

The State of Israel's Human Rights Obligations before the UN Treaty-monitoring Bodies, 1998–07

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Two distinct developments, with relevance to each other, have marked the human rights field in Israel/Palestine over the past decade. On the one hand, the continuing deprivation and dispossession of the Palestinians in the internationally recognized occupied Palestinian territories (oPt) have escalated, despite and partly resulting from the Oslo political process. These clearly have contributed to the eruption of Palestinian civil *and* militant resistance, some of which apparently has been directed against the occupying Power as a whole. On the other hand, international jurisprudence within the UN Human Rights System on the human rights obligations of Israel as State party has reached a new level, addressing long dormant issues that return us to the basics of the Palestine question. These separate developments provide important tools for future human rights defense efforts and promise to affect the language and terms in the discourse on the Middle East.

This paper is written largely from the perspective and experience of the Habitat International Coalition (HIC), operating since 1976 as a unifier, capacity builder and coordinating mechanism for nongovernmental members' self-representation and advocacy in international forums. This perspective and function explains, in part, the complementary purposes of the actors and the efforts memorialized here.

A longer and deeper story of Israel's human rights treaty-monitoring background lies behind the events and motivations that have engaged diverse parties in the State's law-bound performance-evaluation process. Each of the individuals and organizations that brought their legal cases to the UN Human Rights System and, in particular, the treaty-monitoring bodies has a particular narrative. This paper does not attempt to capture each of those stories. Suffice it to say that the evolution recounted here arises from circumstances long preceding *al-Aqsa Intifada* and, for that matter, the foregone phase of occupation known as the Oslo

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process in the occupied Palestinian territory (oPt). As charted here, and more elaborately in the treaty bodies actual dialogues with the State party and the corresponding parallel reports of concerned civil society, the coinciding Oslo process and subsequent *Intifada* have arrested none of the well-cataloged human rights violations. The treaty performance reviews of Israel also show that the patterns of abuse across the oPt are not the only issue at stake, but merely a latter-day extension of institutionalized discrimination long practiced and refined inside the pre-1967 borders of Israel.

The UN Human Rights System

The present inquiry focuses on a select category of bodies within the international Human Rights System. The UN bodies that advance human rights can be understood by their functions in four classifications: (1) political, (2) factual, (3) implementing and (4) legal bodies. The political bodies in the UN Human Rights System are those that are comprised of government delegations, thereby reflecting and submitting to State interests. Such bodies include the authoritative General Assembly and its Councils, such as the Security Council and Economic and Social Council (ECOSOC), when they are acting on human rights matters. This category also included the UN Commission on Human Rights, whose 53 State delegations meet each year and which acts as the principle human rights policy-making institutions within the System.

Factual bodies in the System, such as the Subcommission on the Promotion and Protection of Human Rights, comprised of 26 independent experts studying human rights themes globally. Added to this are the Special Rapporteurs and Independent Experts appointed by the Commission (or, in some cases, the Secretary General) to undertake human rights studies and investigations. They help to expand our understanding of particular human rights on a global or country-specific basis.

Human rights implementing bodies include all those delivering services and social development, whether they are away of their human rights function or not. Clean water, social services, adequate housing, constant improvement of living conditions, the preservation and enjoyment of culture, and the highest attainable conditions of mental and physical health are all human rights that the specialized UN agencies deliver. Therefore, UNDP, WHO, UNESCO, UNICEF and other agencies serve a vital function in fulfilling the human rights promise.

Finally, the legal bodies are those components of the UN Human Rights System that develop, codify, adjudicate and/or monitor international law as developed through the United Nations. For our purposes, the foremost of these are the treaty-monitoring bodies. Their composition of independent experts from all regions and their mandate under specific human rights treaties allows these bodies to make critical judgments with strict reference to the relevant legal instrument, outside the vicissitudes of intergovernmental politics. The treaty bodies' natural reliance on the law and multiple sources of evidence theoretically makes their inquiry most unadulterated by power considerations and offers an opportunity for rights holders and

Typology of UN Human Rights Machinery

Political bodies comprised of State delegations representing government interests

Factual mechanisms independent and substantive individuals studying, investigating and reporting on human rights into the System

Implementation bodies agencies engaged in projects in the field, serving development and humanitarian needs

Legal bodies nonpolitical committees and commissions developing and monitoring human rights standards with international law as the guide

defenders to address the merits of human rights issues in a problems solving matter. All participants in the review process have a common reference: the respective human rights treaty law and jurisprudence. These features make NGO cooperation with the treaty bodies very promising, particularly as their legal findings can serve to open spaces for dialogue, provide the material for improved argumentation, enhance local legal defense and support alternative solutions. Principally for their neutrality and general integrity, this paper draws on the experience of the UN human rights treaty bodies during *al-Aqsa Intifada*.

Focus on the Treaty Bodies

By supporting and coordinating UN self-representation for and with Palestinian rights NGOs in the treaty bodies at Geneva, HIC has sought explicit international law recognition of the human right to adequate housing for, and their violations against Palestinians on both sides of the imaginary Green Line, as well as for refugees living outside their homeland. International human rights law is, theoretically, blind to the State ideology of Israel—and other States—and instead takes as its reference the legal norms governing State behavior. Thus, HIC has cooperated closely with the UN's legal bodies since the 1980s in order to develop the legal criteria and specificity needed to implement human rights. With housing and land as HIC's principal focus, and through the specialized advocacy function of HIC's Housing and Land Rights Network, those efforts have concentrated on cooperation with the Committee on Economic, Social and Cultural Rights (CESCR). As guardians of the Covenant on Economic, Social and Cultural Rights, the Committee, like its Covenant, remains first and foremost among the legal standard bearers for "the progressive realization" of the human right to adequate housing (HRAH). Of course, the States parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) remain the principle guarantors and duty holders under the obligation to protect, defend, promote and fulfill the human right to adequate housing.

Internationally, the most meaningful evidence of Palestinian housing rights advocates' success has come through the active cooperation of Palestinian NGOs in the Human Rights System of the United Nations. In particular, since at least 1998, CESCR has specifically and firmly recognized the existence and rights of the "present absentees" and the "unrecognized villages," as well as the Palestinian refugees' rights of return under the Covenant.

The CESCR Review of Israel 1996–98

When Israel joined other UN member states as a party to the Covenant on 3 October 1991, it committed to present its initial report to the CESCR two years hence on its progress toward achieving the "progressive realization" of ESC rights within the areas of its jurisdiction and effective control. Consistent with its formal reporting obligations, Israel was to follow that with a periodic report every five years thereafter. Israel ignored its first assigned reporting deadline of 30 June 1994; however, HIC and Palestinian NGOs did not.

By the time of CESCR's 14th session (29 April to 17 May 1996), HIC efforts helped in formation of two coalitions of Palestinian housing rights advocate groups presented their own version of the facts. With the support of HIC coordination and extending credentials under its consultative status, the Arab Coordinating Committee on Housing Rights in Israel (ACCHRI),¹

¹ The core members of ACCHRI included the Nazareth-based Arab Human Rights Association, the Association of Forty, representing the northern "unrecognized villages," the Galilee Society of Health Research and Services and *Adalah*: The

inside the Green Line, and the West Bank-based Palestinian Housing Rights Movement (PHRM)² submitted their reports both formally and orally in the scheduled NGO meeting with CESCR. The message of violations was so compelling that the Committee decided to issue a communication to the Israeli Permanent Mission requesting that the government address the issues raised in the 14th session and comply with its covenanted reporting obligations as soon as possible.³

What followed was the first review of Israel's implementation of legal obligations under the human rights treaty guaranteeing ESC rights. Thanks to the strategic presence of HIC at Geneva and the diligence of the local NGOs, the Committee was able to carry out a thorough investigation in the case of Israel's compliance by providing eyewitness of the facts on the ground. HIC supported the visit of the CESCR's rapporteur on Israel, Prof. Virginia Bonoan-Dandan (Philippines), to Israel/Palestine in July 1996 at the invitation of local HIC members and other NGOs. Her on-site investigation, with specific focus on housing rights, assisted in the Committee's review of the government delegation's testimony when asserting that there was no homelessness in Israel.

