



Israel's Human Rights Behaviour

Towards Greater Accountability

July 2005-July 2006

An EMHRN report commissioned by United Civilians for Peace

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EXECUTIVE SUMMARY

The State of Israel is obliged to respect human rights, democratic principles and international humanitarian law because it is a signatory to a number of international conventions and covenants in addition to bilateral agreements. However, this has not put an end to the country's continued blatant violation of international humanitarian and human rights law directed against the Palestinians in the Occupied Palestinian Territories (OPT) and the Palestinian Arabs inside Israel.

This report studies the period July 2005 – July 2006 and was preceded by a study of Israeli violations between 2004 and 2005. In relation to the previous study, the current report does not identify any significant improvement of Israel's human rights behaviour.

As in 2005, this report focuses on the human rights behaviour of the state of Israel. Human rights violations committed by the Palestinian Authority and other non-state actors are not a topic of this report¹. This focus is the consequence of, 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.

This is not to say that violations by the Palestinian Authority and other non-state actors are not of concern. Indeed, they are and they must be addressed as well.

Israeli violations of Palestinians' rights can be related to three core problematic issues, namely: non-negotiated illegal actions; widespread lack of accountability on the side of Israel; and the institutionalised discrimination of Palestinian Arab minority citizens.

The core issues relate to the ongoing construction of the Wall in the West Bank; the continued widespread control of the movement of Palestinians in the West Bank; and the Israeli withdrawal from the Gaza Strip completed by Israel in September 2005, a unilateral, non-negotiated move which Israel refers to as 'disengagement'. Furthermore, they relate to the disproportionate use of force by the Israeli military forces, their inability to distinguish between civilian and military targets, and the lack of access to legal remedies for Palestinians in the OPT vis-à-vis the State of Israel. Finally they relate to a range of discriminatory measures taken against the Palestinian Arab minority inside Israel.

These three core problematic issues are highly relevant to the European Neighbourhood Policy's Action Plan with Israel, an initiative aimed at enhancing relations between the EU, its member states and Israel.

Hence, at a time when the European Commission is working to evaluate the EU/Israel Action Plan, this report provides an analysis of how the patterns of Israeli violations of the rights of the Palestinian Arabs within Israel and the OPT can be related to the priorities set forth in the joint Action Plan. In this regard, the report has translated some of the violations against human rights and humanitarian law by the State of Israel during the time period in question into a set of human rights indicators.

The report concludes by presenting a set of recommendations for actions to be taken by the EU and EU member states, in order to ensure that the Union and its members effectively contribute to the respect, protection and fulfilment of human rights, democratic principles and international humanitarian law of all people, citizens and non-citizens who are directly and indirectly affected by the discriminatory and occupation policies of the State of Israel.

¹ Also questions related to the occupied territory of the Syrian Golan Heights and the Shebaa Farms are outside the scope of this report.

The report was produced by a coalition of Palestinian, Israeli, Arab and European human rights NGOs. It was written by the Euro-Mediterranean Human Rights Network (EMHRN), a network of more than 80 Arab, European, Israeli and Turkish human rights organisations, institutions, and individuals committed to universal human rights. EMHRN is based in more than 25 countries of the Euro-Mediterranean region.

The report has been commissioned by United Civilians for Peace (UCP), a Dutch NGO platform dedicated to promoting justice and peace in Israel and the OPT. In the Netherlands, the report will be published and submitted to the Dutch parliament and the Ministry of Foreign Affairs by UCP, the Dutch Humanist Committee on Human Rights (HOM) and the Dutch section of the International Commission of Jurists (NJCM).

CONCLUSIONS AND RECOMMENDATIONS

Israel has on a number of occasions committed itself to respecting human rights and democratic principles. The EU, the Netherlands, as well as other EU member states, have likewise committed themselves to respecting these principles. The Treaty of the European Community stipulates that all member countries in their relations with third countries shall contribute to the objective of respecting human rights and fundamental freedoms².

This report shows that between July 2005 and July 2006 Israel has continued to misuse its right to defend its citizens and territory by committing grave violations of international humanitarian law and the human rights of the Palestinian population in the OPT and of the Palestinian Arab minority citizens of Israel, most notably: attacks on Palestinian civilians and civilian infrastructure in the Gaza Strip (which Israel claims to have 'disengaged' from) and the West Bank; the continued construction of the Wall on occupied Palestinian territory; restrictions of movement which strangles the social and economic life of the OPT; and discriminatory policies and actions against the Palestinian Arab minority in Israel.

The forthcoming evaluation, scheduled for the end of the year, of the European Neighbourhood Policy (ENP) Action Plans, and in particular the EU/Israel Action Plan, offers a good opportunity to measure progress and/or set-backs of human rights within this specific framework. Taking the violations outlined in this report into account, the development and application of (human) rights-based benchmarks are a necessary outcome of an evaluation of the Action Plan.

The work on this report has shown that the violations committed are encompassed by the core issues addressed in the EU/Israel Action Plan. This report provides a set of sample indicators to help measure progress or set-backs in the human rights situation.

As stated in the ENP EU/Israel Action Plan, the EU and Israel should 'work together to promote the shared values of democracy, rule of law and respect for human rights and international humanitarian law'. Based on the findings of this report, the EMHRN therefore presents the following recommendations for action:

- The EU should ensure that the evaluation of the EU/Israel Action Plan includes a clear acknowledgement of Israel as an occupying power and of its obligations according to international law, and make explicit reference to the status of the Gaza Strip in this regard.
- As stated in the ICJ Advisory Opinion of 9 July 2004, Israel must cease the construction of the Wall in occupied territory and dismantle those parts of it that are situated on occupied Palestinian land. Israel must return all lands seized for this purpose and, in addition, compensate for all material damage. The European Union and its member states as signatories to the Fourth Geneva Convention, have the legal obligation to ensure Israel's respect for the Convention, as made clear by the ICJ Advisory Opinion on the Wall.

² TEC articles 177 and 181 a.

- Israel must ensure the freedom of movement of Palestinians and their access to health, education, work, and an adequate standard of living in the OPT, rights which are guaranteed in the International Covenant on Civil and Political Rights of 1966 (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights of 1966 (ICESCR) respectively.
- Israel must respect the customary international legal principles of distinction and proportionality when carrying out military operations. The European Union and its member states are legally obliged to ensure Israel's respect for the Fourth Geneva Convention, under Article 1 of the Convention.
- The EU and its member states, while reaffirming Israel's right to defend its citizens and territory, should continue to clearly condemn violations of international humanitarian and human rights law by Israel; they should support calls for a meeting of the High Contracting Parties to the Geneva Conventions aimed at ensuring that Israel respects its obligations, and to protect the populations in the OPT.
- The EU has raised its 'concerns about collective punishments, and called on Israel to ensure that any abuses by members of the Israeli military forces, settlers and others are properly investigated and perpetrators are prosecuted'³. The EU should reiterate its concerns clearly in this regard.
- The EU should call on Israel to revoke the proposed 'Criminal Law Procedures Bill (Powers of Implementation - Special Directives for Investigating Security Violations Perpetrated by Non-Citizens)'. This law is mainly aimed at Palestinians from the Gaza Strip and it violates the principles of due process prohibiting persons from being tried and denied freedom in their absence.
- Israel should immediately stop the use of torture and ill-treatment. The EU should urge Israel to respect and protect detainees' fundamental rights according to international law and according to EU Guidelines on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
- The EU should call on Israel to immediately release all administrative detainees or offer them a fair trial for any criminal offences they are suspected of having committed. In addition, the EU should call upon the Israeli government to direct the military commanders to amend the military orders pursuant to which administrative detention is made, so that it conforms to international legal standards.
- In light of the effects of Israel's systematic discriminatory treatment of its Palestinian Arab citizens, the EU should ensure that the commitments included in the EU/Israel Action Plan in this regard are respected⁴. It should therefore take steps to ensure that its cooperation with Israel is made conditional on Israel making moves to end all discriminatory state practice and rectifying its effects.
- The EU and member states should monitor their own relations with Israel in order to make sure that they do not directly or indirectly contribute to human rights violations.
- The EU and its member states should make proper use of already existing fora to address Israeli human rights violations described in this report. Such fora are for example the Association Council meetings, meetings of the Association Committee and the various sub-committees, Working Group meetings, informal meetings etc.

With regard to developing, putting into operation and monitoring human rights-based indicators, the EMHRN recommends the following:

- The EU should make use of the momentum of the evaluation process of the EU/Israel Action Plan to strengthen, in a transparent manner, its work for the respect of democratic principles and human rights in the framework of its bilateral relations with Israel. The EU needs to work out a set of

³ [EU Annual Report on Human Rights](#), 2005, The Council of the European Union.

⁴ 'Promote and protect rights of minorities, including enhancing political, economic, social and cultural opportunities for all citizens and lawful residents'.

indicators and benchmarks to measure progress and/or set-backs in its relations to third countries, including Israel.

- The EU should consult with civil society in Israel, the OPT and Europe when developing the indicators and benchmarks. Civil society can also be very useful for the monitoring process, as these organisations work on the ground.
- In order to support civil society's abilities to provide comparable and reliable data on the human rights situation on the ground, the EU and its member states should support local NGOs. This not only implies financial support, but also political support, as in the case for example of freedom of movement. Due to tough restrictions on movement Israeli and Palestinian NGOs face great difficulties in carrying out their work. This includes researching and monitoring the situation on the ground.

I. INTRODUCTION

Over the past decades, the respect and promotion of human rights and democratisation have become increasingly important in Dutch and European foreign policy. This fact translates, *inter alia*, into the production of an annual report presented by the Ministry of Foreign Affairs to the Dutch Parliament on human rights in Mediterranean partner countries which includes a section on Dutch and EU relations with the State of Israel⁵.

The Ministry's annual report has been welcomed by civil society organisations as it provides an occasion for a public, open, and democratic debate on, and scrutiny of, the role of human rights in Dutch relations with third countries.

As a contribution to this debate, the EMHRN in 2005 prepared a report on Israel's human rights behaviour for the Ministry of Foreign Affairs at the request of the Dutch NGO platform, United Civilians for Peace (UCP), and the Dutch section of the International Commission of Jurists (NJCM). The shadow report showed that the Minister's report offered insufficient insight into the nature, scope, and impact of violations of human rights law and international humanitarian law caused by Israel. As a result, the ability of the Dutch parliament to respond effectively to the human rights crisis in Israel and the Occupied Palestinian Territories (OPT) was hampered.

Due to positive reactions to the report, it was decided to draft a new report in 2006 and also to further the methodological approach in a way that would provide opportunities for a future assessment of progress and set-backs in the human rights record of the State of Israel. It was decided that the report would also seek to assess progress and set-backs in key parts of the EU/Israel Action Plan drafted within the framework of the European Neighbourhood Policy as this Plan is intended to become a main vehicle for framing relations between the EU, its member states and Israel.

Hence this report aims at the following:

- Identifying core issues that have an impact on the human rights of the Palestinians in the Occupied Territories and inside Israel in the period between July 2005 and July 2006.
- Identifying human rights affected by these core issues.
- Relating these to relevant parts of the EU/Israel Action Plan.
- Identifying indicators that enable monitoring of future progress and/or set-backs in Israel's human rights behaviour and by extension progress and set-backs in key parts of the EU/Israel Action Plan.

Hence, the report is intended to assist the Dutch Parliament as well as other Dutch and EU Member State actors in dealing constructively with policy matters affecting the human rights situation in Israel and in the OPT.

a. The Human Rights Framework of the Report

The Israeli occupation of the Palestinian Territories since 1967 is, in this report, considered to be the root cause of the problems pertaining to the human rights situation. The occupation has resulted in numerous violations of international human rights law and International Humanitarian Law (IHL), as expressed in instruments such as: The Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949, the Hague Convention with its annexed Regulations of 1907, The Universal Declaration of

⁵ 'Letter to Parliament concerning human rights in Mediterranean partner countries' (dated 23 November 2005).

Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966 (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights of 1966 (ICESCR)⁶.

