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**BRIEFING TO THE COMMITTEE ON THE ELIMINATION OF RACIAL
DISCRIMINATION
(January 2006)**

68th Session of the UN Committee on the Elimination Of Racial Discrimination (CERD), 20 February to 10 March 2006: Comments by Amnesty International on Israel's compliance with its obligations under the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD)

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Introduction

Amnesty International is submitting this Briefing Paper to the CERD ahead of its consideration of Israel's 10th, 11th, 12th, and 13th Periodic Reports on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), to which Israel became party on 3 January 1979.

This briefing is not intended to comprehensively review all forms of racial discrimination in Israel and the Occupied Territories. Rather, it highlights some of the most egregious aspects of discrimination, in law and practice, which Amnesty International has researched and campaigned on in recent years. These include concerns at the systematic discrimination against Palestinians in the Occupied Territories and certain aspects of discrimination against the Arab minority and migrant workers in Israel.

Applicability of international human rights law

It is a basic principle of international human rights law that human rights treaties apply to all areas over which a state party exercises effective control.¹ Accordingly, Israel has an obligation to implement all the human rights treaties to which it is party, including ICERD, in respect of all persons residing in Israel and East Jerusalem, as well as the Occupied Territories, which have been under Israeli military occupation since 1967. While Israel rejects the application of international human rights law to the Occupied Territories, it stands alone in taking such a view. Israel's obligations towards the Occupied Territories have been repeatedly asserted by international treaty bodies.² However, Israel has failed once again to provide any information in its Periodic Reports to CERD about the situation of the Palestinian population of the Occupied Territories.

¹ UN Human Rights Committee, General Comment No 31, *The Nature of General Legal Obligations Imposed on States Parties to the Covenant*, adopted 29 March 2004, para 10: States have a duty to respect and ensure the rights laid down in the Covenant to anyone *within the power or effective control of that State Party, even if not situated within the territory of the State Party*. With respect to the European Convention on Human Rights, "the High Contracting Parties are bound to secure the...rights and freedoms to all persons under their actual authority and responsibility, whether that authority is exercised on its own territory or abroad.", European Commission on Human Rights, *Cyprus v. Turkey* 2 DR (1975).

² See for example: CERD, Concluding Observations Israel, CERD/C/304/Add.45, 30 March 1998, at para 12; International Court of Justice (ICJ), Advisory Opinion of 9 July 2004, on *the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories*, at para 112; Human Rights Committee, Concluding Observations Israel, 1998, CCPR/C/79/Add.93, para.10; Concluding Observations, Israel, 2003, CCPR/CO/78/ISR, Para 11.

The principle of non discrimination

Article 5 of ICERD obligates States Parties to the Convention to guarantee to everyone, without distinction as to race, colour, national or ethnic origin, equality before the law, notably in the enjoyment of certain civil, political, economic and social rights. The list is not exhaustive.³ However, comments in this briefing will focus on the rights specifically enumerated under article 5.

The principle of non discrimination is non derogable; even when war or a state of emergency exists, a state may not engage in acts that amount to racial discrimination.⁴ Accordingly, when a State faces a threat to its security, for example, it may not target members of a particular racial group for less favourable treatment than persons who do not belong to that group. All restrictions on human rights must always be proportionate to the aim sought, targeted to that aim and be strictly necessary to achieve that aim.⁵ This means that every restriction of rights must be examined according to the particular circumstances of each case.⁶

Though equality before the law is guaranteed by international treaties to which Israel is a party, Israel's constitutional law (the Basic Laws) does not include a provision guaranteeing equality before the law. This has curtailed the ability of victims of acts of racial discrimination to obtain redress from Israeli courts. The problem has been compounded by the existence of laws and policies which institutionalize racial discrimination.

Scope of coverage of the Briefing

Amnesty International proposes to draw the attention of the CERD to the following issues, which, it asserts, involve multiple violations of the ICERD

1. Israeli settlements in the Occupied Territories
2. Bypass roads in the Occupied Territories
3. Closures, roadblocks and curfews in the Occupied Territories
4. Destruction of homes, land and other properties in Israel and Occupied Territories
5. The construction of the Fence/Wall in the occupied West Bank
6. Impunity in the Occupied Territories
7. Land, planning and building laws and regulations in Israel and the Occupied Territories
8. Discriminatory laws and proposed laws in Israel and Occupied Territories
9. Migrant workers in Israel

³ See in particular, CERD's General Recommendation No 20, *Non-discriminatory implementation of rights and freedoms*

⁴ See for example, the International Covenant on Civil and Political Rights (ICCPR), Article 4: "*In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin*".

