses resulting from land confiscations, as well as property access problems described in the paragraph below, resulted in the loss of US\$320 million of agricultural production.<sup>27</sup>

Approximately 49,000 Palestinians living in 38 villages and towns will be trapped, if the wall is built as currently planned, between it and the Green Line.<sup>28</sup> Movement in and out of this area, known as the seam zone, is severely restricted, limited mostly to 55 agricultural gates, only 21 of which are open to Palestinians.<sup>29</sup> Seam zone residents are thus prevented from freely accessing health care, education, employment, their families, and property on the other side of the wall. This situation is responsible for numerous human rights violations, including the right to work, articulated in article 6 of the ICESCR, freedom of movement guaranteed in article 12 of the ICCPR, and the right to education protected by article 23 of the ICESCR. The same human rights violations affect non-seam zone residents of the West Bank, who similarly have trouble accessing any property or employment they may have on the other side of the wall, whether in the seam zone or inside Israel.

The ICJ opinion also emphasized that these human rights and humanitarian law violations created legal obligations for third-party states as well. The court held that the right to self-determination violated by the wall's construction is so important that all states have an interest in its protection, especially as it is

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20 ICJ Advisory Opinion of 9 July 2004, at 152.

21 *Id.* at 112.

22 *Id.* at 115.

23 *Id.* at 131-32.

24 *Id.* at 136.

25 ICJ, at 114.

26 UN Consolidated Appeals Process, Occupied Palestinian Territory: 2005 Mid-Year Report, at 5.

27 World Bank, Stagnation or Revival? Israeli Disengagement and Palestinian Economic Prospects, December 2004.

28 OCHA, The Humanitarian Impact of the West Bank Barrier, at 3.

29 E.CN.4/2005/29/Add.1, at 8.

rooted in the UN Charter and UN practice.<sup>30</sup> The court also argued, echoing the language of one of its earlier advisory opinions, that international humanitarian law constitutes "intransgressible principles of international customary law" that all states have an interest in upholding. The Fourth Geneva Convention further holds, in Article 1, that all parties to the Convention are obliged to "undertake to respect and to ensure respect for the present Convention in all circumstances."<sup>31</sup> The court thus held that all States are obliged "not to recognize the illegal situation resulting from the construction of the wall...[and] not to render aid or assistance in maintaining the situation created by such construction," as well as "to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end."<sup>32</sup>

Israel's construction of the separation wall has thus not only created serious humanitarian problems in the West Bank and violated numerous provisions of international human rights and humanitarian law, but has given rise to a situation in response to which the international community is clearly required to act. Third party obligations have been explicitly articulated in the recent ICJ opinion.

### **c. Restrictions on Movement**

An intricate system of checkpoints, permit requirements, roadblocks, and curfews greatly restricts Palestinian movement within, between, and in and out of the OPT. Israel justifies these measures as necessary for protecting its security, but these restrictions have a devastating affect of the Palestinian economy and have been identified by the United Nations as one of the major sources of human rights violations in the OPT.<sup>33</sup>

Israeli restrictions on Palestinian movement in the OPT violate article 12 of the ICCPR, which guarantees "the right of liberty of movement." At the end of 2004 in the West Bank, closures consisted of a combination of approximately 700 checkpoints and physical obstacles across roads. In the Gaza Strip, Palestinian movement was tightly restricted at all border crossings and within the Gaza Strip by checkpoints and other military infrastructure. On 31 August 2004, Gaza's Erez crossing was closed for almost three months. These restrictions thus turn freedom of movement for Palestinians into a privilege, rather than a right subject to reasonable limits, something that the General Comment on the Implementation of Article 12 expressly forbids: "states should always be guided by the principle that the restrictions must not impair the essence of the right; the relation between the rights and the restriction, between norm and exception, must not be reversed."

Movement restrictions also prevent Palestinians in the OPT from exercising their right to access and freely choose a source of employment, guaranteed in Article 6 of the ICESCR. Unemployment and poverty has been increasing in the OPT since the beginning of the 2000 Intifada and the subsequent increase in movement restrictions. At the end of 2004, the unemployment rate in the OPT was 27% and poverty rates in the West Bank and Gaza Strip were 38% and 65%, respectively.<sup>34</sup> The World Bank cites movement restrictions as a major contributor to this situation, and notes that "recovery depends above all on a comprehensive Israeli approach to lifting closure," and recommends dismantling the checkpoint systems and facilitating easier transportation between the West Bank and Gaza.<sup>35</sup>

Access to health and educational services is also compromised by these restrictions, violating Articles 12 and 13 of the ICESCR. Ambulances are often delayed, and the phenomenon of women giving birth at checkpoints (which in some cases has resulted in the death of the infant and/or the mother) is common enough that a July 2005 UN Human Rights Resolution requested the High Commission for Human Rights to address the issue "with a view to ending this inhumane Israeli practice."<sup>36</sup> The

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30 Id. at 148.

31 Id. at 149-50.

32 Id. at 150.

33 E/CN.4/2005/29/Add.1 at 9.

34 World Bank, *Stagnation and Revival: Israeli Disengagement and Palestinian Economic Prospects*, December 2004, at 3.

35 World Bank, at X, 26-27.

36 Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, Human Rights Resolution 2005/7, at 3.

Palestinian Central Bureau of Statistics revealed that between October and December 2004, 53% of Palestinian households' access to healthcare was limited by movement restrictions.<sup>37</sup> CEDAW also recently indicated that its provisions are applicable to Israel's occupation of the Palestinian Territories and called upon Israel to ensure that access to health-care services for pregnant women at checkpoints (CEDAW/C/ISR/3 from 6 July 2005).

The manner in which movement restrictions are implemented violate further provisions of international humanitarian and human rights law. Article 27 of the Fourth Geneva Convention requires respect for the person and his honor. The often hostile and degrading treatment Palestinians have reported receiving at the checkpoints violates this guarantee. As the Special Rapporteur for Human Rights in the OPT noted after facing difficulties at many checkpoints, "if privileged travellers receive such treatment...it is difficult to imagine the humiliation, frustration and agony caused to ordinary Palestinians in their daily lives. [The Sharm al-Sheik peace accord] will have little impact on Palestinian life until restrictions on the freedom of movement of Palestinians are addressed."<sup>38</sup>

These movement restrictions also only apply to Palestinian residents of the OPT, and not their Israeli counterparts. This violates numerous human rights instruments that require non-discrimination, including the ICCPR, the ICESCR, CERD, and the Fourth Geneva Convention. The fact that they are applied to the entire Palestinian population of the OPT, rather than to individuals who represent an actual threat to security, violates the prohibition of collective punishment in Article 33 of the Fourth Geneva Convention.

#### **d. Humanitarian and Human Rights Situation in Gaza**

The 1.4 million Palestinians living in Gaza face constant threats to their most basic human rights, including the right to life, security, housing, and an adequate standard of living. They are moreover frequently exposed to collective punishment and unnecessary suffering. The following section highlights some of the gross violations of these rights.