Israel subsequently submitted its combined initial and first periodic reports to CESCR on 28 November 1997. In accordance with the standard CESCR procedures, the Committee reviewed the government information, crosschecking it with other reliable information, to produce a list of "priority concerns."⁴ These were then transmitted to the State party as the basis of the subsequent "constructive dialogue" when the government appeared before the Committee at its appointed date for consideration. At its 19th session, the CESCR engaged an Israel government delegation in dialogue on 17–18 November 1998 to determine the extent to which Israel had complied with, or breached its covenanted duties.⁵

The illustrious result of this investigation counted as a substantial corrective in UN history. The politically motivated and laconic "Zionism-is-racism" resolution of 1976,⁶ expunged in 1991 for equally political reasons, may have been the first international instrument recognizing Israel's discriminatory state ideology. However, with due regard to that unedifying document, CESCR's 19th session Concluding Observations reflected an analytical, legal understanding of institutional discrimination in Israel's laws and governmental and state organs.⁷ Thanks to the more-compelling information provided by 15 NGOs coordinated with

Legal Center for Arab Minority Rights in Israel, both based in Shifa 'Amr, Galilee, and the Association for the Protection and Defence of Bedouin Rights in Israel.

² The PHRM's core membership consisted of the Alternative Information Center (Jerusalem), Bisan Research and Development Centre (Ramallah), al-Haq/Law in the service of Man (Ramallah), Citizens Rights Center/Arab Thought Forum (Jerusalem), Democracy and Workers Rights center (West Bank & Gaza), LAW Society (Jerusalem) for a time, OXFAM (Québec), and Palestine Human Rights Information Center? PHRIC (Jerusalem).

³ Letter of CESCR Chairperson Philip Alston to H.E. Ambassador Yosef Lamdan, Geneva, 17 May 1996.

⁴ List of issues to be taken up in connection with the consideration of the initial report of Israel concerning the right referred to in articles 115 of the International Covenant on Economic, Social and Cultural Rights (E/1990/5/Add.39), UN doc. E/C.12/Q/ISR/1 of 10 June 1998.

⁵ The delegation consisted of Malkiel Blass of the High Court of Justice Division of the Ministry of Justice; Michael Atlan, head of the Legal Adviser's Office, Ministry of Social Affairs; Yuval Shany, Ministry of Justice consultant; and Ady Schonman, Office of the Legal Adviser, Ministry of Foreign Affairs.

⁶ UN General Assembly resolution 3379 of 1976.

⁷ State institutions are not necessarily Government institutions. Some "State institutions" and parastatal "national" institutions do not come under government (parliamentary) jurisdiction. See Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel, UN doc. E/C.12/1/Add.27 of 4 December 1998.

the assistance of HIC,⁸ including Palestinian organizations under both Israel's citizenship and military occupation, the 18 independent guardians of the Covenant understood, by consensus, how the combination of ideology, legislation and statal and parastatal institutions conspires to dispossess an entire indigenous people, beginning with their habitat.

This message emerged as even more compelling in light of the apparent unity with which all the Palestinian and Israeli human rights organizations presented their critical case. The analysis of Israel's incremental elimination and dispossession of Palestinian habitat emerged as a shared and contemporary phenomenon with the apparent seamlessness of the testimonies across the Green Line. One expression of this was in the joint statement submitted to CESCR through the UN High Commissioner for Human Rights by seven major oPt civil organizations in response to the 27 September 1998 attacks by Israeli forces on Palestinian citizens in Umm al-Faham/Wadi `Ara protesting the further confiscation of their lands.⁹

At Geneva, in November 1998, the 18 independent experts of CESCR concluded the first periodical review of Israel as a ratifying party (since 1991) of that important human rights treaty and analyzed the effects of structural discrimination in Israel's legal and state institutions. The CESCR observed that, in its reporting and other information, Israel's "excessive emphasis upon the State as a 'Jewish State' encourages discrimination and accords a second-class citizenship to its non-Jewish citizens."¹⁰ More substantively, the Committee found that Israel's legislation, including its "Basic Laws" discriminate against the indigenous people. The Committee noted "with concern that the Law of Return, which permits any Jew from anywhere in the world to immigrate and, thereby, virtually automatically enjoy residence and obtain citizenship in Israel, discriminates against Palestinians in the *diaspora* upon whom the Government of Israel has imposed restrictive requirements that make it almost impossible to return to the land of their birth."¹¹ Among Israel's breaches of the Covenant, CESCR understandably cited the nature and operations of the "national" institutions. It expressed "grave concern" over the Status Law 1952, which "authorized the World Zionist Organization/Jewish Agency and its subsidiaries, including the Jewish National Fund, to act on behalf of the State and control most of the land of Israel, since these institutions are chartered to benefit Jews exclusively."¹²

The Committee identified specific forms of discrimination against Palestinian Arab citizens in housing and land, as the Committee addressed the "unrecognized villages,"¹³ whose resident

⁸ Those present and testifying during the 19th session's public meeting with NGOs on 16 November 1998 included *Adalah* Legal Center for Arab Minority Rights, *al-Beit*, Palestinian NGO Network, Palestinian Housing Rights Movement, Habitat international Coalition (Housing and Land Rights Committee), LAW (Palestinian Society for Human Rights and the Environment), Palestinian Centre for Human Rights (Gaza), Save the Children (UK), Association for Civil Rights in Israel, ArabCoordinating Committee on Housing Rights in Israel, *B'tselem*: The Israeli Information Center for Human Rights in the Occupied Territories, Association of Forty, Center for Economic and Social Rights (London and Gaza), and Physicians for Human Rights.

⁹ "Israel's attack on Palestinian citizens of Israel," 29 September 1998, signed by the Association of Palestinian Trade Unions, Gaza Community Mental Health Programme, Palestinian Accountants Association, Palestinian Bar Association, Palestinian Engineers Union, Palestinian Independent Commission for Citizen's Rights, Palestinian Nongovernmental Organization Network.

¹⁰ Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel, UN doc. E/C.12/1/Add.27 of 4 December 1998, para. 9.

¹¹ *Ibid.*, para. 13.

¹² *Ibid.*, para. 11.

¹³ *Ibid.*, paras. 26–38.