⁵ See UN Human Rights Committee, General Comment No 29, *States of Emergency* (Article 4), at para 4, 31 August 2001, CCPR/C/21/Rev.1/Add.11

⁶ UN Human Rights Committee General Comment No 29, at paras 5 and 8

The list is not comprehensive. Rather, it illustrates patterns of discrimination in Israel and the Occupied Territories for which Israel is responsible. This briefing is divided into three sections: the first examining issues relating to the Occupied Territories, including East Jerusalem; the second relating to Israel and the Occupied Territories; and the last relating to Israel only. Lists of specific rights violated are included in each section.

Articles of ICERD cited

All citations of Article 5 rights violations should be read to include the words “without distinction as to race, colour, national or ethnic origin”.

- *Article 2(1)*, requiring States to pursue a policy of eliminating racial discrimination and to take effective measures to amend, rescind or nullify any laws or regulations which have the effect of creating or perpetuating racial discrimination
- *Article 2(1)(a)* requiring states to take effective measures to review governmental, national or local policies and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists
- *Article 3*, requiring state parties to condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in the territories under their jurisdiction;
- *Article 5*, the right to equality before the law
- *Article 5 (a)*, the right to equal treatment before tribunals and other organs administering justice
- *Article 5 (b)*, the right to security of the person and protection by the State against violence or bodily harm by government officials or by any individual group or institution
- *Article 5(d) (i)*, the right to freedom of movement
- *Article 5(d) (iii)* the right to leave any country, including one’s own, and to return to one’s country
- *Article 5(d) (iv)* the right to marriage and choice of spouse
- *Article 5 (d) (v)*, the right to own property
- *Article 5(d) (vi)*, the right to inherit
- *Article 5 (e),(i)* the right to work and to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- *Article 5(e) (iv)* the right to public health, medical care, social security and social services.
- *Article 5(e)(v)*, the right to education and training
- *Article 6*, the right to an effective protection and remedies for any acts of racial discrimination, including just and adequate reparation or satisfaction for any damage suffered.

1. OCCUPIED TERRITORIES

1.1 ISRAELI SETTLEMENTS

Violations of Article 2, Article 2(1)(a) and Article 3

Since its occupation of the West Bank, including East Jerusalem, and the Gaza Strip following the Six Day War in 1967 and its subsequent unlawful annexation of East Jerusalem, Israel has pursued a policy of establishing Israeli settlements in the Territories.⁷ As well as violating international humanitarian law,⁸ the implementation of this policy violates fundamental human rights provisions, including the prohibition of discrimination. Indeed, discrimination on grounds of nationality, ethnicity and religion is the dominant feature of Israel's settlement policy. The settlements are for Jews only. Israeli settlers are governed by Israeli law, whereas Palestinians are governed by less protective military orders and they come under the jurisdiction of Israeli military courts. Israeli settlers receive a range of benefits and services (such as transportation, schooling, medical facilities, etc) reserved to Israeli citizens. They enjoy freedom of movement, whereas Palestinians are forbidden to enter settlements, except for those who are given special permits to go to settlements as workers - not as visitors. Palestinians are not allowed to use bypass roads built for settlers on seized Palestinian land. The Israeli settlements and large areas of land surrounding the settlements are for the exclusive use of Israeli settlers. Palestinians can neither build nor farm or otherwise use this land. The Israeli settlements in the Occupied Territories also use a substantial amount of water, so depriving the Palestinian population of a scarce and necessary resource.

The seizure and appropriation of land for Israeli settlements, bypass roads and related infrastructure, and discriminatory allocation of other vital resources, including water, have had a devastating impact on the fundamental rights of the local Palestinian population, including their rights to an adequate standard of living, housing, health, education, work and to freedom of movement.