Poverty is rampant all across the OPT, and the humanitarian situation in Gaza is particularly harsh. According to World Bank estimates from October 2004, some 47% of Palestinians, or 1.8 million people, live below the poverty line (less than US\$ 2.10 per day).<sup>39</sup> Of these, more than 600,000 live in subsistence poverty, meaning that 16% of the population cannot afford (or can barely afford) the basics of survival, despite significant amounts of humanitarian assistance.<sup>40</sup> The World Bank further projects that if the status quo continues, by 2006 poverty levels would climb to about 55% overall and more than 70% in Gaza.<sup>41</sup> The World Bank concluded that "The precipitator of this economic crisis has been 'closure,' a multi-faceted system of restrictions on the movement of Palestinian people and goods, which the Government of Israel argues is essential to protect Israelis in Israel and in the settlements. Closures, including the Separation Barrier, prevent the free flow of Palestinian economic transactions; they raise the cost of doing business and disrupt the predictability needed for orderly economic life".<sup>42</sup> Economic self-sufficiency is also impeded by other security restrictions. Fishing, for example, has been prohibited on approximately 40% of the Gaza coast since October 2003. In the remaining coastal areas, fishermen are restricted to operating within 10 nautical miles off the coast. According to the UN Office for the Coordination of Humanitarian Affairs (OCHA) latest Gaza Access Report, the monthly catch of fish has gone down from 823 tonnes in June 2000 to 198 tonnes in June 2004 and finally to 150 tonnes in June 2005.<sup>43</sup>

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37 "PCBS: 53.6% of the households have access problem to health services," from <http://www.healthforum.net/modules.php?name=news&file=article&sid=401>.

38 E/CN.4/2005/29/Add.1 at 9.

39 World Bank, Four Years – Intifada, Closures and Palestinian Economic Crisis: An Assessment, October 2004.

40 Ibid. pages 32- 33.

41 Ibid. page 102.

42 Ibid. p. xiii.

43 OCHA, The Gaza Strip: Access Report June 2005, p. 1.

House demolitions are also a looming threat. OCHA reported that the Israeli Defense Forces (IDF) demolished in 2004 an average of 120 residential buildings each month, leaving 13,510 people homeless.<sup>44</sup> In 2005, the number of house demolitions has decreased considerably in Gaza, while it was pursued with greater fervour in East Jerusalem. The UN Special Rapporteur on the OPT John Dugard wrote on the policy of house demolitions in Gaza:

"[...] Homes have been destroyed in a purely purposeless manner. Caterpillar bulldozers have savagely dug up roads with a "ripper" attachment, which has enabled them to destroy electricity, sewage and water lines in a brutal display of power. Moreover, there has been a total lack of concern for the people affected. On July 12 2004, in the course of a raid into Khan Yunis, the IDF destroyed a house in which 75-year-old Mahmoud Halfalla, confined to a wheelchair, was present. Despite appeals to allow him to leave, the house was destroyed above him and he was killed."<sup>45</sup>

Finally, there is the constant threat of bodily harm Palestinians living in occupied Gaza are exposed to. Only in October 2004, at least 114 Palestinians were killed during operation "Days of Penitence", according to the Palestinian Ministry of Health. Five Israelis were killed during the same period. An additional 17 Palestinians were killed in Khan Younis during a two-day Israeli operation that began on 24 October 2004. In both Israeli operations, Israeli forces stated that their actions are aimed at stopping Palestinian militant shelling and rocket attacks on nearby Israeli towns that caused Israeli casualties.<sup>46</sup> The UN Rapporteur on the OPT mentioned as one of the most alarming features of these incursions the IDF's "failure to curb its fire in the vicinity of schools. As a consequence, on 5 October 2004, a 13-year-old school girl, Imam al-Hams, was shot and killed by 20 bullets near her school. In the same period, other schoolgirls were killed by IDF gunfire in schools run by UNRWA".<sup>47</sup>

### **The Disengagement Plan: The Reality behind Disengagement**

Israeli Prime Minister Sharon issued a disengagement plan on 6 June 2004. The core component of this Plan is a unilateral withdrawal from the Gaza Strip and the northern part of the West Bank, and its declared objective is to allow a more effective deployment of Israeli military forces and reduce the friction with the Palestinian population. However, the exact contents of the disengagement plan and the way Israel pursued its policy of settlement expansion in the meantime suggest that the disengagement initiative will not put an end to occupation. It is clear from the details provided in the disengagement plan that, if implemented, the Gaza Strip will remain under Israel's effective control through an ongoing presence internally and in all border areas. The plan specifically provides that:

"Israel will evacuate the Gaza Strip, including all the Israeli settlements currently existing there, and will redeploy outside the territory of the Strip. This, apart from military deployment along the border line between the Gaza Strip and Egypt, will be detailed below.

Upon completion of the move, no *permanent* Israeli civilian or military presence in the areas that are evacuated in the continental expanse of the Gaza Strip will remain. As a result, there will be no basis for the claim that the Gaza Strip is occupied territory.

Israel will supervise and guard the external envelope on land, will maintain exclusive control in the air space of Gaza, and will continue to conduct military activities in the sea space of the Gaza Strip.

*The Gaza Strip will be demilitarized and devoid of armaments*, the presence of which is not in accordance with the existing agreements between the sides.

Israel reserves for itself the basic right of self-defense, including *taking preventative steps as well as responding by using force* against threats that will emerge from the Gaza Strip."<sup>48</sup> (*Emphases added*)

The decision by the Israeli authorities to prevent the reopening of Rafah International Airport indicates their intention to prevent free movement of people, services and goods in and out of the Gaza Strip.

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44 OCHA, Review of the Humanitarian Situation in the Occupied Palestinian Territory for 2004, p. 10.

45 Commission on Human Rights, E/CN.4/2005/29 (Dec. 7, 2004), p. 9.

46 OCHA, Humanitarian Update 2005, <http://domino.un.org/UNISPAL.NSF/0/7009bd74aa46372785256ffd004b1227?OpenDocument> (accessed: August 15, 2005).

47 Commission on Human Rights, E/CN.4/2005/29 (Dec. 7, 2004), p. 10.

48 Full text of the Disengagement Plan available at Miftah: The Palestinian Initiative for Global Dialogue and Democracy: <http://www.miftah.org/Display.cfm?DocId=3655&CategoryId=10>

Further, Palestinian fishermen will still be restricted from fishing outside of an 8-10 km area along the coast of Gaza, which is patrolled by the Israeli navy. Fishermen are also prevented from moving more than half way down the coastal waters of the Gaza strip. This also denies the Palestinians access to resources of natural gas in their territorial waters.

Though disengagement from Gaza is a positive development, close attention needs to be paid to the way it is implemented, i.e. does it really end Israel's effective control over Gaza, and to the issues it does not touch, i.e. the separation wall, the closure regime, the settlement policy and excessive violence against civilians. For instance, while announcing its withdrawal from Gaza, Israel maintains its claims to parts of the West Bank. The disengagement plan provides that:

"In any future final-status agreement, there will be no Israeli settlement in the Gaza Strip. However, it is clear that in Judea and Samaria, some areas will remain part of the state of Israel, among them civilian settlements, military zones and places where Israel has additional interests. [...] Israel will continue to build the security fence, in accordance with the relevant government decisions".<sup>49</sup>

#### **e. Other Violations**

Palestinian residents of the OPT are subjected to numerous other severe human rights violations, resulting from administrative detention without trial, the detention of Palestinian children, torture and inhuman treatment, targeted killings and house demolitions. These actions constitute gross breaches of international customary law such as the principle of proportionality, humanitarian law and human rights law and may in some cases amount to crimes evoking universal jurisdiction. The Fourth Geneva Convention prohibits extrajudicial killings, torture, willfully causing great suffering and collective punishment. The ICCPR guarantees the freedom of movement and the right to a fair trial. The right to own property is enshrined in the ICESCR. Other international instruments such as CRC, CERD, and CEDAW do apply as well.