Since 1967, Israel has maintained that it would only abide by the Hague Regulations because of their customary status, and the 'humanitarian provisions' of the Fourth Geneva Convention, which it ratified in 1951. Although the Israeli High Court of Justice has proclaimed that Israel is engaged in a belligerent occupation of the OPT, it has endorsed the government's position against the *de jure* applicability of the Fourth Geneva Convention. Israel argues that in order to be a belligerent occupant, a state must take over a territory from a legitimate sovereign. Since 1967, the international community has largely rejected the Israeli argument, stating that Israel exercises effective control of the OPT and therefore that IHL and international human rights law apply.

With the EU-Israel Association Agreement, which entered into force on 1 June 2000, both the EU and Israel further committed themselves to the principles of human rights in their joint relations 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'.

The EU and its member states are further bound to ensure that all its relations with third countries are based upon the respect for human rights⁷. These fundamental rights are reiterated in the EU/Israel Action Plan. The European Neighbourhood Policy (ENP) and the EU-Israel Association Agreement constitute the basis of the EU/Israel Action Plan, which sets the objectives for cooperation between the EU and Israel, built on common values of democracy, respect for human rights, the rule of law and basic freedoms.

This report focuses on the human rights behaviour of the state of Israel. Human rights violations committed by the Palestinian Authority and other non-state actors are not dealt with in this report⁸. Neither will the report focus on the July 2006 war in Lebanon. This focus is due to a number of factors, namely: 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.

This is not to say that violations by the Palestinian Authority and other non-state actors are not of concern. Indeed, they are and they must be addressed as well. *The EMHRN encourages the international community to monitor these violations with increased scrutiny.*

The report recognises Israel's right to secure its territory and its obligation to defend its citizens. It condemns human rights violations committed against Israeli civilians. However, the grave infringements carried out against the human security of residents of the OPT and Palestinian Arab citizens of Israel are out of proportion to the objective of safeguarding the Israeli state and its citizens.

6 A list over the international conventions signed and ratified by Israel can be found at www.unhchr.ch or University of Minnesota Human Rights Library: [Ratification of International Human Rights Treaties – Israel](#).

7 The commitments made by EU member states to respect and promote human rights in third countries are based on article 177 and article 181 a in the Treaty of the European Community (TEC). They stipulate that community members in areas of economic, financial, technical, and development cooperation shall contribute to the objective of respecting human rights and fundamental freedoms.

8 Questions related to the occupied territory of the Syrian Golan Heights and the Shebaa Farms are outside the scope of this report.

b. Methodology

The current report, which is based on a participatory process that included some of the leading human rights organisations⁹ in Israel, the West Bank, and the Gaza Strip, is aimed at identifying core issues affecting the human rights situation in the Occupied Palestinian Territories and inside Israel between July 2005 and July 2006.

In the course of the consultation process the participants arrived at the conclusion that the Israeli occupation is the main element determining the human rights situation in the OPT, i.e. it is the root cause of observable problems. This should be kept in mind in all analyses pertaining to the human rights situation in the time period dealt with.

However, this being said, it is important to determine whether Israel, as the occupying power, respects basic international humanitarian law and international human rights law. In this regard, the organisations identified three core issues related to Israeli policies.

Firstly, the fact that Israel took a number of steps with regard to the Occupied Palestinian Territories which were intended to replace a negotiated end to the occupation and the resolution of the conflict. These steps were both deliberate and coherent, and seem to be part of a wider policy. Some of the highly relevant steps also mentioned in this report are: the ongoing construction of the Wall in the West Bank; the continued widespread control of the movement of Palestinians in the West Bank; and the withdrawal from the Gaza Strip which was completed by Israel in September 2005¹⁰.

Secondly, the fact that the Israeli military forces are rarely held accountable for violations committed against Palestinians in the OPT, including the disproportionate use of force, insufficient distinction between civilian and military targets, and the lack of access to legal remedies for Palestinians in the OPT vis-à-vis the State of Israel.

Thirdly, the participants also looked at the human rights behaviour of the State of Israel inside its 1967 borders and identified the discrimination against the Palestinian Arab minority as being a core issue.

This report will mainly tackle the situation in the Occupied Palestinian Territories and Israel during the period July 2005-July 2006, and provide human rights analysis in relation to the three identified core issues.

It will also provide a list of focused indicators in relation to the EU/Israel Action Plan which policy- and decision makers in the EU and EU member states can apply in order to effectively monitor the human rights situation.

9 Adalah (Israel), Al-Haq (West Bank), Al Mezan Centre for Human Rights (Gaza), B'Tselem (Israel), Arab Association for Human Rights (Israel), Palestinian Centre for Human Rights (Gaza), and Public Committee Against Torture in Israel (Israel).

10 According to the United Nations, Office for the Coordination of Humanitarian Affairs (OCHA), [Preliminary Analysis of the Humanitarian Implications of the April 2006 Barrier Projections](#): Update 5: 7 July 2006, 42 km of the completed sections are concrete segment slabs and 320 km consist of approx. 50 metre-wide areas of fences, patrol roads, barbed wire, tracking sands and an electronic observation system. The main dispute centres on whether the construction is a 'fence' or a 'wall'. Different names are applied to it depending on the political point of view of the observer. In official statements the state of Israel refers to it as 'the security fence' and sometimes 'the anti-terrorist fence' to emphasise its importance in preventing terrorist attacks. Some opponents of this viewpoint call it 'the separation wall' or 'the annexation wall'. Some refer to it as 'the apartheid wall' to highlight its role as a racist segregation barrier. The construction consists of a network of fences with vehicle-barrier trenches (approx. 95%), and of concrete walls (5%). This report will use the term 'Wall' for the construction of wall and fences that Israel has erected on the 1967 Armistice Line, 'the Green Line' and on the occupied West Bank. The use of this term is based on the 9 July 2004 Advisory Opinion of the International Court of Justice where the same term is used.

This report uses the term 'withdrawal' to refer to Israel's unilateral, non-negotiated move to withdraw the illegally residing Jewish settlers and settlements on the occupied Gaza Strip as well as the withdrawal of the Israeli military. Israel refers to this withdrawal as 'disengagement' from the Strip. For a further discussion on this issue, please see ['Disengagement' With Effective Control: Report from a mission to the Occupied Territories](#), EMHRN October 2005.

Although the aims of the EU/Israel Action Plan are ambitious, it remains a vague document when it comes to ensuring and enhancing respect for human rights. Nevertheless, it does give some concrete indications regarding the joint policy, to which the EU and Israel have committed themselves.

In relation to the regional situation in the Middle East, the Action Plan underlines the importance of the following:

'While recognising Israel's right of self-defence, the importance of adherence to international law, and the need to preserve the perspective of a viable comprehensive settlement, minimising the impact of security and counter-terrorism measures on the civilian population, facilitate the secure and safe movement of civilians and goods, safeguarding, to the maximum possible, property, institutions and infrastructure'.

Regarding respect for human rights, the Action Plan states that the parties should:

'Work together to promote the shared values of democracy, rule of law and respect for human rights and international humanitarian law'.

Regarding minority rights, equal opportunities and the right to not be subject to discrimination, the Action Plan is clear. The parties should:

'Promote and protect rights of minorities, including enhancing political, economic, social and cultural opportunities for all citizens and lawful residents'.

Hence, indicators proposed in this report are highly relevant to the process of monitoring progress and/or set-backs in the EU-Israel Action Plan when it comes to international humanitarian law and human rights.

c. Note on the Authors

Katja Sofie Tolstrup was chiefly responsible for writing the report on behalf of, and in close cooperation with, the EMHRN, in particular with Al-Haq (West Bank) and Adalah (Israel). The EMHRN Working Group on Palestine/Israel and the Palestinians¹¹ has acted as resource base for the contents of the report. The core problematic issues (non-negotiated actions, non-accountability and discrimination) were identified by the EMHRN Working Group members during a workshop in May 2006. The Dutch Humanist Committee on Human Rights (HOM) has provided qualified input regarding structuring the issues at stake, as well as in preparing the set of indicators that aims to measure progress and/or set-backs for human rights compliance.

The report was commissioned by United Civilians for Peace (UCP), a Dutch NGO platform dedicated to promoting justice and peace in Israel and the OPT. In the Netherlands, it will be published and submitted to the Dutch parliament and the Ministry of Foreign Affairs by UCP, the Dutch Humanist Committee on Human Rights (HOM) and the Dutch section of the International Commission of Jurists (NJCM).

¹¹ Adalah (Israel), Al-Haq (West Bank), Arab Association for Human Rights (Israel), Bruno Kreisky Foundation for Human Rights (Austria), B'Tselem (Israel), Cairo Institute for Human Rights Studies (Egypt), Palestinian Centre for Human Rights (Gaza), Palestinian Human Rights Organisation (Lebanon) and the Public Committee Against Torture in Israel (Israel), Mr. Per Stadiq (individual member of the EMHRN) along with Al Mezan Centre for Human Rights (Gaza).

II. NON-NEGOTIATED ACTIONS

The report identifies three major decisions taken and implemented unilaterally without being negotiated by Israel in the time period of this report. These decisions have numerous negative consequences for the human rights situation of the Palestinians in the Occupied Palestinian Territories (OPT):

- The continued construction of the Wall in the West Bank.
- The continued widespread control of the movement of Palestinians in the West Bank.
- The unilateral Israeli withdrawal from the Gaza Strip, completed by Israel in September 2005.

a. The Wall

The ongoing construction of the Wall (which commenced in June 2002) has been a salient feature in the time period covered by this report. Since the middle of 2005, building has continued at high speed. Observations during July 2006 show that the construction of the Wall has reached a point where 51% is completed while 13% is still under construction¹².

On 30 April 2006 the Israeli Ministry of Defence published a revised route for the Wall giving its entire length as 703 km instead of the previously planned 670 km. 42 km of the completed section consists of concrete slabs up to 9 meters high. A metal fence with patrol roads and electronic devices runs along 320 km of the route.

Approx. 80% of the Wall lies inside the West Bank, with the remainder running along the 1967 Armistice Line ('the Green Line'). Upon completion, 10.17% of the West Bank (including East Jerusalem) will be situated within the 'seam zone', the area between the Wall and 'the Green Line'¹³.

The Wall has been constructed with a number of gates and crossing roads. As of June 2006, the UN Office for the Coordination of Humanitarian Affairs (OCHA) counted 73 gates incorporated into the completed sections of the Wall. 38 of these were accessible to Palestinians carrying the necessary permit while all gates and checkpoints were open to Israeli settlers¹⁴.

At the same time, a host of obstacles are placed in the way of Palestinians who wish to obtain a permit. A recent report of the Human Rights Council's Special Rapporteur on the human rights situation in the OPT estimates that the number of permits refused are 40 % of the total demands¹⁵.

'Reasons given for refusing permits range from security to failure to establish land ownership. The latter ground is now more frequently used by Israeli authorities as it has become clear that Palestinians, whose land ownership dates from a chaotic Ottoman system of land tenure, are frequently unable to prove ownership to the satisfaction of Israeli authorities determined to deny permits. The fact that the opening and closure of gates leading to the closed zone are regulated in a highly arbitrary manner and frequently do not open as scheduled aggravates the situation. Moreover, tractors and farm vehicles are frequently not allowed access to the closed zone, which means that farmers must walk or use donkeys to reach their land and to bring out their produce. Hence, obstacles placed in the way of access to the closed zone have seriously affected farming in this zone'.

The Wall affects Palestinians' freedom of movement and is the cause of a long list of detrimental effects on the population in the West Bank and East Jerusalem. In East Jerusalem, the Wall is 75 km long of which

12 B'Tselem: [Statistics on construction progress](#), retrieved in October 2006.

13 OCHA [Preliminary Analysis of the Humanitarian Implications of the April 2006 Barrier Projections](#), Update 5, July 2006.

14 United Nations, Office for the Coordination of Humanitarian Affairs (OCHA), [Preliminary Analysis of the Humanitarian Implications of the April 2006 Barrier Projections: Update 5](#): 7 July 2006.

15 Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, A/HRC/2/5, 5 September 2006.

only 5 km are on the 'Green Line'. It divides Palestinian neighbourhoods and hinders access to the city, its educational institutions, hospitals and work places for Palestinians living outside the Wall. The Wall also affects family life as it divides villages and families.