Arab citizens "face demolition orders, lack of basic services and removal into concentrated 'townships'."¹⁴ It noted that the mixed Arab-Jewish towns, such as Yaffa and Lydd, whose Arab neighborhoods (where many "present absentees" live) have "deteriorated into virtual slums" as the result of Israeli policies. The Committee also explicitly addressed the continuing plight of an estimated 270,000 "present absentees."¹⁵ CESCR formally notified Israel that, in order to meet its minimum requirements under the Covenant, the state would have to "ensure the equality of treatment of all Israeli citizens."¹⁶ It urged the Israeli government to "review the status of its relationship with the WZO/JA and JNF"¹⁷ and to revise its re-entry policies *vis-à-vis* Palestinians "to a level comparable to the Law of Return as applied to Jews."¹⁸

At the height of the Oslo process and nearly two years before the outbreak of a second *intifada*, the CESCR's collective investigatory effort, supported by independent NGOs voices from within, took analysis back to its necessary basics to understand the institutionalized and unbroken pattern of human rights violations that is Israel. In the context of that Oslo process, the Israeli government and delegation appearing before the Committee refuted Israel's obligations to report on ESC rights in the West Bank and Gaza Strip, as "jurisdiction has been transferred to the Palestinian Authority."¹⁹ The Committee, like the bodies monitoring other human rights treaties, rejected Israel's dismissal of its human rights obligations in the oPts.²⁰ Therefore, the Committee required that Israel fill this lacuna at the midpoint in its coming review period, calling for a report on the oPts in time for the November 2000 session of CESCR.²¹

Israel's response to the Committee's legal findings was bitter, but much prompter than its mandatory submissions to the treaty body. In a letter from directed to the CESCR chair, the Government of Israel took umbrage at the Committee's inquiry.²² The letter asserted Israel's "impressive accomplishment...in immigration absorption in achieving one of the highest life expectancy rates, absence of hunger and homelessness..."²³ In essence, the letter lamented the Committee's disregard for the government delegation's official explanations and charged a "double standard" and "less-balanced standard" had been applied in the case of Israel when compared to other states, "such as Iraq, Libya and the Russian Federation."²⁴ The State requested that the Committee circulate its letter, as it was meant to be a public rebuttal of the Committee's findings. It was nearly one year later that the Palestinian NGOs in the West Bank responded with a similarly public corrective letter that—though not an unofficial part of the CESCR review—forms a very instructive exchange of on State obligations from the perspectives of both the duty holder and the rights holders.²⁵

¹⁴ *Ibid.*, para. 28.

¹⁵ *Ibid.*, paras. 25, 41.

¹⁶ *Ibid.*, para. 34.

¹⁷ *Ibid.*, para. 35.

¹⁸ *Ibid.*, para. 36.

¹⁹ As stated by Israeli government delegation member Malchior Blum before the Committee, 17 November 1998, and cited in the Government of Israel response to the CESCR's "priority concerns," citing "90% of the population of the West Bank and Gaza Strip to a Palestinian autonomous authority," at p. 1.

²⁰ For example, the Human Rights Committee, monitoring the Covenant on Civil and Political Rights, and CAT, covering the Torture Convention, both have cited Israel's human rights treaty obligations in the oPts. See also CESCR's E/C.12/1/Add.27, CCPR/C/79/Add.93, D 10 and CERD A/52/18, para. 19(3).

²¹ E/C.12/1/Add.27, para. 32.

²² Letter of Israeli Ministry of Justice Director General Nili Arad and Ministry of Foreign Affairs Director General Eytan Bentsur to CESCR Chairman Philip Alston, 28 December 1998.

²³ *Ibid.*, p. 2, para. 3 D.

²⁴ *Ibid.*, p. 1, para. 2.

²⁵ See the historic exchange on Housing and Land Rights Network website: www.hic-mena.org (in Arabic and English).

CESCR: 2001

Israel's refusal to present information on implementing ICESCR in the oPt did not close the subject of its reporting obligations. Instead, it ensured that Israel and its "nonreporting country" status remained on the CESCR agenda in nearly every subsequent session. CESCR had given Israel the grace period of two years to present the "additional information" required. That review was scheduled for the 24th session (13 November–1 December 2000). Therefore, when *al-Aqsa Intifada* erupted in late September 2000, CESCR became the first treaty body to review Israel during the *Intifada*.

While Israel again failed to present its side of the review of its treaty obligations in the oPt, a community of NGOs nevertheless presented information for the occasion.²⁶ In a letter, issued one day before the Committee convened its session, in which it was scheduled to review Israel's "additional information," the government of Israel's appearance proposed to submit a new, second periodic report well in time for its next (25th) session. In the letter, the government still abdicated any responsibility for upholding or reporting on ESC rights in the oPt, and proposed to submit a new periodic report by March 2001 and begin a new review process instead. The Committee responded formally by upholding the integrity of its earlier determination on Israel's jurisdictional responsibility in the oPts, particularly "in light of all current circumstances...and the current crisis."²⁷

In the 25th CESCR session, Israel did present a new periodic report with an attached cover letter, again refusing to report on the Covenant's application in the oPts. Presenting its new report on the very eve of the 25th session prevented the Committee from considering it without the required translations into the working languages. Nonetheless, Israel was already on the agenda for that session and the existing CESCR procedures allowed for consideration of numerous NGO submissions²⁸ and an official response.

One of the NGO concerns was that the Committee not avert its focus from both violations inside the Green Line, as implied by its singular emphasis during the follow-up on the "nonreporting" on the Covenant's application in the oPts. The resulting communication to the Gol reiterated that Israel's Covenant obligations indeed apply to the oPts and that "the State party's argument that jurisdiction has been transferred to other parties is not valid from the perspective of the Covenant, particularly in view of Israel's besieging of all the Palestinian territories occupied since 1967."²⁹

The CESCR review of Israel at that stage took on a further, unprecedented dimension. Faced with a state party's obstinate refusal to meet its implementation and reporting obligations in the oPt, the Committee also faced the limits of its capacity to enforce compliance. CESCR then took the unprecedented step of forwarding its communication to Israel as an annex to an appeal to the Economic and Social Council's summer 2001 session, in accordance with

²⁶ For examples of reports before CESCR in the 24th session, see the Center on Economic and Social Rights website, at <http://www.cescr.org>.

²⁷ Letter of Chairperson Virginia Bonoan Dandan to Permanent Representative of Israel H.E. Ambassador M. David Peleg, 1 December 2000.

²⁸ Formal parallel reports came from *Adalah* Legal Center for Arab Minority Rights, *Badil* Resource Center for Palestinian Refugee and Residency Rights, Boston University Civil Litigation Project (USA), Center for Economic and Social Rights (USA), Habitat International Coalition (Housing and Land Rights Committee), LAW Society and Organization mondiale contre la torture.

²⁹ Letter of CESCR Chairperson Virginia Bonoan Dandan to Permanent Representative H.E. M. Yaakov Levy, Geneva, 11 May 2001.

provisions under articles 21 and 22 of the Covenant. That intervention essentially underscored the need for protection of Palestinian civilians and for taking “effective measures,” such as those that the various UN human rights mechanisms already recommended and remain unimplemented.³⁰ However, ECOSOC did not act on the information.

The Committee rescheduled Israel to appear in Geneva on 17 August 2001 for the continuation of the Covenant's application in the oPts and other issues, considering the most recent report by Israel in light of the requirement for the “additional information” that CESCR previously requested and the Gol omitted. While HIC -HRLN and several NGOs were present to present updates on the deteriorating situation, The Gol sent a low-level diplomat to read out a formal denunciation of the Committee as “biased,” “discriminatory” and “politically motivated.” He then concluded by reiterating the Gol's refusal to apply or report under the Covenant in regard to the oPt and rose from the room in protest.

The Committee's subsequent Concluding Observations concentrated on the deteriorating situation in the oPt and debunking the Gol assertion that human rights obligations do not apply there, where humanitarian law prevails. Beyond the oPt, however, the Committee expressed its continuing concern “that the State party's Law of Return denies indigenous Palestinian refugees the right to return to their homes and properties.”³¹ CESCR also scheduled the review of Israel's 2nd periodic report at its 30th session, May 2003. That session focused on the Committee's list of questions to the Gol issued at its pre-session working group in May 2002.³²

CAT: 2001

The Committee against Torture (CaT) reviewed Israel's initial report under the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in November 2001. This review follows long delays in Israel's submission of the report, as well as a demand for information from Israel in light of the apparent institutionalization of torture in Israel's laws and practice.