In October 2005, there were some 117 officially-recognised Israeli settlements in the West Bank⁹. Construction of settlements continues to increase; according to the Israeli Central Bureau of Statistics, 4,207 residential units were under construction in Israeli settlements in the occupied West Bank as of the middle of 2005. Close to 450,000 settlers are now living in Israeli settlements in the West Bank, of whom some 200,000 reside in East Jerusalem and some 250,000 in the rest of the West Bank.¹⁰ According to the Israeli Interior Ministry's Population Registry, the number of Israeli settlers in the Occupied Territories increased by 6 per cent in 2004 as compared with a population growth rate of less than 2 per cent in Israel

⁷ Israeli colonies are commonly referred to as settlements

⁸ Article 49 of the Fourth Geneva Convention, to which Israel is a party, (1) provides: "...*The Occupying Power shall not deport or transfer parts of its own civilian population in the territory it occupies.*", and Article 55 of the Hague Regulations (2) forbids the occupying State from changing the character and nature of state property, except for security needs and for the benefit of the local population. In addition, the Rome Statute of the International Criminal Court stipulates that the "*transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies*" is a war crime. <http://www.unhchr.ch/html/menu3/b/91.htm>

⁹There are some minor variations on these figures, depending on the source, and the precise method in which settlements are counted.

¹⁰ See Peace Now, Reports, Construction in the Settlements – October 2005, <http://www.peacenow.org.il/site/en/peace.asp?pi=61&fld=191&docid=1518>

itself.¹¹ Despite the evacuation of approximately 8,000 settlers from the Gaza Strip and four settlements in the north of the West Bank in August-September 2005,¹² the Central Bureau of Statistics projected that in the six-month period between 1 January and 30 June 2005, the number of Israeli settlers in the West Bank settlements (excluding East Jerusalem) would increase by approximately 9,370.¹³ These figures are but one indication that existing settlements continue to expand and new settlements are still being built. Some of these have the official approval of the Israeli government; others – generally referred to as “settlement outposts” - are established without official government approval, but rather with tacit government acquiescence. Many of these “settlement outposts” are in due course accorded official approval and so become settlements. There are over 100 “settlement outposts” of this kind in the West Bank.¹⁴

Israel’s policy of establishing settlements in the Occupied Territories violates the ICERD, especially since the settlements are for Jews only (Israeli Jews and Jews from other countries who have not yet acquired Israeli citizenship) to the exclusion of the local Palestinian population of the Occupied Territories.¹⁵ The existence of these settlements goes to the heart of the non-discrimination principle upon which the ICERD is based. They are accordingly contrary to the object and purpose of the treaty itself and amount to a fundamental breach of its provisions, namely to encourage the elimination of racial discrimination; in other words, they violate the treaty in its entirety.

1. 2. OTHER DISCRIMINATORY ACTS RESULTING FROM THE EXISTENCE OF ISRAELI SETTLEMENTS

Widespread violations of human rights in the Occupied Territories have resulted and continue to result from the maintenance of the Israeli settlements. These include the stringent restrictions imposed on the movement of the Palestinian population; the network of “bypass” roads for Israeli settlers; the imposition of curfews, closures, blockades, checkpoints; destruction of homes, land and other properties; unlawful confiscation and appropriation of property; and the building of the fence/wall. These in turn have caused widespread, poverty, unemployment, health problems, and general de-development. Most of these acts are claimed by Israel to be a response to the threat to Israel’s security. However, in reality these acts and restrictions are discriminatory in nature, since they are applied to the whole of the Palestinian population because they are Palestinian. They are not applied to Jewish settlers.

¹¹ See Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied by Israel since 1967, John Dugard, E/CN.4/2005/29/Add.1 5 March 2005, at para 7.

¹² The removal of Israeli settlers and troops from the Gaza Strip and from four small settlements in the northern West Bank is commonly referred to as “disengagement”.