Another example of an obstacle is a new regulation, initiated in early 2005 stating that educational staff with West Bank identity cards working in East Jerusalem have to apply for permits to enter the checkpoints around the city. The permits are valid for three months and allow people to enter Jerusalem only between 5 A.M. and 7 P.M. Fewer than half the permits applied for were granted (147 out of 259)¹⁶.

When the planned route of the Wall has been completed, around one quarter of the 230,000 Palestinians living in East Jerusalem will find themselves living on the eastern part of the Wall and risk losing their Jerusalem identity cards and the attendant benefits. They will also require a permit to enter Jerusalem. Moreover, they will only be allowed to enter the city via four out of twelve crossings in the Wall, which again increases their commuting time and impedes their access to family, schools, universities, hospitals, religious sites and places of employment.

'Palestinians living on the west side of the Wall will be allowed to retain their Jerusalem identity documents, which entitle them to certain benefits, particularly in respect of social security, they will find it increasingly difficult to travel to cities in the West Bank such as Ramallah and Bethlehem, where many of them are employed. Moreover, if they elect to reside in the West Bank in order to be nearer to their places of work, they risk losing their Jerusalem identity documents and the right to live in Jerusalem because under Israel's so-called centre of life policy, Palestinians must prove that they currently live in the city of East Jerusalem to maintain their Jerusalem residency rights'¹⁷.

The impeded access to freedom of movement is connected with the issue of access to paid work. Receiving a salary is a prerequisite to an adequate standard of living, including food, clothing and housing. This affects in its turn access to health services. The Wall mainly influences the right to health with regard to residents of villages around Jerusalem, whose centre of life is in Jerusalem. This is the place where they have access to health services. The same logic applies to issues relevant to access to education.

On 17 July 2006, the Israeli High Court rejected a petition filed by the Palestinian residents affected by the route of the Wall around Ariel settlement in the centre of the West Bank. In making their decision, the High Court relied solely on security considerations presented by the Israeli military forces. The ruling disregarded the fact that the state had admitted that in establishing the route of the Wall considerations other than security were taken into account, e.g. the future developmental plans for the Ariel settlement. The argument put forward by the petitioners, which highlighted the damage caused by the Wall to the fabric of life of the Palestinians, was rejected by the Court on the grounds that the Wall, at the time, had not received final approval, making the complaints by the Palestinians premature¹⁸.

Generally speaking, the Israeli government has argued that the purpose of the Wall is to protect Israeli civilians and that it has temporary status only. However, this view has been undermined in cases where the Wall has been shown to serve a political purpose and not an exclusively security purpose¹⁹. The Israeli Prime Minister, Ehud Olmert, has also expressed the view that the Wall may have political implications in the future²⁰.

16 OCHA: [Special Focus: Access to Jerusalem – New Military Order Limits West Bank Palestinian Access Humanitarian Update](#), February 2006.

17 [Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967](#) A/HRC/2/5, 5 September 2006.

18 B'Tselem: [High Court errs in denying petition against separation barrier around Ariel](#), 24 July 2006.

19 'The admission that the Wall has in part been built to include West Bank settlements within the Wall and under Israel's direct protection has led the High Court to rebuke the Government for misleading it in the Mara'abe hearing and other challenges to the legality of the Wall [...] That the purpose of the Wall is to acquire land surrounding West Bank settlements and to include settlements themselves within Israel can no longer be seriously challenged', [Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967](#), A/HRC/2/5, 5 September 2006.

20 Karby Leggett, Interview with Ehud Olmert, The Wall Street Journal, April 12 2006.

The parts of the Wall that are currently being built on Palestinian land are clearly illegal²¹. The International Court of Justice (ICJ) Advisory Opinion, of July 2004, on the legal status of the Wall in the West Bank 'reached the conclusion that the construction of the Wall by Israel in the Occupied Palestinian Territory is contrary to international law' and that 'infringements resulting from that route cannot be justified by military exigencies or by the requirements of national security or public order'²². The court 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, and that the Wall itself threatened the Palestinian right of self-determination²³. With respect to the construction'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 respectively²⁴.

The continued construction of the Wall also runs counter to the joint commitment of Israel and the EU to work together to promote the shared values of '[...] respect for human rights and international humanitarian law' and to recognise 'the importance of adherence to international law, and the need to preserve the perspective of a viable comprehensive settlement, minimising the impact of security and counter-terrorism measures on the civilian population, facilitate the secure and safe movement of civilians and goods, safeguarding, to the maximum possible, property, institutions and infrastructure'²⁵.

Box 1: Effects of the Wall (Obligations and Indicators)

Obligations:

The building of the Wall constitutes violations of the following articles of international human rights law and norms and international humanitarian law:

International humanitarian law requires of Israel, in its capacity as occupying power, to ensure the safety and well-being of the local residents under its occupation (i.e. the Palestinians), and to maintain, as far as possible, normal living conditions²⁶.

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 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'²⁷.

Article 13 of the Universal Declaration of Human Rights (UDHR), stating that 'Everyone has the right to freedom of movement and residence within the borders of each State. Everyone has the right to leave any country, including his own, and return to his country'.

The right to freedom of movement is vital as it is a prerequisite for the enjoyment of numerous other rights as the right to health, education, family, and work.

Article 12 of the International Covenant of Civil and Political Rights (ICCPR) reiterates the right to freedom of movement by stating that all who live 'lawfully within the territory of a State shall, within that territory, have the

21 For a fuller discussion of this point, please see EMHRN report [Israel's Human Rights Behaviour 2004-2005](#).

22 [ICJ Advisory Opinion of 9 July 2004](#) at 152 and 136.

23 *Id.* at 112 and 115.

24 *Id.* at 131-32.

25 Chapter on the Situation in the Middle East in the EU/Israel Action Plan.

26 See [Commentaries to the Fourth Geneva Convention](#), art. 51, para. 2, sentence 2.

27 ICJ, at 114.

right to liberty of movement and freedom to choose his residence'. Furthermore, everyone has the right to leave any country, including his own and to return.

Article 16 in UDHR states that the family is the natural and fundamental unit in society and it establishes the right of men and women to marry and found a family. The right to family life is also protected by two international conventions, signed and ratified by Israel, namely ICESCR in article 10 and ICCPR in article 23 where it is added that this 'natural and fundamental group unit of society' is entitled to protection by society and the State as well as assistance.

Access to work is protected by UDHR, which states in article 23 that 'Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment'.

Article 11 in ICESCR protects the right to an adequate standard of living; everyone has the right 'to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions'.

The right to adequate health is protected by UDHR's article 25, stating that 'Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care' as well as article 12 of the ICESCR where the right to adequate health is '[...] the right of everyone to the enjoyment of the highest attainable standard of physical and mental health'.

The right to education is considered a fundamental right, and ensuring access to education is a precondition for full realisation of this right. Access to education is mentioned in article 26 of the UDHR, which states that 'Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit'. The right to education is further protected in ICESCR article 13, and the Convention on the Elimination of All Forms of Discrimination against Women Convention article 10, the two latter being conventions that Israel has ratified.

In the European Neighbourhood Policy (ENP) Action Plan between Israel and the EU it is stated that the parties should:

'Work together to promote the shared values of democracy, rule of law and respect for human rights and international humanitarian law'.

'While recognising Israel's right to self-defence, the importance of adherence to international law, and the need to preserve the perspective of a viable comprehensive settlement, minimising the impact of security and counter-terrorism measures on the civilian population, facilitate the secure and safe movement of civilians and goods, safeguarding, to the maximum possible, property, institutions and infrastructure'.

Indicators:

There are no precise statistics which make it possible to draw a direct connection between the construction of the Wall and progress and set-backs in Israel's respect for the articles mentioned above. More than 500,000 Palestinians live near the Wall²⁸. There is reason to believe that an even larger number of people are seriously affected by the Wall and are subject to permit restrictions if desiring to cross the Wall. The Wall impacts on access to work, health, education etc., particularly with regard to Palestinians whose centre of life used to be in Jerusalem.

However, the following figures measuring freedom of movement clearly indicate progress or set-backs in

28 OCHA [Preliminary Analysis of the Humanitarian Implications of the April 2006 Barrier Projections](#), Update 5, July 2006.

29 OCHA [Preliminary Analysis of the Humanitarian Implications of the April 2006 Barrier Projections](#), Update 5, July 2006.

30 OCHA map West Bank Barrier Route Projections, Preliminary Overview, July 2006.

31 OCHA [Preliminary Analysis of the Humanitarian Implications of the April 2006 Barrier Projections](#), Update 5, July 2006.

Israel's human rights behaviour as they directly and indirectly impact on the right to self-determination, the right to a family life and the economic and social rights mentioned above. These indicators may also be used to monitor progress and set-backs in the ENP Action Plan between the EU and Israel.

*i. Percentage of West Bank territory caught between the Wall and the 'Green Line': 10.17%*²⁹.

*ii Number of villages encircled by the Wall, where all movement in and out of villages is under absolute control of the Israeli military forces. In July 2006: 12 villages with 31.400 Palestinian inhabitants*³⁰.

iii Number of gates and crossing roads. In June 2006: 73 gates observed by UN staff.

*iv Number of gates accessible to Palestinians carrying the required permit: 38*³¹.

b. Control of Movement in the West Bank

Checkpoints and Road Blocks

During the period of time covered by this report, permanent checkpoints have remained installed throughout the territory of the West Bank (including East Jerusalem) and have also been integrated into the Wall. In addition, Israel has built and put into operation structures of a (semi-) permanent character, such as the terminals in Bethlehem and Qalandia (Hebrew name 'Atarot'). Israel apparently perceives, and treats, these terminals as entrance points to Jerusalem.

Other physical hindrances to the freedom of movement for the Palestinians are mounds of earth and road blocks. The latter are often set up to block direct access from a Palestinian village onto a nearby road or highway. As a result, villagers are forced to use longer and often more difficult routes to leave and access their villages. The obstacles, both physical and administrative (see following section) have a detrimental effect, *inter alia*, on access to education as school children in the West Bank are delayed in, or prevented from, reaching school. These obstacles to freedom of movement also impede access to health services, work places and family and social life.

Other arbitrarily instigated obstacles are the so-called 'flying checkpoints', checkpoints set up at random times and places. OCHA observed 184 flying checkpoints between 21 December 2005 and 3 January 2006³². According to the Israeli government, these flying checkpoints are, set up as security precautions. However these security regulations or military orders are not, as described by B'Tselem: '[...] set forth in military legislation or in any official document'³³. The flying checkpoints add to the uncertainty felt by residents regarding their ability to move around in the West Bank, making every day life unpredictable for the Palestinians as they never know where and when these checkpoints will be set up and which roads will be blocked.

EMHRN member, Al-Haq, further reports that Israel, which controls all access to the occupied West Bank, began in early spring of 2006 to implement a new policy of denial of entry into the West Bank of foreign passport holders, in particular Palestinian who are citizens of other states and foreign women married to Palestinians or working for Palestinian organisations. The number of such cases is very hard to track, but Al-Haq estimates that it affects thousands.

32 Commission on Human Rights: [Question of Violation of Human Rights in the Occupied Arab Territories, including Palestine](#), 1 March 2006, E/CN.4/2006/NGO/120. Al-Haq observed an increasing number of 'flying' checkpoints in certain West Bank areas between October and December 2006, [Monitoring and Documentation Unit, Report October-December 2005](#).

33 In response to B'Tselem's inquiry on this point, the Israeli military forces' Spokesperson's Office responded that the restrictions were based on 'oral orders' issued by soldiers. B'Tselem: Restrictions on Movement: [Forbidden Checkpoints and Roads](#). The absence of clear or consistent procedures regarding which requirements should be met when Palestinians are applying for travel permits is also noted by the Commission on Human Rights in [Report of the special rapporteur on the situation of human rights in the Palestinian territories occupied since 1967](#), 5 September 2006.