True to form, the Committee's Concluding Observations first welcomed what it considered “positive factors” in the State party's performance. The Committee referred to “real time judicial review of persons under detention to the Supreme Court” as a “positive aspect.” Most human rights advocates, however, found this reference unwarranted, in view of the fact that Palestinian detainees held incommunicado for days and weeks without contact with the outside world, let alone the Supreme Court, to complain of torture or other ill-treatment.³³

The Committee's reference to the fact that “since 1994, the responsibility for investigation of complaints against the Israel Security Agency (ISA) has been transferred to the Ministry of Justice” as a “positive aspect” was also questionable. The Israeli delegation before the Committee had admitted that all such complaints are referred by the Ministry of Justice to be in-

³⁰ Letter of CESCR Chairperson Virginia Bonoan Dandan to the president of ECOSOC, Geneva, 11 May 2001 (UN document number yet unassigned).

³¹ E/C.12/1/Add.69, 31 August 2001, para. 15.

³² E/C.12/Q/ISR/2, 5 June 2002.

³³ “Conclusions and Recommendations of the Committee against Torture : Israel,” CAT/C/XXVII/Concl.5, 23 November 2001, para. 4

vestigated by an "ISA" agent and its conclusions are based solely on that agent's reports. Since 1994, not a single GSS agent has been criminally charged of ill-treating a detainee, indicating impunity for ISA agents is at work.

CAT referred to the September 1999 Supreme Court judgment in the case of *Public Committee against Torture in Israel v. the State of Israel*, which held that the use of certain ISA interrogation methods involving the use of "moderate physical pressure," was illegal as it violated constitutional protection of the individual's right to dignity. However, the Committee found that the ruling does not contain a definite prohibition of torture. It found that: "Despite the Israeli argument that all acts of torture, as defined in Article 1 of the Convention, are criminal offences under Israeli law, the Committee remains unconvinced and reiterates its concern that torture, as defined by the Convention, has not yet been incorporated into domestic legislation."³⁴

CAT reviewed allegations of torture and ill-treatment of Palestinian minors, in particular those detained in the Gush Etzion Police Station. The difference in the definition of a child in Israel and in the Occupied Territories was also a subject of the Committee's concern. Under Israeli law, majority is attained at the age of 18, Military Order No. 132 defines a minor as someone under the age of 16. In addition to this breach of the Convention and its over-riding principle of nondiscrimination, CAT also advised the State of Israel that no minors under the age of 12 years can be held criminally responsible, including the Occupied Territories where minors have been commonly subjected to ill-treatment.

What was new in the 2001 review of Israel was CaT's consideration of violations under article 16 of the Convention, concerning definition of ill-treatment not part of the classic definition of torture in detention, under Article 1. The Committee continued its previous concern that administrative detention does not conform with Article 16 of the Convention. However, it added to the breaches of Article 16 Israel's practices accelerated since October 2000, including closure and house demolition.³⁵ However, this most conservative of treaty bodies reacted weakly to other State practices during *al-Aqsa Intifada*. In passing, the Committee commented that it "is also concerned at instances of "extrajudicial killings" drawn to its attention."³⁶

CRC 2002

In October 2002, the Committee on the Rights of the Child reviewed Israel's compliance under that human rights Convention. When considering the report,³⁷ CAT also focused more on symptoms, rather than causes of violations. CRC recognized the occupation of Palestinian territory as illegal, singling out specific practices during since 2000 such as "the bombing of civilian areas, extrajudicial killings, the disproportionate use of force by the Israeli Defense Forces, the demolition of homes, the destruction of infrastructure, mobility restrictions and the daily humiliation of Palestinians continue to contribute to the cycle of violence."³⁸

³⁴ Ibid., para. 6 (a)–(d).

³⁵ Ibid., para. 6 (i), (j); and para. 44.

³⁶ Ibid., para. 6 (l).

³⁷ consideration of the Periodic Report submitted by Israel in CRC/C/8/Add.44, 27 February 2002, List of Issues in E/C.12/Q/ISR/2, 5 June 2002, concerning the rights covered by articles 1–41 of the International Convention on the Rights of the Child

³⁸ Concluding observations of the Committee on the Rights of the Child : Israel. 09/10/2002. CRC/C/15/Add.195, 9 October 2002, para. 4

The CRC benefited from a presentation of facts in a collective parallel report by human rights NGOs on both sides of the Green Line. In a fashion similar to the reports presented to CESCR, the 2002 parallel report to CRC demonstrated the continuity of practices toward Palestinian Arab children both as citizens of the State of Israel and residents of the oPt.³⁹ As the Convention applies to the State's areas of jurisdiction and effective control the Committee noted discrimination practiced inside the Green Line, in particular the large gap between the needs and services provided to Jewish and "Israeli Arab" children.⁴⁰

In observations on the oPt, the Committee expressed deeply concern about the serious deterioration of health and education, and health and education services of children in the occupied Palestinian territories, especially as a result of the measures imposed by the Israeli Defence Forces, including road closures, curfews and mobility restrictions, and the destruction of Palestinian economic and health infrastructure. In particular, the Committee is concerned about the consequent delays of and interference with medical personnel, the shortages of basic medical supplies and malnutrition in children owing to the disruption of markets and the prohibitively high prices of basic foodstuffs.⁴¹ CRC *recommended* that the State party guarantee safe and unconditional access by all Palestinian children to basic needs and health services, including medical supplies and personnel.

The Committee also expressed deep concerned at "the large-scale demolition of houses and infrastructure in the occupied Palestinian territories, which constitutes a serious violation of the right to an adequate standard of living for children in those territories."⁴² It also invoked humanitarian law and its applicable principles and called on Israel to "refrain from the demolition of civilian infrastructure, including homes, water supplies and other utilities." CRC also applied the Convention to Israel's obligations in its extraterritorial conduct in Lebanon, noting "the insufficient cooperation of the State party in relation to demining efforts in southern Lebanon and the lack of redress available to the child victims of Israeli Defense Forces operations there."⁴³

CESCR: 2003

The review of Israel's second periodic report under ICESCR made progress in that UN treaty bodies consider Israel's legal and institutional discrimination on the basis of "nationality." Uniquely, Israel has established a supercitizenship status for Jews that allows them to benefit exclusively from the properties and possessions taken from the indigenous Palestinian people, including refugees. "Jewish nationality" stands as the pivotal feature of Israel's institutionalized discrimination practiced throughout historic Palestine, as well as extraterritorially.

³⁹Defence for Children International/Palestine Section, Habitat International Coalition, Housing and Land Rights Network (Middle East/North Africa), LAW Society for the Protection of Human Rights and the Environment (Jerusalem, Palestine), Al Mezan Center for Human Rights (Gaza, Palestine, *Implementation of the International Convention on the Rights of the Child: Israel, Issues affecting the Indigenous Palestinian People under the State of Israel's Jurisdiction and Control* (Geneva: HIC-HLRN, 16 September 2002).

⁴⁰ *Ibid.*, para. 42.

⁴¹ CRC/C/15/Add.195, *op cit.*, para. 44.

⁴² *Ibid.*, para. 52.

⁴³ *Ibid.*, para. 58.