#### **Palestinian Prisoners and Detainees**

Since the beginning of the second *Intifada* in September 2000 until the end of 2004, 40,000 Palestinians were arrested or detained by the Israeli Defense Forces (IDF) and border police. At the end of 2004, there were more than 3,500 residents of the OPT held as "security prisoners" in Israeli Prison Service (IPS) facilities inside Israel, and more than 4,000 Palestinians were kept in military detention camps. 380 prisoners are children.<sup>50</sup> According to the UN Special Rapporteur on the OPT John Dugard in March 2005, over 850 of the 7,000<sup>51</sup> Palestinian prisoners were administrative detainees, that is, they are held without trial.

Israel as an occupying power breaches international law by detaining residents of the OPT inside Israel, while Article 47 of the Fourth Geneva Convention provides that "protected persons accused of offenses shall be detained in the occupied country, and if convicted, they shall serve their sentences therein". By detaining children, Israel gravely violates the Convention on the Rights of the Child. According to the Military Order 1500 put in place during the British Mandate period in Palestine, children in the OPT aged 12 and older can be tried in military courts, and a child over the age of 16 is considered an adult. Article 1 of the Convention on the Rights of the Child stipulates that "a child means every human being below the age of eighteen years." It must be noted that Israel keeps to the internationally recognised definition of a child among its own citizens but applies a different standard to Palestinian minors in the OPT. Keeping people in prolonged administrative detention without trial contradicts the Fourth Geneva Convention and the ICCPR which guarantees everyone the right to a fair trial.

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49 Ibid.

50 Statistics are taken from: Addameer, [http://www.addameer.org/detention/current\\_stats.html](http://www.addameer.org/detention/current_stats.html) (accessed: July 27, 2005).

51 In February 2005, Israel released 500 Palestinian prisoners as part of the ceasefire agreement. However, The UN Special Rapporteur notes in his report that these were mainly short-term prisoners or prisoners who had almost completed their sentence.

## Torture and Inhuman Treatment

The Israeli Supreme Court ruled in September 1999 that the use of even "moderate physical pressure" during interrogation is prohibited, except in extreme "ticking time bomb" situations. Nonetheless, the Public Committee against Torture in Israel (PCATI) documented many cases of torture and ill-treatment of Palestinian detainees since the ruling. According to PCATI, ill-treatment of Palestinian detainees by IDF soldiers and other detaining forces is manifested mainly in the following forms:

- Ill-treatment of relatives of the detainee, including threats and cursing, and destructive house searches.
- Violence during arrest and on the way to the detention facility including beatings (sometimes with rifle butts), slapping, kicking, and seating the detainee on the floor of the vehicle and stepping on him.
- Shackling with "azikonim": this is the only method of ill-treatment that is 'legal' in the IDF – "azikonim" are disposable shackles, made of flexible but hard plastic; they can be tightened but not loosened.
- Inhuman conditions of detention, including under the open sky, with exposure to heat or cold and rain, and with no provisions, i.e. blankets, being kept for days on asphalt, being held in a 'cage,' being held in a trash dump, poor food and hygiene.
- Other means of ill-treatment, including being suspended with legs up, engaging in a contest of throwing stones at the detainee, forcing the detainee to run blindfolded and tripping him, stripping (sometimes to complete nakedness), intimidation using a dog, cocking a weapon – as if intending a summary execution, and more.<sup>52</sup>

In August 2004, Palestinian political prisoners went on a hunger strike in order to press for more humane prison conditions and the right to receive visits. In response to the prisoners' demands, then-Public Security Minister Zachi Hanegbi said that if it was for him the prisoners could "starve to death".<sup>53</sup> The agreements reached after the end of the hunger strike have not led to significant improvements.

## Targeted Killings

During the second *Intifada*, Israel formally adopted a policy of assassinating Palestinians suspected of membership in armed organisations. According to *B'Tselem's* figures from May 2005,<sup>54</sup> since the beginning of 2004 Israeli security forces have killed 89 Palestinians during operations referred to as arrest operations. At least 17 of the persons killed were not wanted by Israel, but were civilians who were not suspected of committing any offense. In addition, at least 43 of those killed were unarmed, or were not attempting to use their arms against Israeli security forces at the time they were killed. None of these cases was investigated by the Military Police investigation unit. The assassination policy has been sharply criticised by international bodies and human rights organisations. Israel argues that its assassination victims are, as members of armed organisations, combatants and therefore legitimate targets of attack. However, when Israel captures members of such organizations alive, it does not grant them the rights given to combatants by international humanitarian law, such as the right to be recognised as a prisoner of war when captured, which entails immunity from criminal prosecution.

Israel's policy of targeted assassinations violates a number of fundamental rights such as the right to a fair trial outlined in international human rights instruments to which Israel is a state party. Even if Israel was not a state party to these instruments, fundamental rights such as the right to life, and the prohibition on cruel, inhuman and or degrading treatment or punishment constitute customary international law. According to international human rights instruments, such as the ICCPR, the

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52 Public Committee against Torture in Israel (PCATI), *Back to a Routine of Torture: Torture and Ill-Treatment of Palestinian Detainees during Arrest, Detention and Interrogation*, September 2001-April 2003, <http://www.stoptorture.org.il/eng/images/uploaded/publications/58.pdf> (accessed: July 27, 2005).

53 Arab Association for Human Rights (HRA), "'Let Them Starve to Death': Official Reactions to the Hunger Strike of Security Prisoners Reveal that Israel's Security Needs Clash with the Palestinians' Right to Life", press release (August 23, 2004), <http://www.arabhra.org/publications/pressrel/PDF/pressrel040823.pdf>

54 B'Tselem, "Take No Prisoners: The Fatal Shooting of Palestinians by Israeli Security Forces during "Arrest Operations"", May 2005.

prohibition on the arbitrary deprivation of life cannot be derogated from, even "in time of public emergency which threatens the life of the nation" [emphasis added]. Therefore Israel may not justify its targeted assassination policy in the name of security or counter-terrorism measures. In addition, wilful killing of this nature is a war crime, and constitutes a grave breach of the Fourth Geneva Convention, which mandates universal jurisdiction.<sup>55</sup>

### **House Demolitions**

According to the UN Humanitarian Information Fact Sheet from January 2005, more than 12,000 homes were either demolished completely or damaged in the West Bank since 2000, and more than 24,000 Gazans were made homeless during that same period. In the first nine months of 2004, the IDF demolished an average of 120 residential buildings per month.<sup>56</sup>

60% of houses were destroyed in the course of clearing operations to meet Israel's military needs, 25% of houses were demolished for lacking a building license' and 15% of homes were knocked down as collective punishment for the families and neighbours of Palestinians who allegedly have carried out attacks against Israelis or are suspected thereof. In 40% of these cases, no Israeli was killed in the incidents giving rise to the demolition.<sup>57</sup>

The UN Special Rapporteur notes that "it is difficult to resist the conclusion that punitive house demolitions constitute serious war crimes. Article 53 of the Fourth Geneva Convention prohibits the occupying state from destroying the property of civilians<sup>58</sup> without absolute necessity.

### **III. Israel's Human Rights Violations against its Palestinian Minority Citizens<sup>59</sup>**

The legal situation of Israel's Palestinian minority<sup>60</sup> is significantly different from that of the Palestinian residents of the OPT. As citizens of Israel, they enjoy all the rights conferred to them as Israelis by domestic legislation and are also protected by Israel's self-imposed commitments under international human rights law.