Israeli officials argue that the number of checkpoints in the West Bank has decreased. In all, 540 obstacles to freedom of movement have been observed in the West Bank during July 2006 (based on field observations), 77 of them being manned and 463 unmanned³⁴. As of 1 August 2005, OCHA observed 376 movement restrictions in place³⁵. However, taking the 'flying checkpoints' into account, the total number of movement obstacles does not seem to have been reduced.

Israel refers to the checkpoints, roadblocks etc. as necessary security measures to be used by the Israeli military forces to foil any terror attacks against Israelis.

However, closures, obstacles to movement, the permit system, the 'flying checkpoints' etc. violate the fundamental right to freedom of movement and add to the humiliating treatment of Palestinians. Even though an occupying power has the right to impose such restrictions, this has to be done while respecting the principle of proportionality. Freedom of movement should not be restricted without proper reasons and access to health, education etc. should still be ensured. Nor should such restrictions be used disproportionately as a form of collective punishment.

The Permit System

The Israeli permit system, a system administered by the Israeli military under the Civilian Administration³⁶, is an essential element of Israeli control of the Palestinians in the OPT and of restrictions imposed on them. The system affects almost all aspects of daily life for Palestinians in the West Bank. Palestinians need permits to get from the area between the Wall and the 'Green Line' to vital institutions like schools and hospitals; permits are needed in order for Palestinians to cross from the northern part to the southern part of the West Bank; for leaving and returning to the West Bank; establishing production work; building and construction etc. In addition, the possession of a permit is no guarantee that one may pass through a checkpoint as indicated by numerous cases documented by EMHRN members such as Al-Haq and B'Tselem³⁷. This fact adds another element of arbitrariness to the control system. This big permit system can also be seen as problematic to the issue of proportionality, as it is imposed upon a whole civilian population as a 'security measure'.

The permit system is justified by Israel as a necessary part of its security precautions. Still, there is a lack of transparency and clarity regarding the requirements for obtaining a permit from the Israeli Civilian Administration, including a lack of written orders.

The fact that people living in East Jerusalem, but outside the Wall, are now required to obtain a permit in order to access East Jerusalem is an example of a newly imposed permit requirement. This makes it very difficult for Palestinians with Jerusalem identity cards and a house in the West Bank side of the Wall to maintain their identity cards and the rights attached to it. Over 60,000 Palestinians are trapped between the Wall and the 'Green Line'³⁸.

The permit system is applied solely to the Palestinians living in the OPT, including East Jerusalem. Israeli settlers, who according to international law illegally reside in the West Bank including East Jerusalem, do not need any permits to move around.

The constant and general requirements imposed by the Israeli military forces, stipulating that Palestinians must carry a permit, are a hindrance to the natural movement of the workforce. The permit system also has an impact on the right to education, for instance for pupils trying to reach their schools inside the West

34 United Nations: [Eighteenth Report Implementation of the Agreement on Movement and Access](#), 12-25 July 2006.

35 Commission on Human Rights: [Question of Violation of Human Rights in the Occupied Arab Territories, including Palestine](#), 1 March 2006, E/CN.4/2006/NGO/120 (or: United Nations: [Eighteenth Report Implementation of the Agreement on Movement and Access](#), 12-25 July 2006).

36 Israeli Military Order No. 947 of 1981 established a "Civilian Administration" charged with administering civilian affairs in the OPT. The entire Civilian Administration is subsidiary to the Area Military Commander and accountable to him.

37 See e.g. [Reports of Al-Haq's Monitoring and Documentation Unit](#) and [B'Tselem's web site on closures](#).

38 OCHA, [Preliminary Analysis of the Humanitarian Implications of the April 2006 Barrier Projections](#): Update 5: 7 July 2006, at 1.

Bank; or students from the Gaza Strip trying to continue their studies in West Bank universities. This is especially relevant to teachers and students in secondary school or higher education, as they tend to travel longer distances.

'No Go' Areas and Separated Roads

The West Bank has been divided into areas, some of which have restricted or prevented access for the Palestinian population. These are inhabited illegally by a large population of Jewish settlers, approx. 450,000 in all settlements, including those in East Jerusalem. These settlers enjoy complete freedom of movement throughout the West Bank and between the OPT and Israel.

It is military orders that determine when a particular area becomes a closed military zone for a limited period of time or on a more permanent basis, barring Palestinians from entering specific areas. This has been observed across the OPT, including a specific area in the very northern part of the Gaza Strip, even after the unilateral Israeli withdrawal in September 2005.

One example is the so-called 'seam zone', the area between the Wall and the 'Green Line'. Palestinians living in the 'seam zone' have to obtain a special permit in order to remain living in their houses, while Palestinians living outside have to obtain a permit to cross into the 'seam zone' in order, for instance, to cultivate their crops or visit their families.

Freedom of movement in the West Bank has been further impeded by a discriminatory road system. The roads have been divided into those on which Palestinians are totally prohibited from driving, to roads where Palestinians need special permits or identity cards showing that their village depends entirely on access to the road in question – to roads where Palestinians are partially barred from driving, and finally, roads that are fully accessible to Palestinians. However, there are no restrictions on access imposed on Israeli settlers living in the West Bank. The enforcement of the 'forbidden roads' system relies entirely on decisions taken by the staff at the Israeli District Civil Liaison Offices and the Civilian Administration. If permission to use a road is refused, the applicants are notified orally, without any explanation being provided. As a consequence, Palestinians in the West Bank have been forced to use longer, more winding roads throughout the area which has added to the difficulties of lengthy travelling³⁹.

This seemingly arbitrary 'security policy' only applied by Israel to Palestinians is a form of collective punishment, which is illegal according to international law. 'No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited [...]'⁴⁰.

B'Tselem, analyses the illegality of the settlements in the West Bank in combination with a seemingly arbitrary 'security policy', applied only to Palestinians:

'One of the main purposes of the movement restrictions policy is to protect Israeli settlers. Given that the settlements are illegal, the policy only aggravates the situation: it comprehensively and disproportionately impedes the freedom of movement of an entire population in order to perpetuate the settlement enterprise. If the restrictions were intended to prevent attacks inside Israel, and not in the settlements, the policy would still be illegal because it is sweeping and disproportionate, giving it a semblance of collective punishment, which is forbidden'⁴¹.

Total Closure of Territories

Another example of the control of movement exercised by the Israeli military is the ordering of full, total closures in the West Bank. During a comprehensive closure, all permits previously issued to residents of the OPT for purposes of work, trade, or medical treatment become invalid. Following acts of violence and

39 See more in B'Tselem: [Forbidden Roads – Israel's Discriminatory Road Regime in the West Bank](#), August 2004.

40 Article 33, Fourth Geneva Convention 1949. See e.g. Al-Haq's [campaign against collective punishment](#).

41 B'Tselem: [Restrictions on Movement: Forbidden Checkpoints and Roads](#).

during Israeli holidays, Israel has designed and applied a comprehensive closure policy in the OPT and cancelled all entry permits⁴².

In this respect, it is worth mentioning that the level of remittances sent home from Palestinians working inside Israel dropped from 320 million US Dollar in the third quarter of 2000 (before the second Intifada) to approx. 105 million US Dollar in the first quarter of 2006. Furthermore, the level of dependants in relation to each job has increased from 4.3 persons supported by each job in the West Bank to 5.6 in the first quarter of 2006. The equivalent figures for the Gaza Strip are 5.9 in year 2000 to 8.2 in 2006⁴³.

Restriction of movement between the Gaza Strip and the West Bank has dire impacts on the Palestinian economy and on Palestinian society collectively. In addition to the general rules of IHL binding the Occupying Power to facilitate movement, the Oslo agreements referred to the Gaza Strip and the West Bank as an integrated territory and stated that freedom of movement between them is necessary.

Box 2: Effects of the Restrictions to the Freedom of Movement in the West Bank (Obligations and Indicators)

Obligations:

International humanitarian law requires Israel in its capacity as occupying power to ensure the safety and well-being of the local residents under its occupation (i.e. the Palestinians), and to maintain, as far as possible, normal living conditions. The right to freedom of movement is vital as it is a prerequisite to the enjoyment of numerous other rights, including the right to health, education, family, and work.

In addition, one may question whether the roads system in the Occupied Palestinian Territories does not create a *fait accompli* on the ground (as is the case with the Wall) that could well become permanent, and thus severely impede the exercise by the Palestinian people of its right to self-determination. This would violate the right to self-determination articulated in Article 1 of the ICCPR and ICESCR. It would also violate the Fourth Geneva Convention's prohibition of annexation of territory acquired through war.

For obligations related to the freedom of movement and economic and social rights please see Box 1.

For commitments under the ENP Action Plan between Israel and the EU, please see Box 1 as well.

Indicators:

The following figures measuring the obstacles to freedom of movement may indicate future progress or set-backs in Israel's human rights behaviour as they directly and indirectly impact on the right to self-determination, the right to a family life and the economic and social rights mentioned above. These indicators may also be used to monitor progress and set-backs in the ENP Action Plan between the EU and Israel.

v. Number of physical obstacles to freedom of movement in the West Bank: In July 2006, the UN observed **540 obstacles** to freedom of movement in the West Bank, 77 of them being manned and 463 unmanned. This is an increase from August 2005 where OCHA observed 376 obstacles, 59 of them manned and 317 unmanned⁴⁴.

vi. Number of kilometres of roads to which Palestinians have no access: B'Tselem estimates that Palestinians with West Bank identity cards have no access at all to approx. **110 km** of roads in the West Bank, while they have only limited access to around approx. 782 km⁴⁵.

42 B'Tselem: [Figures on comprehensive closure days](#).

43 The World Bank: [West Bank and Gaza Update](#), September 2006.

44 United Nations: [Eighteenth Report Implementation of the Agreement on Movement and Access](#), 12 – 25 July 2006.

c. The Unilateral Israeli Withdrawal of Settlements and Military from the Gaza Strip

Between 17 August and 12 September 2005 Israel withdrew its settlers and armed forces from the Gaza Strip. The pullout of the Israeli military and settlers from the Gaza Strip, after 38 years, has improved the ability of Gazans to move freely inside the Gaza Strip which had, to a large extent, been impossible over the past years. The withdrawal, the regained ability to access all parts of the Gaza Strip, as well as the regained housing and farming areas have been perceived as positive elements by Gazans⁴⁶.

However, this unilateral, non-negotiated move did not end the Israeli occupation of the Strip. Israel still holds effective control over the Gaza Strip. With its 'Disengagement Plan' Israel continues to claim the right to both pre-emptive and reactive operations for security reasons within the Gaza Strip, its coastline and air space.

The situation in the Gaza Strip is characterised by continued and extensive Israeli control over the population and its daily life. Israel controls access to and from the Gaza Strip, maintains complete military control over the Strip and is able to stage attacks at any time and on all locations inside the Gaza Strip. Moreover, it can assume physical control of any part of the Strip at any time.

Israel also exercises complete control over the import and export of all goods and services to and from the Gaza Strip, all air traffic to and from the Strip and all access to the sea including fishery. While access from the sea is permanently blocked by Israel, Palestinian fishermen too are blocked by Israel from time to time or their activities limited to a tiny area close to the shore.

Furthermore, Israel exercises complete control over all traffic between the Gaza Strip and the occupied territories in the West Bank including East Jerusalem. Israel has so far blocked all passage between the Strip and the West Bank.

An EMHRN mission (sponsored by ICCO) in October 2005 emphasised the unilateral character of the Israeli withdrawal and the contested statement by the Government of Israel that the withdrawal had ended the occupation of the Gaza Strip⁴⁷.

In fact, as mentioned in the report of the Human Rights Council's Special Rapporteur on the human rights situation in the OPT, Prof. John Dugard:

'The Israel Defence Forces departure from Gaza ... did almost nothing to change the living conditions for the residents of the Strip. Gaza is still a prison and its inhabitants are still doomed to live in poverty and oppression. Israel closes them off from the sea, the air and land, except for a limited safety valve at the Rafah crossing. They cannot visit their relatives in the West Bank or look for work in Israel, upon which the Gazan economy has been dependent for some forty years. Sometimes goods can be transported, sometimes not. Gaza has no chance of escaping its poverty under these conditions'⁴⁸.