The Committee's dialogue with the Gol representatives and concerned NGOs had developed an appreciation among members of the rather obfuscatory State rationale behind this institutionalized practice reasoning and its link to general dispossession of the Palestinian people. Thus, CESCR demanded that the State party "explain the distinction between the religion and nationality status categories in Israeli law..., what types of nationality status exist in Israel, and how this status is distinct from other citizenship status in the enjoyment of economic, social and cultural rights?"⁴⁴ The Committee also sought answers as to what steps Israel had undertaken to implement the Committee's recommendation that the State party review its relationship with patently discriminatory institutions such as the World Zionist Organization/Jewish Agency and Jewish National Fund.⁴⁵

The Gol delegation did not provide satisfactory answers to these fundamental questions, and the Committee members generally sought to maintain a convivial atmosphere during the constructive dialogue in order to avoid the previous conduct of the State party when refusing to cooperate in its 25th session in 2001. CESCR maintained this diplomatic posture in the formal Concluding Observations, omitting explicit references to "breaches" of the Covenant. Nonetheless, the Committee did come forward with the findings so far of its inquiry about the pivotal matter of nationality status. It stated, significantly, that:

The Committee is particularly concerned about the status of "Jewish nationality," which is a ground for exclusive preferential treatment for persons of Jewish nationality under the Israeli Law of Return, granting them automatic citizenship and financial government benefits, thus resulting in practice in discriminatory treatment against non-Jews, in particular Palestinian refugees. The Committee is also concerned about the practice of restrictive family reunification with regard to Palestinians, which has been adopted for reasons of national security. In this regard, the Committee reiterates its concern contained in paragraph 13 of its 1998 Concluding Observations, and paragraph 14 of its 2001 Concluding Observations.⁴⁶

To some observers, these may appear to be subtle phraseology. However, their legal significance cannot be easily dismissed. The legal review of Israel under the most fundamental and comprehensive human rights instrument addressing ESC rights has returned to the fundamentals of dispossession. The world's political focus on the oPt, for all the horror there, has distracted from the analytical and legal point that CESCR has revived.

This is in addition to the Committee's observations on the specific violations inside the oPt. These essentially repeated previous findings from the CESCR reviews 1999–2002. The Committee "deeply regretted the refusal of the State party to provide additional information on the living conditions of population groups other than Israeli settlers in the occupied territories in its second periodic report, as requested in its 2001 concluding observations." The Concluding Observations also expressed grave concern about:

the deplorable living conditions of the Palestinians in the occupied territories, who—as a result of the continuing occupation and subsequent measures of closures, extended curfews, road blocks and security checkpoints—suffer from impingement of their enjoyment of economic, social and cultural rights enshrined in the Covenant, in particular access to work, land, water, health care, education and food.

⁴⁴ *Ibid.*, para. 5.

⁴⁵ *Ibid.*, para. 6.

⁴⁶ CESCR, "Concluding Observations: Israel," E/C.12/1/Add.90, 23 May 2003, para. 18.

In 2003, the Committee showed particular concern over “security fence” around the occupied territories, which, CESCR recognized,

“would infringe upon the surface area of the occupied territories, and which would limit or even impede access by Palestinian individuals and communities to land and water resources. The Committee regrets the fact that the delegation did not respond to questions by the Committee concerning the security fence or wall during the dialogue.”⁴⁷

In connection with the Wall and other aspects of land and resource confiscation, CESCR focused newly on denial of Palestinian water rights and resources in the oPt “as a result of inequitable management, extraction and distribution of shared water resources, which are predominantly under Israeli control.”⁴⁸ The Committee also renewed its grave concern about violations by the State party of:

home demolitions, land confiscations and restrictions on residency rights, and its adoption of policies resulting in substandard housing and living conditions, including extreme overcrowding and lack of services, of Palestinians in East Jerusalem, in particular in the old city (1998 concluding observations, para. 22). Furthermore, the Committee is gravely concerned about the continuing practice of expropriation of Palestinian properties and resources for the expansion of Israeli settlements in the occupied territories (1998 concluding observations, para. 24).⁴⁹

Form and Substance

The CESCR's focus on the human rights fundamentals and the continuum of their violations was aided, in part, by the method of presenting parallel information to the Committee. As a tool for demonstrating cross-Green Line institutionalized discrimination and common ESCR violations, HIC-HLRN has developed a parallel reporting format that addresses each right under the treaty body's review (consistent with the treaty body's reporting guidelines). In the case of Israel, that format presents information in columns: the left column for reporting human rights issues concerning Palestinian citizens inside the Green Line; the right column for issues concerning Palestinian rights in the oPt; and a central column, or separate box over both columns articulates the commonalities. This format has appeared in three parallel reports on Israel to UN treaty bodies to date: in the 2001 and 2003 CESCR reviews, as well as the Committee on the Rights of the Child review of Israel in 2002. (See Annex for illustrative example.)

Presenting information in this way allows the Committee members easily to appreciate the common issues in a form that can be placed side-by-side the government's report, thereby being truly parallel. The content of the reports return the reader to the fundamental issues and give attention to the role of State ideology and institutional duty holders in the violations. The rarely spoken message arising from the cumulative evidence presents the State party in its nature as it is inherently intent on dispossession the Palestinian people as such. It also provides a rare occasion to reaffirm the oneness of the indigenous Palestinian people, whom artificial borders, politics and, ironically, even the Palestinian national movement's institutions and diplomatic priorities have effectively dissected.

CERD: 2007

⁴⁷ Ibid., para. 24.

⁴⁸ Ibid., para. 25.

⁴⁹ Ibid., para. 26.

The long-awaited review of Israel's performance under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) finally concluded in February–March 2007. The review marked a lapse of nine years since the Committee on the Elimination of Racial Discrimination (CERD) previously reviewed the State party. Israel's presentation of its formal report in 2005⁵⁰ followed five years of delinquency, passing its binding 2000 reporting deadline. The State asked for a last-minute postponement of the originally scheduled February 2006 review of its latest report, which postponement request Israel repeated three working days before its rescheduled August 2006 session, during its conduct of the summer war on Lebanon. The cumulative delays on the part of the State party ultimately transformed the biennial periodic review into a combined consideration of Israel's 10th through 13th reporting periods when CERD was able to hold its “constructive dialogue” with the Israeli delegation at its 1795th session on 22–23 February 2007.

During CERD's 69th session, the void created on the Committee's work schedule enabled more time for it to review issues of Israel's conduct of the Lebanon war in light of ICERD, as well as to receive a briefing from NGOs on hand for the scheduled review. In the former process, Committee members were unable to formulate a common view and text to issue on the prospective breaches of the Convention in Lebanon. However, the latter briefing provided essential guidance for Committee members in their review and interpretation of on-hand parallel information, as well as the opportunity to ask the civil representative for additional information.

Twenty NGOs cooperated in the presentation of a collective parallel information presented in December 2005 and updated to the moment of CERD's 70th session. The organizations' report, entitled *Israel's Implementation of the Convention on the Elimination of All Forms of Racial Discrimination: Institutional Discrimination against Those without "Jewish Nationality,"* applied all articles of the Convention in a two-column format that provided at a glance the relative practices in the Green Line (left column) and the oPt (right column). The report covered only those aspects of institutionalized discrimination arising from Israel's laws and institutions applied in both jurisdictional zones.