Today, the Palestinian Arab minority in Israel makes up about 20% of the state's population and has since the establishment of Israel been discriminated against as second-class citizenry. Since 1948, no new Arab locality has been established inside Israel even though the Arab population grew from 150,000 to 1.2 million, and the existing villages and towns have not expanded considerably. No Arab political party has ever been in a government coalition and only about 5.5% percent of the state's civil servants are Arab.<sup>61</sup> The state budget consistently allocates disproportionately low amounts to the Arab community, affecting all spheres of political and socio-economic development. Despite this underdevelopment and previous promises to make more resources available, barely three percent of the development budget for 2005 was earmarked for Israel's Palestinian Arab citizens.<sup>62</sup> Moreover, about half of the country's Bedouin population (about 75,000 people) in the Naqab/Negev and many Palestinian Arab citizens in the Galilee live in unrecognised villages lacking all public services. As their brethren in the OPT, Arab minority citizens are exposed to house demolitions and excessive police violence.

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55 The assassination Policy of the State of Israel, November 2000-January 2002, the Public Committee Against Torture in Israel (PCATI) and Law – the Palestinian Society for the Protection of Human Rights and the Environment, June 2002, p. 80.

56 United Nations, Humanitarian Information Fact Sheet, January 2005, [http://www.humanitarianinfo.org/opt/OCHA\\_Body-ASP\\_Files/Doc-Cntr\\_Sec/Doc-Cntr\\_K-Issues/OCHAoPt\\_Fact-Sheet04\\_Web\\_pg1-2.pdf](http://www.humanitarianinfo.org/opt/OCHA_Body-ASP_Files/Doc-Cntr_Sec/Doc-Cntr_K-Issues/OCHAoPt_Fact-Sheet04_Web_pg1-2.pdf) (accessed: August 15, 2005).

57 Commission on Human Rights, E/CN.4/2005/29 (Dec. 7, 2004), p. 11.

58 Ibid., p. 12.

59 Chapter II was prepared by the Arab Association for Human Rights (HRA), with the help of the information made available by other members of the EMHRN Working Group on Palestine.

60 Members of the Palestinian minority inside Israel are ethnically Arab and nationally Palestinian. Palestinian and Arab will be used interchangeably in this chapter in order to describe the Palestinian Arab minority citizens of Israel.

61 Berger, Yackov, Report of the Knesset Constitution, Law and Justice Committee, "Fair Representation among State Service Workers", May 2004 (Hebrew).

62 Mossawa Center, "Palestinian Arab Citizens of Israel: Status, Opportunities, and Challenges for an Israeli-Palestinian Peace (Working Document)", May 2005, p. 40.

The following sections will explain the main issues of concern between July 2004 and July 2005, namely the extension of the Nationality and Entry into Israel Law (Temporary Order), ongoing institutional discrimination in education, employment and welfare, discriminatory demographic policy and the situation of the Bedouin in the Naqab.

### **a. Nationality and Entry into Israel Law (Temporary Order)**

On 31 July 2003, the Knesset enacted the Nationality and Entry into Israel Law (Temporary Order). This law prevents family unification of Israeli citizens married to residents of the OPT (including separating Palestinians in the OPT (excluding East Jerusalem) from their families inside East Jerusalem and Israel) through the prohibition of granting any residency or citizenship status to spouses from the West Bank and Gaza. It should be noted that the Law explicitly excludes "resident[s] of an Israeli settlement in the region",<sup>63</sup> thus making a clear ethnic distinction between Palestinian and Jewish residents of the OPT. In practice, the law affects only Palestinian citizens of Israel and their spouses from the OPT, and it gravely violates the basic human rights to equality, privacy and family life. Furthermore, the ability of Palestinians to seek effective remedy is undermined by the repeated renewal of this law by the Knesset, facilitated by the refusal of the Israeli High Court of Justice to consider the matter due to the "temporary" nature of the law.

International bodies have criticised the discriminatory nature of the Law and called upon Israel to revoke it. In 2003, the UN Human Rights Committee's Concluding Observations on Israel held that Israel "should revoke the Nationality and Entry into Israel Law (Temporary Order) of 31 July 2003, which raises serious issues under articles 17, 23 and 26 of the Covenant. [...]."<sup>64</sup> The European Parliament, in its Resolution on Human Rights in the World in 2002 and European Union's Human Rights Policy stated that it "[c]ondemns the approval by the Knesset of a draft law prohibiting Palestinians from obtaining Israeli citizenship by marriage; calls on the Israeli government not to ratify or apply this discriminatory and racist law."<sup>65</sup>

On 15 May 2005, Israeli cabinet ministers approved a draft bill to extend the validity of the Law with some amendments, including differentiations on the grounds of age and gender. The Nationality and Entry into Israel Law (Temporary Order) has been extended in its amended version at the end of July 2005.

### **b. Institutional Discrimination in Education, Employment, and Welfare**

Palestinian Arab citizens of Israel are faced with institutional discrimination in all socio-economic fields. The huge gap between educational achievement of Arab and Jewish pupils and the limited access to employment for Arabs lead to high unemployment rates and low levels of income. Moreover, Israel's social safety net does not work for the majority of indigent Arab citizens of Israel. The disparities in standard of living between Jewish Israelis and Arab minority citizens are not simply a consequence of social injustice but are the result of systematic legal and budgetary discrimination and denial of access to proper education, employment and welfare including health care.

There are two school systems in Israel, one for Palestinian Arab children and one for Jewish children. The Ministry of Education does not regularly provide information on how public funds are distributed between the two systems, however, statistics published in August 2004 reveal that public investment on each Palestinian student amounted to NIS 534 in the academic year 2000-2001, compared to NIS 1,779 per Jewish student.<sup>66</sup> Accordingly, Arab schools are under-staffed and under-equipped and lack

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63 The full text of the Nationality and Entry into Israel Law (Temporary Order) in both its original and the proposed amended version is available at the website of Adalah, the Legal Center for Arab Minority Rights in Israel, at:

<http://www.adalah.org/features/famuni/lawBill.pdf>

64 The UN Human Rights Committee, Concluding Observations on Israel, 2003 [CCPR/CO/78/ISR], paragraph 21. Full text at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.78.ISR.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.78.ISR.En?Opendocument) (accessed: July 20, 2005).

65 European Parliament, "Resolution on Human Rights in the World in 2002 and European Union's Human Rights Policy (2002/2011(INI))," paragraph 40.