45 B'Tselem's report to the UN Committee on the Elimination of Racial Discrimination: Comments on Israel's Combined 10th, 11th, 12th, and 13th periodic report concerning the implementation of the International Convention for the Elimination of Racial Discrimination, May 2006.

46 The rubble from the destroyed structures in the settlements has still not been removed, contrary to an agreement between the Palestinian Authority, Egypt and Israel, facilitated by the Quartet. This renders the development and use of the evacuated land impossible. Under the agreement, Israel must allow Egyptian trucks and equipment to enter the Strip to remove the rubble and take it to Sinai. One year after the disengagement this had still not happened.

47 '[Disengagement' With Effective Control: Report from a mission to the Occupied Territories](#), EMHRN October 2005. The same conclusion was drawn by the mission of Mr. John Dugard in: [Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967](#), A/HRC/2/5, 5 September 2006.

48 Israeli columnist Gideon Levy cited in Mr. John Dugard in: [Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967](#), A/HRC/2/5, 5 September 2006.

Examples of disproportionate use of force, indiscriminate attacks and collective punishment were shown in the Israeli 'Operation Summer Rain' in the Gaza Strip, initiated on 25 June 2006. See more on this in the chapter on non-accountability.

Palestinians from the Gaza Strip have launched missiles at Israeli towns and civilian population centres, leading to a number of deaths, wounded civilians and damage to property. The Israeli government has treated the missile launches as a reason to justify Israeli military action against and inside the Gaza Strip.

On 25 June 2006 a group of Palestinian militants attacked a military base near the Israeli-Egyptian border, leaving two Palestinians and two Israeli soldiers dead. In retreating, they took an Israeli Corporal with them as a captive, and demanded the release of Palestinian detainees in Israeli jails in return for his release.

Since then the Gaza Strip has been more or less closed to people moving in or out, a fact that was presented by the Israeli government as a response or retaliation to the capture of the soldier.

Israel had already tightened its control of the Gaza Strip before the start of 'Operation Summer Rains' in response to the election of Hamas to the Palestinian Authority in January 2006. The border crossings for trade, Al-Muntar (Karni) and Rafah were partially or fully closed respectively for 77% and 98% of the time between 15 November 2005 and 31 July 2006 regardless of the Agreement on Movement and Access, stating that the border crossings should operate 'continuously'⁴⁹.

One of the EMHRN members in Gaza, the Palestinian Centre for Human Rights (PCHR), stated that the Israeli military forces prevented Gazan patients from leaving the Strip for treatment abroad. The Rafah crossing between the Gaza Strip and Egypt was closed for two and a half months during the implementation of the non-negotiated and unilateral 'Disengagement Plan'. That had catastrophic effects on patients in need of treatment abroad. The Israeli military did not provide any service for patients who were in urgent need of treatment in hospitals in Israel or occupied East Jerusalem⁵⁰.

However, the situation in the Gaza Strip has deteriorated significantly since the incursion of Israeli military forces on 25 June 2006.

One general effect of the closure on the population of the Gaza Strip is increasing poverty and this caused a wide range of repercussions. In June 2006 around 70% of the population were unable to fulfil their daily food requirements without assistance⁵¹. According to the UN World Food Programme (WFP), wheat flour and sugar, two main food staples remain in short supply with prices respectively 15% and 33% higher than in January 2006. To support the nutrition of the most vulnerable non-refugee population in Gaza, WFP has increased the number of people it provides food to from 160,000 to 220,000 monthly⁵². Such humanitarian assistance depends heavily on the movement of goods into the Gaza Strip, which has been complicated by the closures of the Gaza Strip.

The closures imposed on the Gaza Strip have also had a negative influence on access to health and medical care. Besides the above mentioned poverty that makes it difficult for people to purchase medicine, the closed borders have led to a lack of medication and medical equipment and to a situation where patients in need of professional medical care outside the Strip have been denied exit and/or return. According to the Human Rights Council's Special Rapporteur, eight Palestinians died while waiting to cross into the Gaza Strip through Rafah, because they were denied proper medical treatment⁵³.

49 Al Mezan Centre for Human Rights: [Rafah Crossing: Urgent Letter to the EU](#), 30 August 2006. The full text of the '[Agreement on Movement and Access](#)'.

50 PCHR, [Special Report on the Israeli Closure of the Gaza Strip](#), June 2006.

51 The United Nation's World Food Programme (WFP) according to OCHA: [Protection of Civilians – Weekly Briefing Notes](#), July 5-11 2006.

52 UN: [Statement by UN's Humanitarian Agencies working in the Occupied Palestinian Territory](#), 3 August 2006.

53 Human Rights Council: [Report of the special rapporteur on the situation of human rights in the Palestinian territories occupied since 1967](#), 5 September 2006.

A report from Physicians for Human Rights-Israel on health issues following the Israeli withdrawal, notes that border regulations between Israel and Egypt, demanding that all Palestinian patients apply for permits to cross into Israel for treatment or to proceed to East Jerusalem or other parts of the West Bank, complicates access for patients⁵⁴. It has had a highly negative effect on seriously ill patients in need of treatment as well as on patients who previously were treated in Israel and who were suddenly denied entry and therefore had to have their treatments terminated. Prior to the Israeli withdrawal, 40-50 patients would travel daily to Egypt to receive medical treatment whereas currently no patients have been observed crossing the border legally.

Denial of entry into Israel has had a devastating effect on children suffering from cancer who previously were scheduled for appointments for regular treatment inside Israel in the absence of adequate treatment facilities in the Gaza Strip. Such treatments have now been cancelled. Prior to the incursion that started on 25 June, around 25 cancer patients would usually pass through the Beit Hanoun (Erez) crossing into Israel on a weekly basis⁵⁵.

Generally, the number of patients who get permission to leave the Gaza Strip for treatment after the Israeli withdrawal has decreased from 742 patients (out of 758 requests, referred to by the Palestinian Ministry of Health) in December 2005 to 171 patients being allowed to pass (out of 185 requests)⁵⁶.

Box 3: Effects of the Israeli Unilateral Withdrawal from the Gaza Strip (Obligations and Indicators)

Obligations:

International humanitarian law requires Israel in its capacity as occupying power to ensure the safety and well-being of the local residents under its occupation (i.e. the Palestinians), and to maintain, as far as possible, normal living conditions. The right to freedom of movement is vital as it is a prerequisite to the enjoyment of numerous other rights, including the right to health, education, family, and work.

Israel has violated fundamental rules of international humanitarian law, which constitute war crimes in terms of article 147 of the Fourth Geneva Convention and article 85 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflict (Protocol I). These include direct attacks against civilians and civilian objects and attacks which fail to distinguish between military targets and civilians or civilian objects (arts. 48, 51 (4) and 52 (1) of Protocol I); the excessive use of force arising from disproportionate attacks on civilians and civilian objects (articles 51 (4) and 51 (5) of Protocol I); the destruction of property not justified by military necessity (article 53 of the Fourth Geneva Convention). In addition the Israeli military forces (and by extension the government of Israel) has violated the prohibition on collective punishment of an occupied people contained in article 33 of the Fourth Geneva Convention.

Israel has violated these obligation as well as a number of rights contained in the International Covenant on Economic, Social and Cultural Rights, notably "the right of everyone to an adequate standard of living for himself and for his family, including adequate food, clothing and housing", freedom from hunger, and the right to food (article 11) and the right to health (article 12) (see Box 1 for details).

In addition the strict control over land, air and sea space severely impedes the exercise by the Palestinian people of its right to self-determination. This violates the right to self-determination articulated in Article 1 of the ICCPR and ICESCR.

54 PHR - Israel: [Gaza after 'disengagement': Patients pay the price](#), 26 September 2005.

55 World Health Organisation: [Statement by the United Nations Agencies working in the Occupied Palestinian Territory](#), 10 July 2006.

56 OCHA: [Humanitarian Update, Access and Protection](#); June/July 2006.

Regarding commitments under the ENP Action Plan between Israel and the EU please see Box 1.

Indicators:

The following figures measuring the impact of the closure of the Gaza Strip indicate progress or set-backs in Israel's human rights behaviour as they directly and indirectly impact on the right to self-determination, the right to a family life and the economic and social rights mentioned above. These indicators may also be used to monitor future progress and set-backs in the ENP Action Plan between the EU and Israel.

ix Number of days of closure: Throughout the period relevant to this report, a so-called comprehensive closure was issued on the OPT for **122 days**, meaning that Palestinians could not travel between the West Bank and the Gaza Strip or into Israel and all permits granted for medical treatment, work or trade became invalid⁵⁷.

The border crossings for trade to/from the Gaza Strip, Al-Muntar (Karni) and Rafah, were observed partially or fully closed respectively for 77% and 98% of the time between 15 November 2005 and 31 July 2006 regardless of the Agreement on Movement and Access, stating that the border crossings should operate 'continuously'⁵⁸.

vii Number of workers with permits to enter Israel: By 26 February 2006 **5,442 workers** from the Gaza Strip had permits to enter Israel to work while only roughly half of the workers were able to make use of the permits as the Beit Hanoun (Erez) border crossing was closed on various occasions⁵⁹.

viii Number of Palestinian workers allowed into Israel from the Gaza Strip: **No Palestinian workers** from the Gaza Strip have been allowed into Israel since 12 March 2006⁶⁰.

ix Number of Palestinian traders allowed into Israel from the Gaza Strip: The Palestinian Ministry of National Economy reports that a limited number of Palestinian traders (**approx. 15-20**) were allowed through Beit Hanoun (Erez) Crossing between late April and 25 July 2006⁶¹.

x Level of poverty: The World Bank states that the level of poverty for the Palestinian population was **44%** in 2005 and it projects that it will reach 67% by the end of 2006⁶².

57 B'Tselem: Closure - [Figures on comprehensive closure days](#).

58 Al Mezan Centre for Human Rights: [Rafah Crossing: Urgent Letter to the EU](#), 30 August 2006.

59 UN: [Humanitarian Update Occupied Palestinian Territory](#), February 2006.

60 OCHA: [Protection of Civilians – Weekly Briefing Notes](#), July 19-25 2006.

61 OCHA: [Protection of Civilians – Weekly Briefing Notes](#), July 19-25 2006.

62 World Bank: West Bank and Gaza Update, September 2006.

III. NON-ACCOUNTABILITY

The legal framework for this section builds on two main principles within international humanitarian law, the principle of proportionality and that of distinction. The principle of distinction prohibits any attack on civilian targets, as the main purpose of international humanitarian law is to protect civilians in times of war and conflict. The principle of proportionality emphasises that legitimate military targets must not be attacked if that will cause excessive harm to civilians. Closely related to these issues is the question of liability on the side of the state of Israel and legal remedies available for Palestinians in the OPT enabling them to file for compensation and request an investigation in cases of deaths or injuries.

The issue of non-accountability is also relevant to the EU/Israel Action Plan, as the plan emphasises that the rule of law and respect for human rights and international humanitarian law are vital parts of the common values, adhered to by the two parties in the Action Plan.

The recent incursion by the Israeli military forces into the Gaza Strip is an example of disproportionate use of force. As mentioned above, 'Operation Summer Rain' was initiated by Israel on 25 June 2006 and claimed to be in reaction to the abduction of a soldier and as a response to the firing of rockets from the Gaza Strip into civilian areas of Israel.

This military incursion has been heavily criticised for causing disproportionate harm to civilians, destruction of civilian structures, infrastructure, public property etc. The UN states that 175 Palestinians have been killed (40 children and eight women) and 620 injured in the operation (1 Israeli soldier was killed and 25 Israelis injured, incl. 11 injured by rockets fired from the Gaza Strip)⁶³. Buildings including ministries and bridges were also hit.

a. Extra-Judicial Killings

The policy of extrajudicial killings is not new as it dates back to the beginning of the second Intifada, when Israel formally adopted a policy of assassinating Palestinians suspected of taking part in militant actions against Israel⁶⁴. All but one case were left uninvestigated by the Israeli Military Police investigation unit. The policy of extrajudicial killings has been sharply criticised by international bodies and human rights organisations, including EMHRN members, Palestinian Centre for Human Rights, Al Mezan Centre for Human Rights, and the Public Committee against Torture in Israel (PCATI).