¹³ Peace Now, *Settlements in Focus, Taking Inventory of the West Bank* – September 2005, <http://www.peacenow.org.il/site/en/peace.asp?pi=62&docid=1498&pos=7>

¹⁴ *Ibid*

¹⁵ See Amnesty International, *Israel and the Occupied Territories: The Issue of settlements must be addressed according to International law*, AI Index: MDE 15/085/2003, 8 September 2003; <http://web.amnesty.org/library/Index/ENGMDE150852003>

1.2.1 Bypass Roads

Violations of: Article 2, Article 3, Article 5(d)(i), Article 5 (d) (v) and Article 5(d) (vi)

Bypass roads, like the settlements, are a discriminatory enterprise. They are built to connect Israeli settlements to one another and to Israel, and are constructed on land confiscated from Palestinians. Palestinians, for the most part, are forbidden to use them.¹⁶

Palestinians are subjected to severe restrictions on their movements within the Occupied Territories, *inter alia*, by virtue of a practice of excluding them from so called bypass roads. Such roads are built on land unlawfully appropriated from Palestinians by means of expropriation for a “public purpose” or requisition for “military/security needs”. The former method is forbidden by international humanitarian law, except where undertaken in accordance with local law and intended to benefit the local population. The latter justification is only permitted as a temporary measure where seizure of the property is unavoidable in order to meet a legitimate military necessity. These bypass roads are a permanent feature and serve only the interests of Israeli settlers.¹⁷ The construction of bypass roads began with the establishment of the settlements themselves, to connect settlements to one another and to Israel, avoiding the necessity to travel through Palestinian villages. The construction of these roads has also pursued other aims: Israeli official policy in the 1980s, as expressed in the Settlement Master Plan for 1983-1986, included the building of roads in order to stifle Palestinian urban development and to prevent the joining of contiguous Palestinian built-up areas.¹⁸ In 1998, Israel stated that a further aim of these roads was to ensure that Palestinian traffic did not pass through the settlements.¹⁹ Some roads have been built by the Israeli settlers themselves, without intervention by the Israeli authorities to stop them.

Increasingly, in recent years, Palestinians have been effectively prevented from using these roads by means of a growing number of blockades and checkpoints, as well as seizure of vehicles, fines, arrests and even shooting. On occasions when passage through checkpoints is possible, delays for many hours are common. By contrast, Israeli settlers are very rarely stopped and when they are stopped they are allowed to proceed immediately.²⁰ Some roads are completely forbidden to Palestinian traffic. The regime used to restrict and prohibit Palestinians from using these roads is not provided for under any law. Israel claims that its practice of refusing access to Palestinians to the bypass roads is motivated by reasons of security. In reality all Palestinians are forbidden or severely restricted by virtue of the fact that they are Palestinian. International law permits the restriction of individual rights in certain cases in the interests of national security, providing that such restrictions are proportionate as well as necessary. The denial of access to roads to a whole community defined by its national or ethnic origins does not meet the requirements of necessity and proportionality and constitutes a discriminatory practice, perpetuating racial discrimination.

¹⁶ Also see for example Yariv Oppenheimer, *Apartheid Roads* by, 23 October 2005, at <http://www.peacenow.org.il/site/en/peace.asp?pi=203&docid=1513&pos=0>

¹⁷ B'tselem, *Land Grab: Israel's Settlement Policy in the West Bank*, May 2002, at page 50 http://www.btselem.org/Download/200205_Land_Grab_Eng.pdf

¹⁸ B'tselem, *Forbidden Roads: Israel's Discriminatory Road Regime in the West Bank*, at page 50, http://www.btselem.org/download/200408_Forbidden_Roads_Eng.pdf

¹⁹ State Comptroller, Annual Report 48 (in Hebrew) (Jerusalem, 1998), pp. 1032-1033.

²⁰ B'tselem, *Forbidden Roads: Israel's Discriminatory Road Regime in the West Bank*, at page 11, http://www.btselem.org/download/200408_Forbidden_Roads_Eng.pdf.

1.2.2 Restriction of movements: Curfews, closures/blockades and checkpoints

Violations of: Article 5 (d)(i), Article 5(e) (iv), Article 5 (e), Article 5(e)(v), Article 5(a).