The Israeli delegation pursued a strategy of avoiding to answer structurally significant questions of ICERD treaty implementation that the CERD country rapporteur for Israel Morten Kjærum (Denmark) already had posed in writing six months previous. The Israeli delegation provided no written responses to the rapporteur's questions, instead spending an inordinate amount of time presenting the State's official version on the putative legality of the Separation Wall, which the Committee has addressed in its line of inquiry. The Committee's questions—repeated also in the oral dialogue—about the status and discriminatory nature of the “national” institutions (WZO/JA, JNF *et al*) and the superior status of “Jewish nationality” went entirely unanswered. The NGOs present at the meetings—which spanned two half days—included three from among the 20 joint parallel-report authors⁵¹ and four additional groups.⁵² The civil society groups coordinated two briefing sessions for CERD: one preceding its meeting with the Israeli delegation on 22 February, and a morning briefing the following morning.

⁵⁰ Thirteenth periodic reports of States parties due in 2004: Israel, CERD/C/471/Add.2, 1 September 2005 (submitted 23 June 2005).

⁵¹ BADIL, Habitat International Coalition—Housing and Land Rights Network and al-Haq.

⁵² ACRI, Adalah, B'Tselem and FIDH.

During the dialogue, the head of the Israeli delegation, Ambassador Yitzhak Levanon, insisted that “there is essentially no discrimination in Israel.” Although the Israeli delegation evaded the Committee’s written and oral questions about the fundamental forms of discrimination in the “Jewish State,” CERD did not redirect the delegation to the unanswered questions. Nonetheless, those questions and the understanding arising from the ample parallel information comprised the Committee’s Concluding Observations.

In its Concluding Observations, the Committee regretted that many of its questions sent in advance to the State party remained unanswered, and that, despite requests made in its previous concluding observations, Israel’s report did provide any information on the oPt.⁵³ While the Committee noted that Israel’s Basic Law: Human Dignity and Liberty (1992) does not include a non-discrimination provision,⁵⁴ it also expressed concern that preferences conveyed exclusively for Jews through the Basic Law: Law of Return (1950) involve particular privilege in access to land and other benefits. The Committee recommended “that the State party ensure that the definition of Israel as a Jewish nation state does not result, in any systemic distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin in the enjoyment of human rights.”⁵⁵

CERD formally expressed its concern about the denial of the right of many Palestinians to return and repossess their land in Israel, and reiterated its view expressed in its previous Concluding Observations and urged Israel instead to assure equality in the right to return to one’s country and in the possession of property.⁵⁶

The Committee regretted that it did not receive sufficient information from the State party on the status, mandate and responsibility of the World Zionist Organization, the Jewish Agency and the Jewish National Fund, as well as about their budgets and allocation of funds. It noted its concern that these institutions manage land, housing and services on a discriminatory basis for the Jewish population, and the Committee called on Israel party “to ensure that those bodies are bound by the principle of nondiscrimination in the exercise of their functions.”⁵⁷

CERD’s Concluding Observations included a range of concerns, enumerating also a commensurate range of Convention articles that Israel has breached through discriminatory practices that deny residency and housing rights. After having previously addressed Israel twice on the issuer under its emergency and early warning procedure,⁵⁸ the Committee recommended again in its 2007 Concluding Observations that Israel revoke the “Citizenship and Entry into Israel Law (Temporary Order),”⁵⁹ which denies family reunification for Palestinians on a discriminatory basis. It also noted patterns of disproportionate State violence or impunity for the individual practice of violence against Arab citizens⁶⁰ and Palestinian Arabs in the oPt.⁶¹

⁵³ CERD/C/ISR/CO/13, para. 3.

⁵⁴ Ibid., para. 16.

⁵⁵ Ibid., paras. 15, 17.

⁵⁶ Ibid., para. 18.

⁵⁷ Ibid., para. 19.

⁵⁸ Prevention of Racial Discrimination, including Early Warning Measures and Urgent Action Procedures: Decision 2 (63): Israel, CERD/C/63/Misc.11/Rev.1, 14 August 2003 and Decision 2 (65) 20 August 2004.

⁵⁹ Ibid., para. 19.

⁶⁰ Ibid., para. 30.

⁶¹ Ibid., para. 37.

Among the Committee recommended that the State party “cease the construction of the Wall in the [oPt], including in and around East Jerusalem, dismantle the structure therein situated and make reparation for all damage caused by the construction of the Wall.” The Committee also recommended that “the State party take action to give full effect to the 2004 Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territories.”⁶² Inside the Green Line, CERD noted Israel’s discrimination in planning, services, housing and land use against Arab citizens, in particular, the “unrecognized” villages of the Naqab/Negev.⁶³

The Committee called on Israel to submit its fourteenth, fifteenth and sixteenth periodic reports in a single report, due on 2 February 2010, addressing and updating all points raised in CERD’s 2007 Concluding Observations. However, as an indication of the gravity of the State party’s deviation from the obligations enshrined in the Convention, the Committee called on Israel also to provide an update within one year to report progress in implementing the recommendations on eliminating discrimination in residence and family unification; health, education and housing rights, in particular, in the Naqab/Negev; and the denial of freedom of movement in the oPt. Significantly, in four of its findings, CERD invoked the State’s obligation to prevent, prohibit and eradicate practices of *apartheid* (Article 3 of the Convention).⁶⁴

Conclusion: So what?

The classic challenge to human rights efforts lies in implementation and enforcement. The closest thing the world has come to human rights enforcement mechanisms, apart from civic vigilance and “people’s agency,” are the UN human rights treaty bodies. While States usually wield ultimate power and violence within their area of jurisdiction,⁶⁵ local civic agency may not suffice to compel a State to implement of justice. Principles of State sovereignty also constrain external forces from intervening within a UN Member’s and impedes the countervailing political will required of other States (or similarly empowered forces), even though those States may be parties to the same treaties prohibiting the offending behavior. However rare and slow in coming, such treaty based potentially could overcome arguments of absolute State sovereignty when the violation of human rights threatens to destabilize regional and international order. Such theoretically is the case addressed in the serial erview of Israel’s dismal performance and mounting recognition of fundamental breaches of the world’s major human rights treaties.

The case of *apartheid* in southern Africa provides the exception that proves a rule of international law and diplomacy, whereby practices within a jurisdictional zone arise to the level of legitimate international concern when they threaten regional peace and security. Thus, the UN General Assembly established the legality of international engagement in the anti*apartheid* movement in the early 1950s against the Republic of South Africa’s claims to immunizing state sovereignty. In 1952, the UN General Assembly settled a long-standing

⁶² Ibid., para. 19.

⁶³ Ibid., para. 37.

⁶⁴ Ibid., paras. 22–23, 32, 35

⁶⁵ Max Weber, *The Theory of Social and Economic Organization* (New York: The Free Press, 1964). p. 154.

debate, overruling South Africa's argument that its racist ideology and policies should be excluded from consideration as a matter of South Africa's domestic sovereignty.⁶⁶

Through its engagement with the UN human rights treaty bodies, including CESCR, Habitat International Coalition's Housing and Land Rights Network has sought to develop the legal tools of analysis that address institutionalized discrimination imbedded in the nature, laws and institutions of States that manifest as violations of housing and land rights. The analogy of Israel with the former South Africa lies in the devastating material effect on all dispossessed Palestinians: the refugees, the uprooted, the present absentees, the "unrecognized villages" and other victims of Israel's house demolition and land confiscation policies inside and outside the oPt, including Israel's mere "citizens" who lack privileging "Jewish nationality."

During the intense period of *al-Aqsa Intifada* in the meltdown of the Oslo process, we can count positive developments in the UN legal bodies' recognition of both the fresh and the enduring violations of Palestinians economic, social and cultural rights. The treaty monitors in all committees so far have formed and reaffirmed an unbroken consensus that Israel's human rights treaty obligations apply in all areas of its "jurisdiction and effective control," including the oPt.