Israel argues that its assassination victims are combatants and therefore legitimate targets of attack. However, when Israel captures members of such organisations alive, it does not grant them the rights given to combatants by international humanitarian law, such as the right to be recognised as prisoners of war, which entails immunity from criminal prosecution⁶⁵.

According to B'Tselem, 38 Palestinians were killed as targets of assassinations in the OPT, while 22 Palestinians were killed during the course of a targeted killing during the time period July 2005 to July 2006⁶⁶.

PCATI has filed a petition of principle, which demands that the State of Israel terminates its assassination policy. The case is still pending⁶⁷.

63 [Statement on Gaza by United Nations Humanitarian Agencies working in the occupied Palestinian territory](#).

64 For more on this, please see the report of PCATI and Law: [The Assassination Policy of the State of Israel](#), May 2002.

65 International Committee of the Red Cross (ICRC): [Convention \(III\) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949](#).

66 B'Tselem: [Statistics: Fatalities](#), July 2005 – July 2006.

67 See more in PCATI: Report to the United Nations Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the occupied Territories, 10 August 2006.

The policy of extra-judicial killings violates a number of fundamental rights, first and foremost the right to life but also the right to a fair trial outlined in international human rights instruments to which Israel is a state party.

b. Torture and Inhuman Treatment

The report by the Public Committee against Torture in Israel (PCATI), which deals with instances of torture and ill-treatment in the period July 2005-July 2006, states that there has been an overall reduction in the level and severity of violence used against detainees. However, PCATI underlines that Palestinian complaints about abuse, torture, and ill-treatment during interrogation, in particular by the State of Israel's General Security Service, are still counted in the hundreds. Furthermore, PCATI argues that investigations of complaints about torture or inhuman treatment are not conducted impartially, as active agents from the General Security Service investigate fellow agents thereby creating a conflict of interest⁶⁸.

During the period 1 July 2005 to 31 July 2006, PCATI opened 1,157 files. Of these, 811 concerned violence during arrest, 64 concerned interrogation methods and the ill-treatment of detainees, 38 involved assassinations and/or civilian deaths, 192 concerned incommunicado detention, and 9 involved cases of torture⁶⁹.

The State of Israel, the Ministry of Defence, and the military forces have reiterated the arguments about the state's obligation to employ extraordinary means of protection to protect civilians against for instance suicide bombers. Israeli law, as interpreted by an Israeli High Court decision, prohibits torture and a number of other interrogation techniques but allows 'moderate physical pressure' against detainees considered to possess information about an imminent terrorist attack⁷⁰.

However, torture and other acts of cruel, inhuman, or degrading treatment include physical and mental pressure and harm, all which is intentionally inflicted on a person. International law does not allow the use of torture under any circumstances even in exceptional situations, e.g. during a state of war or internal political instability.

c. House Demolition

The demolition of private houses by Israeli military forces has become a regular occurrence in the OPT over the years. This has been justified in a number of different ways, e.g. as a way to facilitate the construction of the Wall in the West Bank. More recently, Israeli military forces have started destroying houses as part of arrest actions. According to international humanitarian law, private houses can only be demolished out of military necessity, which is not the case with an arrest.

The number of houses demolished in the Gaza Strip rose significantly during July 2006. Figures from Al Mezan Centre for Human Rights state that 57 houses in the Gaza Strip were demolished, including 9 completely demolished between 1 July 2005 and 30 June 2006. If one adds an extra month, i.e. to include the period 1 July 2005 to 31 July 2006, the number rises to 462 houses demolished, including 44 completely destroyed.

The demolition of houses is a form of collective punishment. It deliberately punishes whole families for the alleged conduct of one family member. As the Palestinian population is bowed down by poverty and as

68 PCATI: Report to the United Nations Special Committee to Investigate Israeli Practices Affecting the human Rights of the Palestinian People and Other Arabs of the occupied Territories, 10 August 2006.

69 Cases that concern violence during arrest may also include some form of ill treatment during interrogation although the principal subject of the complaint is violence during arrest and vice versa - cases concerning means of interrogation and/or torture may also include some form of disproportionate violence during arrest.

70 The Association for Civil Rights in Israel 2004 report stated that the Public Committee Against Torture submitted over 100 complaints of torture in 2003. US Department of State: [Israel and the Occupied Territories, Country Reports on Human Rights Practices, 2005](#), Released by the Bureau of Democracy, Human Rights, and Labour, 8 March 2006.

buildings require permits, the demolition of a house can take a heavy toll on a family, apart from the more obvious negative consequences on the family's well-being. Furthermore, the demolitions of houses as an act of retaliation also violates the right to private ownership and the prohibition against an occupying power conducting permanent changes in the occupied territory.

Palestinian Arabs, who are citizens of Israel, have also had their homes demolished. One of the EMHRN's members in Israel, the Arab Association for Human Rights (HRA), reports that the home demolition policy is based on systematic plans instituted by the Israeli authorities to increase control over remaining Arab land in Israel⁷¹.

d. Right to a Fair Trial

An essential issue related to the question of non-accountability is the right to a fair trial i.e.; Palestinians who are suspected of having committed security offences and imprisoned without a fair trial. On 27 June 2006 the Israeli Knesset approved the 'Criminal Law Procedures Bill (Powers of Implementation – Special Directives for Investigating Security Violations Perpetrated by Non-Citizens').

By the Israeli government's own admission, the proposed law is chiefly aimed at Palestinians from the Gaza Strip, although it also applies to other persons. The law applies to detainees that are suspected of security offences. The law violates the principles of due process prohibiting that a person be tried and denied freedom in his/her absence. The law also allows Israeli security forces to hold a security suspect for up to 96 hours before bringing him/her before a judge⁷². The Israeli Justice Ministry argued that the law was a necessary tool to prevent terror attacks from the Gaza Strip.

e. Lack of Investigation of Civilian Casualties

Civilian Casualties in the OPT

Investigations into civilian casualties play a vital role when examining non-accountability in a conflict situation or in a situation of occupation. During the first Intifada (1987-93), all killings of Palestinian civilians were investigated by the Israeli military forces. This has changed dramatically following the second Intifada that started in September 2000. During the first Intifada, the Israeli military made a distinction between military operations and police and law enforcement actions. This definition was altered at the beginning of the second Intifada and all actions by the Israeli military are now defined as actions resulting from armed conflict, including arrests, dispersion of demonstrations etc.⁷³.

The change of policy by the office of the Israeli Judge Advocate General (JAG) at the beginning of the second Intifada led to the previously mentioned redefinition of the activities conducted by the Israeli military forces in the OPT. Changes were also made to the Open-Fire Regulations and to the judicial and legal procedures regarding killings of Palestinian civilians. This means that an army unit investigates a particular incident that has happened within its own unit and forwards its findings to the JAG office. The JAG then decides on whether this warrants a Military Police investigation. Officials in the JAG office believe that investigations should only be opened when soldiers 'severely violate the open-fire regulations and cause bodily injury or loss of life'. These are vague formulations and the JAG office lacks clearly formulated procedures explaining when a Military Police investigation is to be opened⁷⁴. The fact that the army unit in

71 See more in HRA's report: [On the Margins – Annual Review of the Human Rights Violations of the Arab Palestinian Minority in Israel 2005](#).

72 Adalah, [Special Report: The Criminal Law Procedures Bill](#).

73 Since September 2000 and the beginning of the second Intifada, 3063 Palestinian civilians have been killed by Israeli military forces in the OPT, of these 677 minors (under 18). This does not include the number of injured. PCHR figures, statistics updated June 9 2006. By comparison, 462 Israeli civilians were killed by Palestinians inside Israel. This lack of investigation into the killing of civilians is connected to Israeli Defence Forces' regulations on firearms and the legal remedies regarding injuries and deaths of civilians. More on B'Tselem: [Statistics: Fatalities](#).

74 B'Tselem refers to cases where investigations were opened only after pressure was put by human rights organisations, journalists or others: B'Tselem: Use of Firearms: [Military Police investigations during the al-Aqsa Intifada](#).

question carries out the first phase of the investigation is problematic since this means that soldiers are potentially investigating themselves⁷⁵.

Also the right to legal remedy has come under attack. Adalah's report to the CERD Committee regarding amendments to the Civil Wrongs (Liability of the State) Law argues that the ability of Palestinians living in the OPT [...] to obtain compensation for damage or injury caused by negligent or unlawful acts of the Israeli security forces was almost blocked completely with the enactment in July 2005 of new amendments to the Civil Wrongs (Liability of the State) Law – 2005⁷⁶. The amendments, which apply retroactively to September 2000 and include pending cases, deny citizens of 'Enemy States' (i.e. read the OPT), and members of 'a Terrorist Organisation', the right to sue Israel in Israeli courts. The amended law grants the Minister of Defence the authority to proclaim any area outside of the State of Israel (i.e. outside the 1967 borders) a 'Conflict Zone', even if no war-related activity has taken place there. This proclamation denies those who sustain injury within the area the right to seek compensation from Israeli courts⁷⁷. The consequence of this is that the scope of Israel's exemption from tort action increases for activities such as the random or deliberate opening of fire, torture and abuse, and the looting and theft of civilian property⁷⁸. The law is in clear breach of article 5(a) as well as 5(b) of the ICERD, which states that everyone is entitled to equal treatment before the law as well as right to personal security and protection against violence or bodily harm⁷⁹.

Administrative and Incommunicado Detention

Incommunicado detention is defined as detention without access to lawyers, doctors, relatives or friends⁸⁰. Administrative detention covers a procedure where Israeli commanders can order the detention of an individual due to security concerns and on the basis of evidence, which is not revealed to the detainee and without formal charges or trial. Consequently, the detainee cannot rebut the evidence, which renders hollow the formal right to appeal the detention order. Indeed, such appeals are rarely upheld. There is no legal requirement to provide an interpreter, even though confessions to be signed by Arabic-speaking detainees are written in Hebrew. Administrative detention orders are valid for up to six months, and indefinitely renewable.

An estimated figure released by Al-Haq in June 2006 states that around 700 Palestinians are currently held in administrative detention inside Israel. This figure includes field workers from three human rights NGOs who are placed under administrative detention⁸¹. PCATI has submitted pre-petition letters on behalf of 566 Palestinians, demanding that the State Attorney's office allow the detainees to meet with their counsel⁸². Both administrative detentions and incommunicado detentions have in several cases resulted in torture and the ill-treatment of prisoners.

75 Recent procedural changes (mentioned by B'Tselem in their e-mail update dated March 2006) have been made stipulating that the JAG's office will be provided a detailed report, within 48 hours, of each incident in which a civilian not taking part in the hostilities is killed. Based on the information contained in the report, the Judge Advocate General (JAG) will decide whether to open an investigation. More details are mentioned by B'Tselem: [Military Police investigations during the al-Aqsa Intifada](#).

76 Adalah: [NGO Report, Suggested Issues for Consideration Regarding Israel's Combined 10th, 11th, 12th, and 13th Periodic Report to the UN Committee on the Elimination of All Forms of Racial Discrimination](#) (CERD), 15 December 2005: page 7.

77 EMHRN Open Letter to the EU/Israel Association Council, June 13 2006.

78 On 1 September 2005 nine human rights organisations in Israel and the OPT filed a petition requesting an urgent hearing to the High Court of Israel demanding that the Court declare the law unconstitutional and void. At a hearing on 30 July 2006 the Court ruled that the State should show cause within a 40 day's period showing why the amendments should not be declared void. See more e.g. Adalah: [Newsletter, Volume 27](#), July-August 2006.

79 Adalah: [NGO Report, Suggested Issues for Consideration Regarding Israel's Combined 10th, 11th, 12th, and 13th Periodic Report to the UN Committee on the Elimination of All Forms of Racial Discrimination](#) (CERD), 15 December 2005: 7.

80 PCATI underlines that such detention by the General Security Service increases the risks of the detainee to be victim of cruel and inhuman treatment. PCATI: Report to the United Nations Special Committee to Investigate Israeli Practices Affecting the human Rights of the Palestinian People and Other Arabs of the occupied Territories, 10 August 2006.