66 Central Bureau of Statistics (CBS), "New Survey – Investment in Education 2000/01," press release, 3 August 2004 (Hebrew).



special services such as counsellors and truancy officers. Educational attainment levels are much lower in the Arab education system, while drop-out rates are significantly higher, especially among the Bedouin in the Naqab. In terms of years of education, only 19% of Arab citizens had more than 12 years of education, while 43% of Jews had tertiary education. 48% of Arabs left school after ten years or earlier, while only 20% of Jewish students leave school before the end of tenth grade.<sup>67</sup>

The average available income for a Palestinian Arab family is 67.8 percent that of a Jewish family.<sup>68</sup> Arab citizens have limited access to employment opportunities for various reasons. Firstly, low education performance levels and traditional employment patterns keep the Arab community in the lower income professions. In the civil service sector, differences are particularly stark: Only 5.5% of civil servants in Israel are Arabs.<sup>69</sup> Secondly, Arab communities lack the infrastructure, such as industrial zones, public transport and day care facilities for children. Arab women are particularly affected by these infrastructural problems. The combination of limited mobility and social restraints prevent Arab women from joining the work force, and Israel does not apply sufficient special measures to encourage participation.<sup>70</sup> As a consequence, only 17% of Arab women participate in the work force as compared to 53% of Jewish women and 60% of Arab men.<sup>71</sup> Another result of the above-mentioned structural problems is the high unemployment rate among Arab citizens of Israel, particularly Arab women, who have no niche in the Israeli economy. Unemployment rates among Jews compared with Arabs show a continually increasing disparity beginning in the late 1990s. Among Arab men, the unemployment rate in 2002 was 14% compared with 9% among Jewish men.<sup>72</sup>

Israel is a welfare state in the European tradition and acknowledges its duty to guarantee sufficient means of subsistence to all of its residents and citizens. However, Palestinian Arab citizens of Israel are denied proper access to the state's welfare system through covertly discriminatory legislation and biased implementation of laws and policies. Common means of exclusion are military service as a condition for social assistance, deduction of income benefits due to property that does either not exist or does not generate income and withdrawal of transfer payments for job refusal in cases where the employer decided not to hire the job seeker.<sup>73</sup> According to 2005 statistics of the National Insurance Institute (NII), 46.6% of Arab families inside Israel (excluding East Jerusalem) lived below the official poverty line in 2004, while only 15.7% of Jewish families were poor.<sup>74</sup> Moreover, the statistics proved that the social safety net does not work for Palestinian Arab citizens. The poverty reduction rate after welfare payments and direct taxation was only 15.4% for Palestinian Arab families as opposed to 42.2% among the Jewish population.<sup>75</sup> Recent statistics also reveal that in 2004, poverty increased sharply all over Israel, particularly within the Palestinian Arab community. In 2004, more than 107,000 people dropped below the poverty line, amounting to 23.6 percent of the population, as opposed to 22.4 percent in 2003.<sup>76</sup>

### **c. Discriminatory Demographic Policy**

Israel's population policy illustrates most clearly the contradictions inherent in the country's self-definition as both Jewish and democratic. Both Israel's demographic policy and the public discourse suggest that keeping a Jewish majority in Israel is of paramount political importance. Tools to maintain this majority range from the re-establishment of the Demography Council, a government agency whose

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67 CBS, Labour Force Survey 2003.

68 Sikkuy, Sikkuy Report 2003-2004, November 2004, <http://www.sikkuy.org.il/english/report%202004.pdf> (accessed: July 25, 2005).

69 Berger, Yackov, Report of the Knesset Constitution, Law and Justice Committee, "Fair Representation among State Service Workers", May 2004 (Hebrew).

70 Working Group on the Status of Palestinian Women Citizens of Israel, NGO Alternative Report in Response to "List of Issues and Questions with regard to the Consideration of Periodic Reports", July 2005, p. 21.

71 CBS, Statistical Abstract of Israel, Table 12.1.

72 Sikkuy, Sikkuy Report 2003-2004, November 2004, <http://www.sikkuy.org.il/english/report%202004.pdf> (accessed: July 25, 2005).

73 For detailed information about the complex issue of discrimination in the social welfare sector, please contact Sawt el-Amel: The Laborer's Voice, [www.laborers-voice.org](http://www.laborers-voice.org), or the Arab Association for Human Rights (HRA), [www.arabhra.org](http://www.arabhra.org).

74 Israel defines the official poverty line as 50% of the median income, adjusted to family size. In 2004, the poverty line for a single person was NIS 1,777. A couple was considered poor if its joint income was less than NIS 2,843; for a family of four it was NIS 4,548 and for a family of six NIS 6,041.

75 National Insurance Institute (NII), Annual Report 2004, April 2005.

76 NII, Annual Survey 2004, Leah Achdut (ed.), August 2005.

mandate it is to devise policies to increase the percentage of Jews in Israel, to official suggestions of population exchange between Jewish settlers from the OPT and Palestinian citizens of Israel.<sup>77</sup> Ethnically biased population policies violate the principle of non-discrimination and the Palestinian minority's rights to equality and family life. Moreover, some Israeli laws and government policies are directed towards preventing the Palestinian refugees' right to return, even by way of marriage.

Refugees' right to return to their home country is enshrined in international law, most notably in the International Covenant on Civil and Political Rights (1966, Article 12: Freedom of Movement), and UN General Assembly Resolution 194 (III) of 1948, calling upon Israel to allow the peaceful return of refugees. The Nationality and Entry into Israel Law (Temporary Order) and the unofficial government policy to freeze all status applications from citizens of Arab countries<sup>78</sup> are indirect means to prevent return through marriage, which is a grave violation of the fundamental human right to freely choose a partner and establish a family.

Demographics are also a major aspect in Israel's development policy. Coinciding with disengagement from Gaza, Israel initiated a large international campaign to raise funds for the Negev and Galilee Development Plan. Compared to the centre of the country, the Naqab and Galilee regions are scarcely populated and home to most of Israel's Palestinian Arab citizens. The two regions are also significantly poorer and less developed in terms of infrastructure. Therefore, the objective of investing in the Naqab and the Galilee is in principle a good step. However, statements from government officials suggest that development funds will be spent in a biased manner. In an official address to the attendants of the Galilee Conference in June 2005, Prime Minister Sharon presented the reasoning behind disengagement from Gaza and developing the Naqab and Galilee as follows:

"I wish to say that the Disengagement Plan is not only a decision to withdraw from Gaza, it is a decision to invest increased efforts in developing the Negev, developing the Galilee and the Greater Jerusalem area. It is a decision to withdraw from a region with little security importance, in order to ensure the areas which we view as having high strategic importance. [...] Leaving Gaza is the key to ensuring the future of Zionism. Also here in the Galilee, Zionism must expand its activities, and I am certain that it will do so".<sup>79</sup>

#### **d. The Naqab/Negev**

The approximately 140,000 Bedouin in the Naqab are the targets of severe human rights violations. The majority of the Bedouin population lives in conditions comparable to the world's least developed countries, which is expressed in the official socio-economic ranking according to the Central Bureau of Statistics (CBS).<sup>80</sup> The findings of the CBS reveal that all seven recognised Bedouin localities in the Naqab are among the ten poorest municipalities in Israel.<sup>81</sup> However, these data do not include the 46 unrecognised villages in the Naqab, inhabited by about half of the Bedouin population. Due to an unsettled land dispute and Israel's claim to most of the land inhabited by the Bedouin of the Naqab, the state denies recognition to villages it considers to be situated on state land. Unrecognised villages do not appear on any map and are denied all public services, including electricity, water, and waste disposal. The state claims ownership to the land occupied by the Bedouin, even though some of the unrecognised villages predate the establishment of Israel, and the state has not yet settled all Bedouin legal claims to land. Due to the lack of public health services in the villages, health indicators show

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77 For example, Avigdor Lieberman, former Minister of Transportation, proposed a population exchange plan in his position as government official in June 2004.

78 Prime Minister Sharon has issued an order, officially acknowledged only in August 2004, to stop the granting of status permits to citizens of Arab countries married to Israeli citizens. A petition submitted by the Association for Civil Rights in Israel challenging this order remains pending before the Supreme Court (H.C. 9292/04, Kanam et. al., v. The Minister of Interior et. al.).