CAT has established the nexus between ESCR violations and the Torture Convention in its unprecedented November 2001 finding. It has cited Israel's economic closure and house demolitions as violating Article 16 prohibitions against cruel, inhuman and degrading treatment or punishment. CRC also has identified Israel's systematic punishment and discrimination practiced against Palestinian children, regardless of the victims' civil status.

The CESCR's 1998 Concluding Observations on Israel serve as a seminal recognition of the "right to land," made so clear by its violation by Israel's program of transferring indigenous Palestinian citizens from their "unrecognized villages" into "concentration points" (in Hebrew, *rekuzim*) in the Naqab (Negev) and Galilee. Most fundamental of all is the growing recognition of the structural dispossession inherent in the State's laws, institutions and prevailing official ideology. The central role of the World Zionist Organization, Jewish Agency and Jewish National Fund now is legally exposed as institutionalizing discrimination under legislation and with other State agents. (Ironically, the same institutions operate as "charitable" and tax-exempt institutions in many countries, while actually representing a foreign State.) CESCR also has recognized that the lack of constitutional rights to nondiscrimination in Israel also reveals a flaw in the legal dimensions of the State that rhetorically claims to be "democratic and Jewish." The legal result of these core contradictions in the Israeli legal system is that no legislation or judicial principle effectively contradicts the systematic dispossession of the indigenous people of Palestine, but, in fact, deliberately enables it.⁶⁷

The most significant and instructive finding for both legal practitioners and the public is the CESCR and CERD inquiries into "Jewish nationality" as the basis for materially unequal status and rights among Israeli citizens. This categorization of citizens serves as the lynchpin of the legal and ideological structure of the State of Israel that serves principally to ensure the

⁶⁶ By its resolution 615 (VIII), the GA concluded that *apartheid* policies indeed fell well within the jurisdiction of international law because they violate the antiracism provisions of the UN Charter (articles 13, 55 and 56), lead to international friction and endanger regional peace and security.

⁶⁷ CESCR, "Concluding Observations: Israel," E/C.12/1/Add.27, 4 December 1998.

continuous dispossession of the indigenous people of the country. Thus, what the combined treaty monitoring of Israel reveals is a continuum through which citizens (and even noncitizens) with “Jewish nationality” benefit materially from the Palestinians’ individual and collective dispossession and their economically, social and cultural exclusion.

The treaty-based line of inquiry into the Zionist legal system invokes analogy with the global *antiapartheid* movement that continues to transform the Republic of South Africa into a democracy. Significantly, South Africa has emerged with one of the most-progressive Constitutions in the international State system. At the time of this writing, no such honorable prospect bodes yet for the State of Israel.

Nonetheless, these theoretical gains of legal recognition and public information can serve some immediate—if also limited—advantage. Local human rights advocates report the palpable benefit from findings critical of Israel’s ESC rights violations in the UN Human Rights System.⁶⁸ Despite the need, the stage has not yet been reached at which the UN community takes “effective measures” to establish a just decolonization of Palestine or, alternatively, the democratization of the State of Israel. Nor have the slow and sometimes proforma advancements reported here yet arrested the institutions or policies that transfer the indigenous Palestinians from their few remaining lands, regardless of their civil status. Thus, perpetuating a historical continuum, the conflict over home and land in Israel/Palestine is destined to become deeper as Zionist Israeli policies complete the project to eliminate the indigenous Palestinian presence from historic Palestine, replacing them with Jewish settlers? and others? recruited through the extraterritorial application of “Jewish nationality.”

Despite over a half-century of UN political bodies addressing the Palestine question, no effort—not least the intervention of any States—has succeeded to address the fundamentals of refugee and displaced/dispossessed Palestinians’ rights violations. Since 1998, the more-neutral UN legal bodies have promised more integrity through their recognition of rights and violations otherwise dismissed, or eluding sufficient support in the political bodies. That hope lies in the realization that, while upholding international law may not be the priority of all parties, it remains a compelling basis for promoting the alternative of civilized and legitimizing State conduct, so majestically lacking throughout the colonization of Palestine.

⁶⁸ For example, in 1992, Association of Forty Director Muhammad Abu al-Haija perceived that each recognition of the “un-recognized villages” in the outside world renders some local improvement, even if only formal, such as creating opportunity to negotiate demands with government officials. In 2003, Knesset Member Jamal Zahalka formally raised the Committee’s Concluding Observations in parliamentary session, successfully demanding that the executive government address the mentioned breaches and recommendations.

Annex: Excerpt from HIC-HLRN-coordinated Parallel Report to CESCR, May 2003

Article 11: The right to an adequate standard of living

[CESCR's question to GoI] 14. When demolishing homes on the grounds of violations of planning criteria, please explain how the State party ensures that such punitive actions are carried out in full cognizance of its obligations under the Covenant, particularly where it concerns the necessity for and proportionality in the use of force in the exercise of law enforcement (para. 341).

The State policy and practice of demolishing Palestinian homes is always punitive and discriminatory. Israeli authorities carry most demolitions of Palestinian homes without regard to law enforcement criteria of necessity or proportionality, and without respect to rights congruent to adequate housing, including participation, compensation to victims, property, personal security, protection of family, resettlement, etc. The policy and practice also flout over-riding principles of self-determination, rule of law, nonregressivity and nondiscrimination, applying ethnic criteria to this uneven punishment and purposeful dispossession.

Since its establishment, Israel has discriminated against its indigenous Palestinian citizens by disproportionately demolishing their privately built homes and other real property, then transferring it through the state for exclusive Jewish possession and use.

Between 1993–1996, Israel demolished 1,440 Palestinian Arab houses, 624 of them outside of any court process.⁶⁹ During this period, Arab homes accounted for 94% of all demolitions, despite forming only 57% of all recorded unlicensed building.

There is no Housing Nondiscrimination Act and the right for housing is not protected in any Israeli law.

Israel denies Arab citizens planning participation and benefits. In certain areas, like unrecognized villages and security zones, Israel regularly denies Palestinian citizens planning and construction permission, concentrating population in dense centers.

The State and its parastatal institutions (WZO/JA and JNF) continue to build settlements inside the "green line" exclusively for Jewish immigrants, while confiscation and eviction are violations systematically practised against indigenous Palestinian citizens, completing the program of "population transfer."

Denial of planning participation and benefits. Among other acute

MGol dismantled the indigenous physical planning system immediately upon occupation in 1967. Authorities ("civil administration" at Beit El colony, West Bank, and the Jerusalem occupation municipality) deny planning and building space by military orders and arbitrary town-planning criteria.⁷⁰ (This violates the Hague Regulations Article 43 which prohibits an Occupying Power from altering the legal system in occupied territories. Israeli occupiers continue to plan and develop oPt Areas B and C. Israeli domestic laws, including Basic Laws, military orders and planning regulations, are applied with discrimination against, and to the disadvantage of the Palestinian population.

During its October 2001 invasion of PNA territory, Israel renewed house demolitions as collective punishment, suspended in late 1997. Unlike previously, the army currently acts without an order,⁷¹ and without giving the owners the opportunity to petition the High Court of Justice. The army demolished houses in which Palestinian suspected of attacks in Israel lived. Thus, the suspects' family also becomes dispossessed and homeless.