81 EMHRN members PCATI (Mr. Hassan Zaga) and Al-Haq (Mr. Ziyad Hmeidani) and The Alternative Information Centre (Mr. Ahmed Abu Haniya).

82 PCATI: Report to the United Nations Special Committee to Investigate Israeli Practices Affecting the human Rights of the Palestinian People and Other Arabs of the occupied Territories, 10 August 2006.

The State of Israel argues that it makes use of article 78 in the Geneva Conventions, which states that the Occupying power is allowed ‘...for imperative reasons of security...’ to detain people. Administrative or preventive detention is allowed according to international law, however there is a long list of restrictions attached to how such detention can be used. Detention can be used solely to prevent acts of violence or the like and only when other, less severe measures have been tried and proven ineffective. It cannot be used as a punishment and the detainee has the right to counsel, to be brought before a judge, and has the right in a meaningful way to contest the continuation of the detention as well as proper housing, clothing, food, and regular family visits⁸³.

The State of Israel is responsible for numerous violations of the right to due process. When Israel holds Palestinian detainees from the OPT inside Israel it is in violation of the prohibition to forcefully transfer citizens of the occupied territory outside of this territory. The administrative detainees rarely know why they are being held; they are not presented with an arrest order; neither they nor their legal counsel are presented with evidence; the evidence is usually classified, which leads to a procedure where the General Security Service provides the evidence, which is accepted without question. In addition, the fact that the vast majority of Palestinian detainees are held inside Israel causes many problems for their relatives who want to pay them a visit, for instance, when the OPT are put under total closure.

f. The Right to Health

On 28 June 2006 the Israeli Air Force attacked the only electrical power plant operating in the Gaza Strip. Prior to that, two major entities produced electricity for the Gaza Strip: the Palestine Electric Company (providing 100 megawatts before 28 June), and the Israel Electric Corporation (providing 120 megawatts before 28 June). Before the air strikes Gaza did not only rely on Israel for importing electricity but was also dependent on Israel for allowing fuel and natural gas needed to operate the turbines of the Gaza power station to come from Israel via the Nahal Oz crossing, which is under Israel's full control. After the attack on the power plant in Gaza, the Israel Electric Corporation became the Strip's sole electricity provider⁸⁴.

Since the bombing, the Gazans have been receiving 6-8 hours of electric supply per day. The lack of electricity and the scarcity of fuel for generators in hospitals and clinics, combined with water shortages, have lead to a threatening situation for the general health of the more than 1.4 million Palestinians in the Gaza Strip⁸⁵.

Many Gazans have not been able to keep food, especially meat and dairy products, for more than a day or two, a problem exacerbated by the heat of the Gazan summer. In addition to the trouble and waste of time in daily shopping, the lack of reliable refrigeration also significantly increased family expenses as well as increasing health risks due to the lack of proper storage of food⁸⁶.

83 For a detailed study of the family visit programme of the International Committee of the Red Cross (ICRC), see B'Tselem's report: *Barred from Contact - Violation of the Right to Visit Palestinians Held in Israeli Prisons*, September 2006.

84 B'Tselem: [Act of Vengeance: Israel's Bombing of the Gaza Power Plant and its Effects](#), September 2006.

85 Different UN sources – such as the Secretary General, OCHA, and World Food Programme – have repeatedly referred to the drastic deterioration of the health situation in the Gaza Strip. Diseases like diarrhoea have increased by more than 150% compared to 2005 and there is a fear that communicable diseases such as cholera and polio will re-emerge. UNHRC: [UN Health rights expert: Independent enquiry into alleged war crime in Gaza, Press Release](#), 19 July 2006.

86 B'Tselem: [Act of Vengeance: Israel's Bombing of the Gaza Power Plant and its Effects](#), September 2006.

Box 4: Effects of Non-Accountability (Obligations and Indicators)

Obligations:

The issues highlighted in relation to the non-accountability of the Israeli military forces have been: disproportionate use of force, torture and inhuman treatment, extra-judicial killings, house demolitions, the right to a fair trial, lack of investigation of civilian casualties, and administrative and incommunicado detention.

In this regard, Israel has violated fundamental rules of international humanitarian law, which constitute war crimes in terms of article 147 of the Fourth Geneva Convention and article 85 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflict (Protocol I). These include direct attacks against civilians and civilian objects and attacks which fail to distinguish between military targets and civilians or civilian objects (arts. 48, 51 (4) and 52 (1) of Protocol I); the excessive use of force arising from disproportionate attacks on civilians and civilian objects (articles 51 (4) and 51 (5) of Protocol I); the destruction of property not justified by military necessity (article 53 of the Fourth Geneva Convention). In addition, Israeli military forces (and by extension the government of Israel) have violated the prohibition on collective punishment of an occupied people contained in article 33 of the Fourth Geneva Convention.

Israel has also violated a number of rights proclaimed in the International Covenant on Civil and Political Rights, particularly the right to life (article 6), freedom from torture, inhuman or degrading treatment (article 7), the freedom from arbitrary arrest and detention (article 9), the right to a fair trial (article 14) and freedom of movement (article 12). In addition it has violated rights contained in the International Covenant on Economic, Social and Cultural Rights, notably 'the right of everyone to an adequate standard of living for himself and for his family, including adequate food, clothing and housing', freedom from hunger, the right to food (article 11) and the right to health (article 12)⁸⁷.

For commitments under the ENP Action Plan between Israel and the EU, please see Box 1.

Indicators:

The following figures measuring the impact of the non-accountability of the Israeli armed forces indicate progress or set-backs in Israel's human rights behaviour as they directly and indirectly impact on the rights listed above. These indicators may also be used to monitor future progress and set-backs in the EU/Israel Action Plan.

*xi Number of children killed: **95 Palestinian children** (under the age of 18) have been killed in the period July 2005-July 2006 by the Israeli military forces⁸⁸.*

*xii Number of extra-judicial killings of Palestinians: B'Tselem states that **38 persons were killed as direct targets** and 60 bystanders were killed⁸⁹.*

*xiii Total number of Palestinians arbitrarily detained: Held by the IDF and the IPS (Israeli Prison Service): **750**⁹⁰.*

*xiv Number of cases of torture: PCATI has during 1 July 2005-31 July 2006 opened **9 cases on torture**.*

*xv Number of cases of violence during arrest: PCATI has during 1 July 2005-31 July 2006 opened cases: **811 cases of violence during arrest, 64 concern interrogation methods and the treatment of detainees, 192***

87 Human Rights Council: [Report of the special rapporteur on the situation of human rights in the Palestinian territories occupied since 1967](#), September 2006.

88 B'Tselem on [casualties statistics](#).

89 B'Tselem on [casualties statistics](#).

90 B'Tselem: [Statistics on Palestinians in the custody of the Israeli security forces](#), as of July 2006.

concern incommunicado detention.

xvi Number of investigations of civilian killings by the Israeli armed forces and percentage of all cases: 175 since the start of the second Intifada. This is around 5% of all the cases, which required investigation, including cases regarding people that were involved in fighting and those of people who were not involved and including cases of injuries and deaths⁹¹.

xvii Number of houses destroyed in the Gaza Strip: Figures from Al Mezan Centre for Human Rights state that during 1 July 2005 and 30 June 2006: **57 houses** in the Gaza Strip were demolished, including **9 completely demolished**. Number of **inhabitants affected: 278** (of whom 121 were children).

Adding one more month, counting 1 July 2005 to 31 July 2006, Al Mezan reports: **462 houses** demolished in the Gaza Strip, including **44 completely demolished**. Number of **inhabitants affected: 5,066** (of whom 2,542 were children).

xviii Number of houses destroyed in the Gaza Strip and the West Bank: OCHA statistics show that **277 Palestinian structures** have been demolished in the OPT, with the vast majority located in the Gaza Strip⁹².

91 Update from B'Tselem, 30 April 2006.

92 OCHA: [Humanitarian Update, Access and Protection](#), June/July 2006.

IV. DISCRIMINATION

A number of reports submitted by NGOs to the CERD Committee stress several important problems concerning discrimination in Israel. These relate in particular to Palestinian Arabs with Israeli citizenship⁹³.

Palestinian Arab citizens of Israel enjoy in principle the same rights as all Israeli citizens. However, in fact there are several examples of discrimination against and violation of fundamental rights of this minority group which constitutes 20% of a total Israeli population of seven million⁹⁴.

As mentioned in the previous EMHRN report on Israel's Human Rights Behaviour (2005), the Palestinian Arab minority in Israel has been discriminated against, and treated as second-class citizens, since the establishment of the State of Israel. The State of Israel lacks a written constitution or a Basic Law that constitutionally guarantees the right to equality and prohibits discrimination, either direct or indirect. Israel has not taken any steps to reflect this right in the Basic Laws. Although ordinary statutes do provide protection for the right of equality for women, such as The Women's Equal Rights Law - 1951 (Sections 1 and 6) which declares total gender equality⁹⁵, no statute relates to the right to equality as a constitutional right. The Basic Law: Human Dignity and Liberty - 1992, which is considered a mini-bill of rights by Israeli legal scholars, does not enumerate the right to equality.

Since 1948, no new Arab town has been established inside Israel even though the Arab population has grown from 150,000 to 1.2 million, and the existing villages and towns have not expanded significantly. No Arab political party has ever been in a government coalition and only about 5.5% percent of the state's civil servants are Arab⁹⁶. The state budget consistently allocates disproportionately lower amounts to the Arab community as per their percentage of the population, which affects all spheres of political and socio-economic development. The state's use of military service as a condition for affording substantial benefits (e.g., discounts on land, mortgages for homes, housing for students, etc.) also discriminates against Palestinian citizens of Israel, as the vast majority are exempt from and do not perform military service. The Absorption of Discharged Soldiers Law - 1994, which enumerates all of the generous social and economic benefits to which former soldiers are entitled, should preclude the granting of any additional benefits conditioned on military service. Moreover, about half of the country's Arab Bedouin population (about 75,000 people) live in unrecognised villages in the Naqab/Negev which are deprived of most public services like water, electricity, infrastructure, roads, and the like. These citizens, like the Palestinians in the OPT, are subjected to home demolitions and excessive police violence.

One of EMHRN's members in Israel, Adalah, recently submitted a comprehensive report entitled 'The Accused' to the Attorney General of Israel, Menachem Mazuz. The report addresses the shortcomings and failures of the law enforcement authorities – first and foremost the Ministry of Justice's Police Investigation Unit ('Mahash') – in investigating the killings of 13 Palestinian citizens of Israel and the injury of hundreds of others during the October 2000 protest demonstrations. "Mahash" recommended that no indictments be issued against any police officers and commanders. The report primarily exposes Mahash's negligent work and its failure to fulfil its duty to investigate the criminal offences committed by police officers and commanders in October 2000, despite the recommendations of an official Commission of Inquiry issued in September 2003. In addition, the report discloses, for the first time, how Mahash concealed significant facts from the public and issued a falsified report in September 2005, in which it claimed that it carried out an extensive investigation of the fatal events of October 2000⁹⁷.

93 [ICERD Session 70, February-March 2007](#) (planned examination by ICERD of Israel for July-August 2006 was postponed).

94 [Israel's Central Bureau of Statistics](#), 1 August 2006.

95 See also The Prevention of Sexual Harassment Law - 1998, and The Equal Rights for People with Disabilities Law - 1998

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

97 Adalah news update, 15 October 2006. The report is currently only available in [Hebrew](#).

a. Right to Family Life

One example of discrimination against Palestinian citizens of Israel is the Citizenship and Entry into Israel Law (Temporary Order) - 2003. The Law prevents the granting of status in Israel to Palestinian residents of the OPT who are married to citizens and residents of Israel⁹⁸. The law explicitly stipulates a prohibition on the submission of applications by citizens and residents for the granting of status to their spouses if they are residents of the West Bank or the Gaza Strip. The law also retroactively eliminates the possibility of upgrading already issued status granted prior to 12 May 2002. Inhabitants of the settlements in the OPT are explicitly exempted from this prohibition.