For more than three decades, and especially during the last 15 years, Israel has imposed varying degrees of restrictions on the movements of Palestinians. In recent years the restrictions have reached an unprecedented level. The UN Human Rights Committee (HRC) has called on Israel to respect the right to freedom of movement guaranteed under Article 12 of the ICCPR with respect to Palestinians travelling in and between East Jerusalem, the Gaza Strip and the West Bank.²¹

The Israeli army employs a complex system of blockades, permit requirements, checkpoints, curfews and internal and external closures, all of which have the effect of severely restricting Palestinian movements. Palestinian refugee camps, towns and villages have frequently been placed under 24-hour curfew, during which no one is allowed to leave their houses.²² The army has explicitly admitted that these restrictions are intended to ensure the free movement of Israeli Jews in the Occupied Territories.²³ While curfews have decreased in 2005, they continued to be imposed. More recently, in a single week in November 2005, the UN Office for the Coordination of Humanitarian Affairs (OCHA) reported four curfews totalling a period of 64 hours.²⁴

Internal closures, in which Palestinians are prevented from moving within and/or between towns and villages in the Occupied Territories by means of check points, blockades, and refusal to issue permits to travel, have meant that some 3,500,000 Palestinian men, women and children have frequently been confined to their house, village or town for extended periods.²⁵ Palestinians have to obtain permits from the Israeli army to travel between towns and villages in the West Bank; the system lacks any clear legal basis and is arbitrarily applied.²⁶ Permit holders may be granted permission to travel only on certain days and during certain hours. Even then, permits do not grant an automatic right to travel, as the Israeli army frequently denies passage to permit holders arbitrarily. Closures, used during the period of the Peace Process (1993-2000),²⁷ intensified significantly since the end of 2000. The areas most affected are those nearer to Israeli settlements. In March 2005 the UN Special Rapporteur

²¹ UN HRC Concluding Observations, CCPR/A/58/40 (2003), 4-5 August 2003, at para 19 and UN HRC Concluding Observations, CCPR A/53/40 (1998), 8 July 1998, at para 318.

²² - Amnesty International, *Israel and the Occupied Territories: Surviving under Siege – The Impact of movement restrictions on the right to work*, 2003 (AI Index: MDE 15/001/2003)
[http://web.amnesty.org/library/pdf/MDE150012003ENGLISH/\\$File/MDE1500103.pdf](http://web.amnesty.org/library/pdf/MDE150012003ENGLISH/$File/MDE1500103.pdf)

- *Israeli practices affecting the human rights of the Palestinian People in the Occupied Palestinian Territory, including East Jerusalem*, 18 August 2005, UN Special Rapporteur John Dugard, A/60/271, <http://domino.un.org/UNISPAL.NSF/0/02bf82d785fe854a85257088004c374c?OpenDocument>

²³ B'tselem, *Restrictions on Movement*,

<http://www.btselem.org/English/Freedom%5Fof%5FMovement/>

²⁴ UN Office for the Co-Ordination of Humanitarian Affairs, Protection of Civilians, *Weekly Briefing Notes*, <http://www.humanitarianinfo.org/opt/docs/UN/OCHA/WBN132.pdf>

²⁵ Amnesty International, *Israel and the Occupied Territories: Surviving under Siege – The Impact of movement restrictions on the right to work*, 2003 (AI Index: MDE 15/001/2003)

²⁶ Amnesty International, *Israel and the Occupied Territories: Surviving under Siege – The Impact of movement restrictions on the right to work*, 2003, at page 19, (AI Index: MDE 15/001/2003).

²⁷ The Israelis controlled some 60% of the land (in Area C) and were thus able to control access in and out of Areas A and B.

mentioned the example of Nablus, as being “sealed off from the outside world.”²⁸ Indeed Nablus, a major town which used to be the economic pulse of the West Bank, continues to be blockaded by military checkpoints because it is surrounded by Israeli settlements on all sides.

Until the Israeli redeployment in September 2005, Palestinians in the Gaza Strip endured a harsh regime of restrictions of movement. Passage for some 1.5 million Palestinians along the two main north-south roads was completely subordinated to the movement of some 6,000 Israeli settlers.²⁹ Checkpoints were opened and closed arbitrarily, leaving Palestinians to wait for hours or even days at a time. Israeli settlers on the other hand had unrestricted access to the roads in question; Palestinian traffic was systematically held up to give priority to settler traffic. In addition, several areas adjacent to Israeli settlement were declared closed military areas, accessible only to Palestinians who lived there and only on foot and at certain times and in certain circumstances.³⁰

In enforcing closures and curfews and other restrictions on the movements of Palestinians within the Occupied Territories the Israeli army frequently resorts to lethal force.³¹ Hundreds of Palestinian men, women and children have been killed or injured by Israeli soldiers simply for being in “restricted” or “closed” areas; often they had no way of knowing that movement in those areas was not permitted at that time.