Planning policy restricts Arab construction, causing a severe housing shortage and, perforce, "illegal construction." To combat this, the Ministry of the Interior and the Jerusalem Municipality: (i) impose high fines; and (ii) demolish "illegal buildings" at various stages of construction. Demolition orders can be issued by the Municipality or by a court deci-

concerns is the exclusion of Arab localities from the government's "national economic priority areas," which receive benefits, such as extra educational funding, additional mortgage grants to residents, and tax breaks to local industries.

Palestinian Arab citizens are under-represented or totally absent among planning/zoning inspectors and assessors, professions effectively controlled by Jewish "nationals."

The National Planning & Building Law prohibits the provision of basic services such as water and electricity to roughly 115,000 residents of tens of unrecognized Arab villages in the State.

Although the vast majority of these villages existed before the State's establishment, the main purpose of the law is to force the people to leave their villages and move to government-planned areas that suffer from high unemployment rates and disadvantaged social & economic services and infrastructure. There are no unrecognized Jewish villages in Israel.

The State implements house demolitions in a very violent manner indeed. It undertakes the demolition of homes of large families, sometimes 10–15 persons. Home demolitions are often undertaken in the middle of the night. The authorities bring a large number of police men and women, whose number can reach 50–100 officers, and include Special Units. They remove the families: men, women and children, and leave no chance to remove their property. They destroy the home with everything inside. Demolitions are implemented using bulldozers in front of all the members of the family, including the children. During the demolition operation, the police officers arrest the men, and beat anyone who tries to stop or impede the progress of the demolition. Such was case on 3 July 2002, in Wadi al-Na`am village (Naqab) when 500 police and special forces savagely demolished the 4 homes. One owner, Salim Zanun, estimated the immediate material loss at NIS 200,000 (>\$45,000).

Since May 2001, Israeli authorities have demolished 44 homes in unrecognized villages, plus 40 others within the Bedouin community. Prior to that date, the Barak government froze all house demolitions. In this period, approximately 450 residents in the unrecognized villages have been forcibly evicted through home demolitions, and around 400 among the rest of the Bedouin community.

sion. The Municipality can carry out demolition orders within 24 hours, foreclosing the chance for most to mount a court challenge. Court-ordered demolition orders, however, give residents the opportunity to make appeal.

The punitive application of demolitions in the oPt is linked to Israel's theft of land and settler colonies' land-use patterns. The Israeli MGol planning authorities allot oPt land lavishly to settlers, banning Palestinian building within a 500m radius around the colony's edge. Contrastingly, indigenous Arab centers are severely confined in MGol plans. The planning maps remain largely inaccessible to the public, and especially to the Palestinian public. However, available data indicate that occupation authorities have allotted 41.9% of all West Bank to settler colonies as building, planning and development zones.⁷² MGol routinely demolishes Palestinian buildings in what MGol considers as peripheral to Palestinian towns/villages.

Gratuitous destruction is noted in Rafah, where the IOF shelled the Tal al-Sultan neighbourhood with heavy machineguns on 29 January 2003 afternoon. The destroyed apartments had been newly built to house Palestinian families whom army attacks previously had rendered homeless. The homeless families were to take delivery of the new apartments on 1 February 2003.⁷³

Most commonly, Israeli tanks and bulldozers have conducted incursions inside the PNA-controlled territories, usually under combat helicopter cover, and bulldozed homes. These operations are always accompanied by intensive firing, preventing the victims from salvaging their belongings. In most cases, the Israeli authorities do not warn the affected civilians in advance. Israel has escalated the destruction of Palestinians' homes with explosives since early September 2002, following the Israeli Cabinet's approval of the policy to resume destruction of the homes of Palestinians suspected of armed resistance the occupation.

In August, the Israeli High Court denied judicial review in such cases, as had previously been the position, thereby giving military commanders complete discretion to order the demolition of houses. Since then the demolition of the homes of suicide bombers and Palestinian militants has accelerated. In many instances the families of militants had been unaware of their activities, but they were punished nonetheless. Between July and November 2002 the IOF demolished 61 homes in this way, leaving over 500 persons homeless, more than 220 of them chil-

dren.

15. Please provide more detailed information on the number of housing units that Israeli authorities have demolished in 1997-2001; their affected residents/owners; and the location and living conditions of those residents today (para. 341).

The State's demolition of Palestinian homes has increased in intensity over the review period, particularly with the advent of the current administration of Ariel Sharon. On both sides of the Green Line, this practice is consistently military in nature. The State makes no provision for resettlement, essentially rendering victims homeless and dependent on family, community and voluntary service providers to provide shelter and other forms of welfare and support.

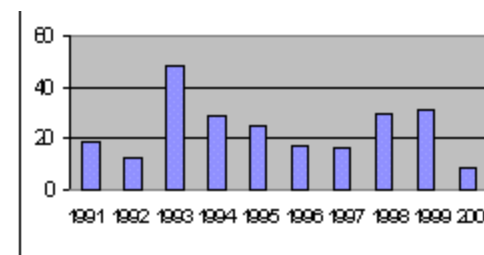
House demolition is a planning-policy choice rather than a legal requirement. Planning & Construction Law Article 97A allows for retroactive approval for buildings established on agricultural land, and was used retroactively to legalize the illegally built *mitzpim* settlements.⁷⁴ Equally, the demolition policy is implemented unevenly: A 1997 Interior Ministry report on house demolitions admitted that it focused on "open" (unrecognized) areas. In 1993–96, 1,440 Palestinian Arab houses were demolished, 624 of them outside of any court process.⁷⁵ During this period, Arab homes accounted for 94% of all demolitions, despite forming only 57% of all recorded unlicensed building.

In court appeals, villagers have found that all building in the unrecognized villages has been defined as against the public interest.⁷⁶ They are usually required to demolish their own homes, which then go unregistered in the statistics. Should they fail to do so, they are fined for contempt of court and can be imprisoned for up to a year. Equally the authorities can implement the demolition order at the cost of the homeowner. Once issued, demolition orders cannot be cancelled. However, since the "grey houses" cannot be repaired, and houses that are found to be hazardous can be demolished immediately, the authorities implement orders randomly, and wait until the other houses become unlivable and/or demolished as "condemned."

The administrative policy of demolishing homes targets Palestinian areas disproportionately, and the military demolition policy targets Palestinians exclusively. An estimated 84% of building violations take place in the Jewish sector; while Palestinians commit 16%. However, Israeli authorities carry out over 60% of demolitions on Palestinian houses (nearly 300 in 1987–2000). In predominately Jewish (1948-occupied) West Jerusalem, authorities have carried out few demolition orders, but then only of a room or porch, never a whole building as in Palestinian neighborhoods.

The Jerusalem (occupation) Municipality reported, 1,117 buildings built illegally in East Jerusalem in 2001. It initiated demolitions against 270, issuing 68 civil orders. The Municipality actually demolished 32. This compares to the 6,051 illegal buildings in (predominately Jewish) West Jerusalem in 2001. Of those, the Municipality initiated legal procedures against 760; issuing 8 civil orders to demolish and actually demolishing 7, including 4 tents; one kiosk; and two buildings built on a cemetery.

House demolitions, East Jerusalem, 1991–2000



The biggest demolition campaign in Jerusalem during 2001 took place in Shu'fat refugee camp. Israel demolished 14 homes on 9 July, leaving their inhabitants homeless, many of them for the second time.⁷⁷

In addition to the Jerusalem Municipality, the Interior Ministry also demolishes Palestinian homes in Jerusalem. Such demolitions in East Jerusalem in 2001 are estimated at 51 buildings, including 74 housing

Endnotes