79 Prime Minister's Office, "Prime Minister Ariel Sharon's Speech at the 2005 Galilee Conference" (June 16, 2005), <http://www.pmo.gov.il/PMOEng> (accessed: July 25, 2005).

80 CBS, "Table 1: Local Councils and Municipalities, by Socio-Economic Index, Ranking and Cluster Membership", [http://www.cbs.gov.il/hodaot2004/13\\_04\\_22t1.pdf](http://www.cbs.gov.il/hodaot2004/13_04_22t1.pdf) (accessed: July 25, 2005).

81 The CBS conducted a study, commissioned by the Ministry of the Interior, on the characterisation and ranking of Israel's 210 local authorities according to the socio-economic level of the population in 2001. Jewish localities in the Naqab rank between positions 83 and 209 (210 being Israel's richest town according to the characteristics used by the CBS).

huge gaps between the Bedouin and the Jewish population. In 2000, for example, the infant mortality rate among the Bedouin population was 14.7 per 1,000 live births, four times higher than among the Jewish population in the Naqab (3.9). The data further indicates an upward trend in infant mortality among the Bedouin community since 1998.<sup>82</sup> The non-recognition of the villages and the living conditions resulting from this policy gravely violate the Palestinian Bedouins' rights to equality, an adequate standard of living and to own property. Moreover, the inhabitants are denied their economic and social rights to education, employment and health.

It is the government's policy to encourage the Bedouin to move to the seven established townships in the Naqab, and eviction policies range from denial of public services to house demolitions and crop destruction.<sup>83</sup> In April 2003, the Ministerial Committee for the Non-Jewish Sector approved a five-year US\$265 million plan to develop the Bedouin sector in the Naqab, also known as the Sharon Plan. The plan claims to improve the living conditions for the Bedouin citizens, but a precondition for receiving more services is relocation. About one third of the budget is allocated for evictions and evacuations, i.e. house demolitions and crop destructions. Apart from expulsion, the Sharon Plan aims to complete the development of the seven state-recognised Arab towns and to plan the establishment of seven more Arab towns. However, all seven existing Arab townships in the Negev are currently among the 10 poorest localities in Israel and are already in need of major development aid. As an indigenous population, the Bedouin community has the right to development within the framework of its traditional lifestyle. The state of Israel denies its Bedouin citizens this right.

#### **IV. Violations during the Dutch EU Presidency**

The Dutch EU Presidency from July to December 2004 was marked by a milestone in the EU's relations with Israel. In December 2004, the European Commission presented a draft EU-Israel Action Plan, a strategic document aimed to intensify bilateral relations in all spheres – political, economic, scientific, and cultural and in security cooperation.

The Action Plan states that the “level of ambition” of the relationship will depend on the “degree of commitment to the common values” of democracy, respect for human rights and the rule of law and basic freedoms. Moreover, the “pace of progress of the relationship will acknowledge fully the efforts and concrete achievements in meeting those commitments”<sup>84</sup>.

These references are in line with the EU's stated policy of positive political conditionality, according to which countries should not be rewarded for abusive human rights behaviour. In a letter dated August 2004 to the Dutch parliament concerning the human rights situation in countries with which the EU has an association agreement, the Dutch government confirmed its support for this policy, arguing that “agreements on respect for human rights constitute an important element of the priorities for cooperation”<sup>85</sup>.

The letter also stated that “in the EU, the [Dutch] government has always pleaded for the establishment of special working groups for human rights and democratisation that can systematically address [...] and report on these issues.” More specifically, it argued that “the proposed combination of the establishment of working groups for human rights and democratisation under the association treaties, the agreement on national action plans that include the respect for human rights, and the connecting, to some degree,

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82 Working Group on the Status of Palestinian Women Citizens of Israel, NGO ALTERNATIVE REPORT IN RESPONSE TO 'LIST OF ISSUES AND QUESTIONS WITH REGARD TO THE CONSIDERATION OF PERIODIC REPORTS' (CEDAW/PSWG/2005/II/CRP/ADD.7) (July 2005), p. 25.

83 For further details, please consult: Arab Association for Human Rights (HRA), *By All Means Possible: Destruction by the State of Crops of Bedouin Citizens in the Naqab (Negev) by Aerial Spraying with Chemicals*, July 2004. [http://www.arabhra.org/publications/reports/PDF/NaqabReport\\_English.pdf](http://www.arabhra.org/publications/reports/PDF/NaqabReport_English.pdf)

84 Proposed EU/Israel Action Plan, introduction.

85 The Minister of Foreign Affairs, The Netherlands, “Letter to the Parliament on the situation of human rights in the countries with an EU association agreement, 23 August, 2004.

of achievements concerning human rights and democratisation to additional EU finances will [...] lead to more effective dialogue and cooperation with these countries”<sup>86</sup>.

However, contrary to these objectives of the Dutch government, negotiations between the EU and Israel did not lead to the establishment of a special working group on human rights and democratisation. It was decided that human rights issues would only be addressed as an element in the wider political dialogue between the parties, as one of many issues.

In August 2005, this outcome was explained by the Dutch Foreign Minister, Mr. B.R. Bot. In answers to parliamentary questions of Dutch MP Van der Laan (D’66) addressing the EU-Israel Action Plan, he responded: “To successfully conclude these negotiations, both parties had to be able to agree upon the end result. The Israeli government did not wish to [...] agree to the formation of a separate sub committee concerning democracy and human rights”<sup>87</sup>. This means, a critical momentum was lost to attribute real priority status to human rights issues and create the required mechanisms for effective monitoring and enforcement.

The Minister added that Israel also rejected “an explicit reference in the Action Plan to the separation barrier”<sup>88</sup>. It is remarkable that the EU agreed to the absence of such a reference, considering the serious human rights consequences of the barrier, its illegality and the related obligations of third states, as stipulated, *inter alia*, in the July 2004 ruling of the International Court of Justice. In doing so, the EU member states missed an important opportunity to live up to their obligations and encourage Israel to act in accordance with the ruling.

Considering the above and Israel’s persistence in violating international humanitarian and human rights law, it is evident that while the Netherlands held the EU Presidency, the EU failed to effectively apply its stated policy of political conditionality to its relation with Israel.

At the end of the Dutch EU Presidency, the humanitarian and human rights situation in Israel and the OPT unfolded as follows:

#### **a. Occupied Palestinian Territories (OPT)<sup>89</sup>**

**Closures:** At the end of 2004 in the West Bank, closures consisted of a combination of approximately 700 checkpoints and physical obstacles across roads. In the Gaza Strip, Palestinian movement was tightly restricted at all border crossings and within the Gaza Strip by checkpoints and other military infrastructure. On 31 August 2004, Gaza’s Erez crossing was closed for almost three months. Between January and September 2004, relief agencies filed 929 incident reports in which the delivery of aid and/or the movement of personnel were obstructed by the IDF or Israeli Border Police. Relief operations were also severely disrupted at times by IDF military operations, notably in the Gaza Strip.

**House Demolitions:** In 2004, 1,443 Palestinian buildings were demolished only in the Gaza Strip by the IDF, resulting in the dispossession of 13,510 people.

**Casualties:** In 2004, 118 Israelis and 881 Palestinians were killed, including eight Israeli and 160 Palestinian children; a total of 602 Israelis and 4,009 Palestinians were injured. Only in October 2004, at least 114 Palestinians were killed during operation “Days of Penitence”, according to the Palestinian Ministry of Health. Five Israelis were killed during the same period.<sup>90</sup>

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<sup>86</sup> Ibid.