External closures prevent the movement of Palestinians between the Occupied Territories and the outside world, including Israel, as well as between the West Bank and the Gaza Strip. Special permits in the period between 1993 and 2000 were granted to permit Palestinians access to Israel and East Jerusalem for work purposes, though the Israeli government frequently froze them for prolonged periods and thereby prevented such access.³² However, since October 2000, the granting of such permits has been very rare. Similarly, since the early 1990s, movement of Palestinians between the West Bank and the Gaza Strip has been barred, except for rare exceptional cases, even though Israel has recognized that the West Bank and Gaza Strip constitute a single territorial unit.³³

Internal closures in Gaza were lifted in September 2005, after Israel’s redeployment, but the Israeli army continued to control access to the Gaza Strip. The Gaza-Egypt border at Rafah, the only entry/exit point for the inhabitants of Gaza, was kept closed by Israel until the end of November 2005. Since then it has operated under the supervision of European Union (EU) forces, monitored at a distance by Israeli security services. However, Israel maintains control over the Gaza Strip’s sea and airspace and over the passage of goods, which are only allowed in and out of Gaza via Israeli crossings.

²⁸ Nablus, is the largest Palestinian city in the West Bank, with approximately 120,000 residents, UN Office for the Co-ordination of Humanitarian Affairs (oPT)

²⁹ Amnesty International, *Israel and the Occupied Territories: Surviving under Siege – The Impact of movement restrictions on the right to work*, 2003, page 24

³⁰ Examples include the Mawasi area, sandwiched between the Israeli settlement block of Gush Katif and the sea in the south of the Gaza Strip, the Sayafa area, surrounded by the Israeli settlements of Dugit and Eli Sinai in the North, and the area sandwiched between the two wings of the Israeli settlement of Kfar Darom, in central Gaza.

³¹ Amnesty International, *Israel and the Occupied Territories: Surviving under Siege – The Impact of movement restrictions on the right to work*, 2003, page 27.

³² Amnesty International, *Israel and the Occupied Territories: Surviving under Siege – The Impact of movement restrictions on the right to work*, 2003, page 15 (AI Index: MDE 15/001/2003)

³³ Article IV of the Declaration of Principles on the Interim Self-Government Arrangements (part of the Oslo Accords), signed by the Israeli and Palestinian sides on 13 September 1993.

All these restrictions have “turned freedom of movement for Palestinians into a privilege, rather than a right subject to reasonable limits.”³⁴ They make it difficult and often impossible for Palestinians to go about everyday activities.³⁵ They often prevent Palestinians from reaching hospitals, doctors’ surgeries and other health clinics. In its August 2005 Humanitarian Monitoring Report, the UN Office for the Coordination of Humanitarian Affairs (OCHA) observed that “A large part of the Palestinian population has difficulty accessing basic services such as health and education”.³⁶ Repeated cases of women giving birth at checkpoints prompted the UN Commission on Human Rights to include in its Resolution on Israeli Practices affecting the human rights of the Palestinian People a call to the UN High Commissioner for Human Rights “to address the issue of Palestinian pregnant women giving birth at Israeli checkpoints owing to denial of access by Israel to hospitals, with a view to ending this inhumane Israeli practice...”³⁷ Palestinian children and students, as well as teachers, have frequently been unable to attend classes due to closures. In a survey carried out in December 2002, 72 % of West Bank respondents indicated that they had found it difficult, very difficult, or nearly impossible to attend school or university in the previous twelve months. Some 34,940 teacher days were lost in the 2002-2003 school year in UNRWA’s West Bank Schools alone.³⁸ This can only have a negative impact on the future academic and professional development of Palestinian students, which, in turn, will have negative consequences for the future economy of the Occupied Territories.