Following three extensions by the Knesset, the Law was amended in July 2005. The amendments allow individuals to apply for at best temporary visit permits in Israel leaving the applicants ineligible for residency status, work permits, social benefits, etc. The amendments impose additional arbitrary criteria including age and gender-related stipulations, which in a general way ban applications for temporary visit permits from all Palestinian men under 35 and all Palestinian women less than 25 years of age. A further amendment states that no status will be granted to Palestinians related to an individual whom security-officials suggest may constitute a security threat to the state⁹⁹.

Figures presented by the Attorney General to the Supreme Court on 7 February 2006 indicate that from the time of the law's amendment on 27 July 2005 until the beginning of February 2006, over 1,500 applications for temporary permits were submitted (or initiated) under the amendment, of which only 33 were approved¹⁰⁰. Thousands of families consisting of tens of thousands of people are affected by the Law.

The State of Israel has claimed before the Supreme Court that the law is a justified security measure, arguing that a number of Palestinians from the OPT who have been granted status in Israel pursuant to family unification have been involved in terror activities¹⁰¹. However, the State presented no specific evidence as to arrests, indictments, or convictions to support these claims.

On 14 May 2006 the Israeli Supreme Court dismissed with the smallest majority possible (6-5) a petition submitted by Adalah on 3 August 2003 arguing that the Law is unconstitutional¹⁰². The ruling of the Supreme Court sustained the argument by the State that the Law is based on a legitimate security precaution and rejected the argument that the law is a disproportionate security measure and relates to a specified group of individuals in a collective/sweeping manner violating a list of fundamental human rights under both domestic and international law. The opening created for a legitimate use of collective punishment as stated by one of the justices is in complete contradiction to the absolute prohibition on collective punishment.

b. Right to Equal Treatment

In response to a report on racism published by the Arab Association for Human Rights (HRA), the Attorney General of Israel recognised that many forms of racism had been practiced against the Palestinian minority in Israel. The Attorney General claimed that his office and the Ministry of Justice take a strong stand against such crimes. However, the HRA states that it is clear from the Attorney General's remarks that the number of indictments brought are few and the penalties imposed are very lenient and insufficient to deter

98 The amended text of the Nationality and Entry into Israel Law (Temporary Order) is available on [Adalah's](#) web site.

99 Adalah: [Israel's Human Rights Violations as a Breach of its Obligations Under the EU-Israel Action Plan Paper Submitted to the European Parliament's Sub-Committee on Human Rights](#), 19 June 2006.

100 Orna Kohn, Adalah, [Newsletter 25](#), May 2006.

101 Israel claimed that 23 individuals have been interrogated for alleged involvement in terror activities.

102 Chief Justice Aharon Barak, who wrote a minority opinion, said: 'The issue concerns the right of Israeli citizens of the state to family life and equality, which derive from the constitutional right to human dignity, as espoused in the Basic Law [Human Dignity and Liberty]... A citizen has the right to conduct a family life with a spouse in Israel. There [in Israel] is his [or her] house and his [or her] society, there is his [or her] historical, cultural and social roots... this violation of rights is directed against Arab citizens of Israel. As a result, therefore, the law is a violation of the right of Arab citizens in Israel to equality'. Adalah, [Newsletter 25](#), May 2006.

people from committing these crimes. Those who commit such crimes realise that the State of Israel will rarely prosecute, except in random cases¹⁰³.

Two examples of discriminatory policies – one related to emergency preparedness and the other related to land and planning - reveal the differential treatment afforded to citizens of Israel based on nationality.

Unequal security arrangements

The war between Israel and Hezbollah during the summer 2006 revealed that Arab towns and villages in Israel did not have aerial sirens installed or sufficient bomb shelters. Two boys were killed in Nazareth on 19 July 2006 from Katyusha rockets fired by Hezbollah. Mayors from the Arab towns lodged complaints about the insufficient emergency arrangements and Arab members of Knesset complained that emergency instructions on what to do following rocket attacks were distributed in Hebrew only. The responsibility to install sirens and shelters lies with the Israeli military, and the Home Front Command is responsible for the distribution of emergency instructions. As such, the State of Israel did not fulfil its responsibility to protect all its citizens.

Land and Planning - Separation Walls between Jewish and Palestinian Arab Citizens of Israel

The Arab Association for Human Rights (HRA) has described how walls and earth embankments have been erected in three different places inside Israel, separating Jewish and Palestinian neighbourhoods from each other¹⁰⁴.

Most neighbourhoods in Israel consist of either Jewish or Palestinian Arab citizens. Mixed neighbourhoods are rare and there has been a debate about whether this fact – that is closely related to the land distribution policy of the State of Israel – constitutes an act of discrimination. However, there is no doubt that the construction of separation walls constitutes an example of discrimination by the Israeli authorities against Arab minority citizens.

The three separation walls/earth mounds described by HRA were erected under different circumstances and were given different justifications by the Israeli authorities. The earth embankment between Jisr Al-Zarqa and Qisariya is called an 'acoustic embankment' by the Israeli authorities and the concrete wall between an Arab quarter of the town and a Jewish one is also referred to as an acoustic embankment. However, in neither case is there any proof that noise levels were the main reason for building of the walls. The concrete wall in Ramle was constructed as an integral part of the building of a new neighbourhood in the city. The Israeli authorities have explained that the three walls/earth mounds were erected because an earth embankment constitutes an 'acoustic embankment' or that a concrete wall between two neighbourhoods in the same city was necessary in order to persuade Jewish newcomers to move to the town – statements that reveal an opinion of the proximity of the Palestinian neighbourhood as a general inconvenience. The 'inconvenience' of living close to Arab neighbourhoods is described as generally caused by noise, criminals, drug addicts, family feuds, vandalism etc. emanating from the Arab side. Proximity to Arab neighbourhoods is further said to lead to falling real estate prices¹⁰⁵.

The consequences of the walls are that the different populations do not meet on a regular, day-to-day basis and that they experience differential treatment based on their national origin. Furthermore, the walls constitute a problem in relation to urban planning and the expansion of the Palestinian neighbourhoods.

103 See HRA's report [One Gunman, Many to Blame](#) and the AG's [response](#) to the report.

104 Arab Association for Human Rights: [Behind the Walls: Separation Walls between Arabs and Jews – in mixed cities and neighbourhoods in Israel](#), December 2005.

105 Arab Association for Human Rights: [Behind the Walls: Separation Walls between Arabs and Jews – in mixed cities and neighbourhoods in Israel](#), December 2005.

Dispossession and Displacement in the Naqab/Negev

Over the last few years, the government has developed and started to implement a “new generation” of policies to minimise the amount of land held by Palestinian citizens of Israel. Whereas over the years the state applied indirect pressure on the community by simply failing to provide basic infrastructure and services to the unrecognised Arab villages in the Naqab/Negev (and continues to do so), today, the government also seeks to directly and collectively re-locate and concentrate the Arab Bedouin living in the unrecognised villages within a select number of recognised towns, and to encourage intensive Jewish settlement of the area. Whilst increasing Jewish settlement in the Naqab/Negev has also long been on the agenda of Israeli governments, policy changes elsewhere (e.g., the withdrawal from Gaza, parts of the northern West Bank, the Wall, etc.) are likely to be contributing to the intensification of current efforts (e.g., increasing home demolitions, evacuation orders, etc). In this climate of transition, the land rights of Arab Bedouin citizens of Israel are especially vulnerable. Two cases are illustrative:

Adalah is representing Arab Bedouin citizens of Israel in 27 civil lawsuits filed by the state to evacuate and expel the 300 residents of the unrecognised village of Umm Al-Hieran in the Naqab.¹⁰⁶ In these cases, the state is requesting that evacuation orders be issued against the inhabitants of the village, based primarily on the claim that the villagers are using state land without permission and need to be prevented from using it in the future. The village of Umm al-Hieran was established in 1956, during the period of the military government. At that time, the village’s residents were required, by way of orders of the military governor, to leave their homes in Wadi Zuballa (today, these lands are under the control of Kibbutz Shuval), to their current place of residence in Umm al-Hieran. Hearings in the civil suits began in the summer of 2005 before the Beer el-Sabe Magistrate Court.

On 30 March 2006, Adalah submitted a petition to the Supreme Court of Israel against the National Council for Planning and Building and the Israel Lands Administration demanding the cancellation of the ‘Wine Path Plan’ (Regional Master Plan TAMAM 4/ 14/ 42: Partial District Master Plan for the Southern District – Amendment No. 42).¹⁰⁷ In the petition, Adalah explains how the plan seeks to establish expansive ranches or ‘individual settlements’ in the Naqab for Jewish citizens on tens of thousands of dunams of land, and to prevent the use and development of the land by Arab citizens of Israel in the region. A draft report prepared by the Prime Minister’s Office for the Negev-Galilee Ministerial Committees entitled, ‘Individual Settlements – Northern District and Southern District’ advocates for the development of individual settlements, stating that, ‘The reasons for initiating [individual settlements] are to preserve state lands... [as] solutions for demographic issues.’ The plan involves the distribution of vast and lucrative portions of land in the Naqab/Negev in an inequitable manner, with no clear, objective criteria; prevents equal access to the land for the entire population of the region, and is thus discriminatory; is not based on any relevant factual data about the local Arab Bedouin population; and by retroactively legalising the seizure of ‘state lands’, is unconstitutional.

Box 5: Effects of Discrimination (Obligations and Indicators)

Obligations:

By enacting the Citizenship and Entry into Israel Law (Temporary Order) - 2003, the State of Israel denies a particular group of citizens as well as a specific group of non-citizens, to which Israel has an obligation as occupying power, the right to exercise their right to family life (ICESCR article 10 and ICCPR article 23) and equality. By banning both applications and the potential upgrading of residency status, the state views all

¹⁰⁶ See e.g., Civil File 3326/04, *The State of Israel and the Israel Lands Administration v. Ibrahim Farhood Abu el-Qian, et. al.* (Beer el-Sabe Magistrate Court, cases pending).

¹⁰⁷ H.C. 2817/06, *Adalah, et. al. v. The National Council for Planning and Building, et. al.* (case pending).

Palestinians as a collective security threat.

By neglecting to provide the Palestinian Arab minority with aerial sirens and sufficient bomb shelters the State of Israel is violating the overall right to equal treatment, which runs through the ICERD, a convention ratified by the State of Israel in 1979.

The establishment of walls separating Palestinian Arab citizens of Israel from Jewish Israeli citizens violates the basic human rights of the Palestinian Arab minority to equality and human dignity. It constitutes racial discrimination which again results in discrimination against groups of citizens on the basis of their national origin, a violation of ICERD article 2.1.

In the ENP Action Plan between Israel and the EU it is stated that the parties should:

'Promote and protect rights of minorities, including enhancing political, economic, social and cultural opportunities for all citizens and lawful residents'.

Indicators:

The following figures measure progress or set-backs in Israel's human rights behaviour related to discrimination of the Palestinian Arab minority. These indicators may also be used to monitor future progress and set-backs in the EU/Israel Action Plan.

ixx Number of applications for temporary entry permits submitted compared to numbers approved: Between 27 July 2005 and until the beginning of February 2006 over **1,500 applications** for temporary permits were submitted (or initiated) under the amendment and only **33 were approved**¹⁰⁸.

xx Number of Arab Local Councils with emergency committees and alarm systems and shelters: of the 46 Arab Local Councils in Israel **100% have emergency committees**. Only **41% of them have emergency alarm systems**. **46% of them have shelters** – all inside schools¹⁰⁹.

xxi Number of walls erected between Palestinian Arab and Israeli Jewish neighbourhoods in Israel: **3**. In all **approx. 5 km** of concrete and brick wall and earth mound. All 4 meters high¹¹⁰.

108 Orna Kohn, Adalah, [Newsletter 25](#), May 2006.

109 The National Committee for the Local Arab Authorities in Israel: Actions in Time of War, 18 August 2006.

110 Arab Association for Human Rights: [Behind the Walls: Separation Walls between Arabs and Jews – in mixed cities and neighbourhoods in Israel](#), December 2005.