<sup>87</sup> The Minister of Foreign Affairs, The Netherlands, Answers to “Questions of MP Van der Laan concerning the EU-Israel Action Plan”, 15 August, 2005.

<sup>88</sup> Ibid.

<sup>89</sup> The statistics provided in this section are – if not referenced otherwise - taken from: OCHA, Review of the Humanitarian Situation in the Occupied Palestinian Territory for 2004, [http://www.humanitarianinfo.org/opt/docs/UN/OCHA/OCHAoPt\\_Annual-Rev\\_2005.pdf](http://www.humanitarianinfo.org/opt/docs/UN/OCHA/OCHAoPt_Annual-Rev_2005.pdf) (accessed: July 25, 2005).

<sup>90</sup> OCHA, Humanitarian Update 2005, <http://domino.un.org/UNISPAL.NSF/0/7009bd74aa46372785256ffd004b1227?OpenDocument> (accessed: August 15, 2005).

**The Separation Wall:** On July 9, 2004, the International Court of Justice (ICJ) published an advisory opinion, declaring the construction of the wall illegal and reminding the international community of its obligations to ensure respect for international law. Israel refused to accept the jurisdiction of the Court. At the end of 2004, the constructed Barrier was approximately 205 km long. A further 72 km was under construction. In total, the length of the completed Barrier was projected to be 621 km.

**Settlements built:** On 2 August 2004, the Israeli Defence Ministry announced the approval of 600 new housing units in the Ma'ale Adumim settlement near Jerusalem. On 17 August 2004 the Israeli Ministry of Housing published tenders to build approximately 1,000 new houses in the West Bank settlements of Betar Illit, Ma'ale Adumim, Ariel and Karne Shomron. On 23 August, an additional 532 new settler homes were announced.<sup>91</sup> It should be noted that all these announcements were made shortly after the presentation of the disengagement plan.

**Land confiscated:** 85% of the separation wall as planned as of December 2004 is constructed on Palestinian land. As of September 2004, it has been estimated that the construction of the Wall has resulted in the formal confiscation of 8,000 acres of land.<sup>92</sup> In addition, the separation wall effectively annexes a large portion of Palestinian water resources: the Palestinian Hydrology Group estimates that over 32% of the Palestinian share of the Western Aquifer Basin has been lost due to the first phase of the wall's construction.<sup>93</sup> According to the Israeli newspaper *Ha'aretz*, between January 2004 and the end of September 2004, approximately 2,200 dunums of land were confiscated and declared to be "state land" in the West Bank, for the purpose of expanding settlements.<sup>94</sup>

**Prisoners:** At the end of 2004, there were some 7,000 Palestinian prisoners in Israeli prisons or detention camps, of whom 380 are children and over 100 are women. Of these prisoners, only 1,500 have actually been put on trial. Many of those detained report being subjected to torture or inhuman and degrading treatment. In August 2004, 2,500 prisoners embarked on a hunger strike against prison conditions.<sup>95</sup> During the strike, Israeli Minister of Public Security Zachi Hanegbi, now resigned, noted that if it was for him, the prisoners could starve to death.

## **b. Inside the Green Line**

**Nationality and Entry into Israel Law:** In July 2004, the Knesset voted to extend the Nationality and Entry into Israel Law (Temporary Order), even though it had been condemned by various international bodies including the UN Human Rights Commission and the European Union.

**House demolitions:** Some 150 houses of Palestinian citizens of Israel were demolished in the Naqab only in 2004. In December 2004, the Interior Ministry issued hundreds of demolition orders for whole villages.<sup>96</sup>

**Poverty:** The National Insurance Institute (NII) published its Poverty Report 2003 in November 2004. According to the report, 22% of Israel's citizens are poor (as defined by the NII). However, the percentage of Palestinian Arab citizens who live below the poverty line is 50%, and it rises to 55% among Arab children. The poverty rate among Jewish Israelis was 16%.

**Destruction of Holy Places:** In December 2004, the Arab Association for Human Rights (HRA) published a research which revealed that some 250 places of worship of the Muslim and Christian

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91 Al-Haq, Annual Report 2004 (unpublished).

92 Ibid.

93 Palestinian Hydrology Group, "Water for Life: Israeli Assault on Palestinian Water, Sanitation, and Hygiene During the Intifada," 2004, Ramallah, pages 72-73.

94 Benn, Aluf, "Israel Still Expropriating Land to Expand Settlements", *Ha'aretz*, 26 September 2004, <http://www.globalexchange.org/countries/palestine/2501.html>.

95 Commission of Human Rights, E/CN.4/2005/29 (7 December 2005), p. 8.

96 Mada al-Carmel, Nimer Sultany (ed.), *Israel and the Palestinian Minority 2004*, p. 53.

faiths have been destroyed or made unusable by Israel since 1948. In 2004, numerous places of worship were vandalised, including the Hassan Bik mosque in Yaffa in August 2004.

**Incitement:** 2004 saw a sharp increase in racist incitement against the Palestinian Arab minority, particularly among government officials, Knesset members and intellectuals. For example, Internal Security Minister Gideon Ezra said in an interview in October 2004 that the Arab citizens in the state of Israel are "our greatest sorrow," and he further noted that the police officers who shot and killed 13 Arab demonstrators in October 2000 should not be prosecuted.<sup>97</sup> In the same month an officer who was involved in the October 2000 killings was promoted to General Commander of the Border Police.<sup>98</sup>

## V. Conclusion and Recommendations

As this report has shown, Israel continued its grave violations of international humanitarian law and human rights against Palestinian residents of the Occupied Palestinian Territories and Palestinian citizens of Israel between July 2004 and July 2005. Israel abuses its right to defend its citizens and territory by applying state security measures that either lack correlation to the stated security risks or that are carried out in a disproportionate manner. Moreover, drastic violations of fundamental human rights as they are caused by the separation wall and excessive violence against civilians are bound to have a deteriorating effect on the human security of Palestinian and Israeli citizens alike, since these policies perpetuate the conflict.

Israel committed itself to the principles of the Barcelona Process. Through the conclusion of the EU-Israel Association Agreement, both Israel and the European Union assumed responsibility to promote human rights in their bi-lateral relations. Both parties have the duty to discourage violations of human rights principles by an associated partner. Even though the EU regularly criticises Israel's violations of humanitarian law and human rights, this practice is not reflected in its operational relations with Israel.

In the second half of 2004, coinciding with the Dutch EU Presidency, Israel committed serious breaches of international law, most notably: Israel's ongoing construction of the separation wall; increased settlement activities in the West Bank, especially in the Greater Jerusalem area; suffocation of social and economic life in the OPT by extensive movement restrictions; the use of excessive force against civilians, particularly during Days of Penitence in Gaza, extra-judicial and confirmed killings, including children; house demolitions in the OPT and inside the Green Line; the extension of the Nationality and Entry into Israel Law (Temporary Order); and the ongoing institutional discrimination against Palestinian citizens of Israel.

The EU has a stated policy of positive political conditionality, according to which countries should not be rewarded for abusive human rights behaviour. During the Dutch EU Presidency, Israel and the EU negotiated a bilateral Action Plan in the context of the European Neighbourhood Policy (ENP). The implementation of this plan in the coming years significantly extends the privileges the EU offers to Israel. The very fact that the plan was successfully negotiated while Israel gravely violated human rights and fundamental rules of international law, exposes that the EU in fact does not apply the principle of political conditionality to its bilateral relations with Israel.

Nevertheless, the EU-Israel Action Plan still offers opportunities for positively influencing Israel's human rights behaviour. In that regard, the establishment of a special sub-committee on human rights, which systematically monitors Israel's human rights behaviour and reports back to EU institutions and member states, as well as the development and application of (human) rights-based benchmarks, are necessary steps that should be taken without delay.

In line with and in addition to that, the Euro-Mediterranean Human Rights Network presents to the European Union and its member states the following recommendations for action:

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97 Gidi Weitz, "Minister to his Subordinates" Yediot Ahronot, 15 October 2004.

98 Arab Association for Human Rights (HRA), Weekly Review of the Arab Press in Israel, No. 192 (October 15-22, 2004).

- As contracting parties of the Fourth Geneva Convention, the EU member states are obliged to "ensure respect" of this Convention "in all circumstances". This obligation was reinforced by the ICJ's Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Palestinian Territory. The EU member states should take steps to fulfil this obligation in a more effective manner;
- While reaffirming Israel's right to defend its citizens and territory, the EU should continue to clearly condemn violations of international humanitarian law and human rights by Israel;
- In addition to the critical declarative diplomacy, the EU's operative diplomacy should be linked to the declared criticism, e.g. the provision and extension of economic privileges and trade agreements should be made dependent on Israel's human rights behaviour;
- In order to link the operative diplomacy to the human rights situation in a transparent fashion, clear benchmarks need to be defined and followed up over time;
- The process of benchmarking should include increased consultation with Palestinian, Israeli and European civil-society organisations;
- To achieve an institutionalisation of the human rights dialogue between Israel and the EU, a specialised authority needs to be established within the framework of the Association Agreements;
- The provisions of the Action Plan related to an annual review of the situation in Israel and the Occupied Palestinian Territories and to the establishment of sub-committees on special issues should be realised as soon as possible; a sub-committee on human rights needs to be set up;
- Finally, the European Union needs to monitor its own relations with Israel in order to make sure that it does not indirectly contribute to human rights violations, e.g. by financing discriminatory projects such as the Negev and Galilee Development Plan or by selling weapons, which (may) contribute to the violation of human rights in the Occupied Palestinian Territories.

In order to promote human security in both Israel and the OPT for all citizens and residents, it is of paramount importance that the European Union and its member states pursue a policy of political conditionality with regard to Israel's human rights behaviour. While confirming Israel's right to defend itself and its citizens, a clear distinction should be made between appropriate measures of state security and disproportionate actions that only perpetuate the violence in Israel/Palestine and undermine any final status negotiations. Moreover, discriminatory practices against citizens of Israel, particularly members of the Palestinian minority, need to be addressed in a clear manner.

The EU and its member states should work to realise these objectives as soon as possible in order to achieve a more rights-based approach to their relations with Israel, pursue a policy of political conditionality with regard to Israel's human rights behaviour and thereby promote the human security of all residents of Israel and the Occupied Palestinian Territories.

## Annex 1 Presentation of the authors

### The drafting committee

This report was written by Marie Badarne and Erin E. Thomas from the Arab Association for Human Rights (HRA) in close cooperation with al-Haq and other members of the EMHRN working group on Palestine. The report is based upon information and facts from working group members.

The Euro-Mediterranean Human Rights Network (EMHRN) is a network of 83 Arab, European, Israeli and Turkish human rights organisations, institutions, and individuals committed to universal human rights and based in 30 countries<sup>99</sup>.

The EMHRN was established in 1997 as a civil society response to the Euro-Mediterranean Partnership. Its main objectives are to:

- Support and publicise in the Euro-Mediterranean and Arab regions the universal human rights principles as outlined in the international human rights instruments and the Barcelona Declaration.
- Strengthen, assist, and co-ordinate the efforts of its members to monitor States' compliance with the principles of the Barcelona Declaration in the fields of human rights and humanitarian concerns.
- Support the development of democratic institutions, promote the Rule of Law, Human Rights, Gender Equality and Human Rights Education, and to strengthen Civil Society in the Euro-Mediterranean region and beyond.

### The EMHRN Working Group on Palestine

The EMHRN established working groups on several human rights issues relevant to the Barcelona process and the region. The Working Group on Palestine consists of competent and experienced human rights activists from the following organisations:

- Adalah – The Legal Center for Arab Minority Rights in Israel (Israel)  
*Works to protect human rights in general, and the rights of the Arab minority in particular. It serves Arab citizens of Israel, numbering close to 20% of the population. [www.adalah.org](http://www.adalah.org)*
- Al-Haq (The West Bank, Palestine)  
*One of the first human rights organisations established in the Arab world. Works with legal research, documentation and advocacy. [www.alhaq.org](http://www.alhaq.org)*
- Arab Association for Human Rights (Israel)  
*Works to defend and promote the social, cultural, economic, political and civil rights of the Palestinian Arab citizens of Israel. [www.arabhra.org](http://www.arabhra.org)*
- B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories (Israel)  
*Works to document and educate the Israeli public and policymakers about human rights violations in the Occupied Territories, combat the phenomenon of denial prevalent among the Israeli public, and help create a human rights culture in Israel. [www.btselem.org](http://www.btselem.org)*
- Bruno Kreisky Foundation (Austria)  
*Every two years the Bruno Kreisky Human Rights Prize is awarded by the Foundation to an international figure who has advanced the cause of human rights. [www.kreisky.org](http://www.kreisky.org)*
- Cairo Institute for Human Rights Studies (Egypt)  
*A regional human rights organisation. Analyses and publicises the difficulties of implementing human rights law in the Arab world. [www.cihrs.org](http://www.cihrs.org)*
- Swedish member of the International Commission of Jurists (Sweden)  
*ICJ-Sweden works for respect for human rights and the rule of law in Sweden and in other*

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<sup>99</sup> Algeria, Tunisia, Morocco, Egypt, Jordan, Syria, Lebanon, Libya, Palestinian National Authorities, Israel, Turkey, Iraq, Malta, Cyprus, the USA, Greece, Italy, France, Spain, France, Germany, UK, Denmark, Sweden, Switzerland, Norway, Ireland, Austria, Belgium, Finland.



countries. Co-operates with human rights organisations in the Middle East, South Africa, Eastern Europe and Paraguay. [www.icj-sweden.org](http://www.icj-sweden.org)

- Palestinian Centre for Human Rights (Gaza, Palestine)  
*Works to protect human rights, promote the rule of law and uphold democratic principles in the Occupied Palestinian Territory. Records, reports and advocates on human rights violations committed by Israel and the Palestinian Authority.* [www.pchrgaza.org](http://www.pchrgaza.org)
- Palestinian Human Rights Organisation (Lebanon)  
*Works for improving the rights and status of the Palestinian community in Lebanon. Works towards the implementation of UN resolution 194 guaranteeing the right of return.* [www.palhumanrights.org](http://www.palhumanrights.org)
- Public Committee Against Torture in Israel (Israel)  
*Struggles against the use of torture in interrogation in Israel and the Palestinian Authority through legal means, support of relevant legislation and through an information campaign aimed at raising public awareness of the subject.* [www.stoptorture.org.il](http://www.stoptorture.org.il)
- Swedish Refugee Aid (Sweden)  
*Works for national and international support to refugees.* [www.swera.org](http://www.swera.org)