The proliferation of military blockades, checkpoints and forbidden roads has caused transport costs to soar, as Palestinians have been forced to take lengthy detours to reach their destinations.³⁹ At the same time, such restrictions on the movement of people and goods have paralyzed the Palestinian economy. Palestinians are unable to reach their places of work either at all, or in a timely fashion, cannot tend to their lands, are restricted in their import/export trade. In the Gaza Strip, despite the Israeli redeployment, Palestinians are forbidden to fish freely.⁴⁰ The result of the virtual destruction of the economy has been an unprecedented level of unemployment and poverty. The World Bank reported that in 2003, 16% of Palestinians in the Occupied Territories lived in subsistence poverty, meaning they can barely afford the basics of survival (ie living on US\$ 1.60 per person per day),⁴¹ and 47%

³⁴ Euro-Mediterranean Human Rights Network, *Israel’s Human Rights Behaviour*, August 2005, at p 10, <http://www.arabhra.org/publications/reports/PDF/EMHRNReport.pdf>

³⁵ See for example, Amnesty International, *Israel and the Occupied Territories, Conflict, Occupation and Patriarchy: Women Carry the Burden*, March 2005 (AI Index MDE 15/016/2005) and Amnesty International, *Israel and the Occupied Territories: Surviving under Siege – The Impact of movement restrictions on the right to work*, 2003 (AI Index: MDE 15/001/2003)

³⁶ See UN OCHA *Humanitarian Monitoring Report*, August 2005, at:

<http://www.humanitarianinfo.org/opt/docs/UN/OCHA/ochaHumMonRpt0805.pdf>

³⁷ UN Commission on Human Rights, *Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem*, Human Rights Resolution 2005/7, 14 April 2005,

<http://domino.un.org/UNISPAL.NSF/0/4a2b4fbd54a285e68525700d0068d65a?OpenDocument>

³⁸ See UNRWA, *Emergency Appeal 2004*, at page 17,

<http://www.un.org/unrwa/emergency/appeals/7th-appeal.pdf>

³⁹ Amnesty International *Israel and the Occupied Territories, Conflict, Occupation and Patriarchy: Women Carry the Burden* AI Index MDE 15/016/2005, (March 2005), at page

⁴⁰ Since 1994, under the Oslo Accords fishing by Palestinians was restricted to a small area extending up to 20 nautical miles from the shore of the Gaza Strip. Since 2000 Palestinians have been forbidden to go out to sea for prolonged periods and when allowed, only up to six miles or at times up to 12 miles.

⁴¹ World Bank, *Four Years, Intifada, Closures and Palestinian Economic Crisis: An Assessment* (October 2004), at pages 31 and 32,

<http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/wbgaza-4yrassessment.pdf>

lived in poverty, ie existing on US\$2.30 per person per day.⁴² In December 2005 OCHA reported that “Poverty rates have increased in 2005 compared to 2004...The West Bank and Gaza Strip (WBGs) remain strangled by an inability to freely cross borders to potential markets and move within the West Bank”.⁴³

The stringent restrictions on movement imposed by the Israeli army have also had the effect of denying Palestinians effective access to courts. Even if the parties reach a court in a timely fashion, there is no guarantee that the judges, court clerks, lawyers and witnesses, who are all integral to the proper administration of justice, will also be able to do so. The lack of access to courts has made it more difficult for Palestinians to enforce their legal rights.

No similar restrictions are imposed on Israeli settlers in the Occupied Territories. On the contrary, the unlawful presence of the Israeli settlements and settlers in the Occupied Territories is the primary reason for the imposition of these restrictions on the movements of the entire Palestinian population in the Occupied Territories.

As a result of these severe restrictions on their movements, Palestinians living in the Occupied Territories have suffered multiple violations of their economic and social rights, and their civil and political rights.

1.2.3 Construction of the fence/wall

Violations of: Article 5(d) (i), Article 5(d)(v), Article 5 (d)(vi); Article 5 (e) (i) Article 5(e) (iv), Article 5 (e) (v)

Israel is in the process of building a 670km⁴⁴ long fence/wall, most of it through the occupied West Bank. The Israeli authorities contend that the fence/wall is a temporary measure which is necessary because of security considerations, to prevent Palestinian suicide bombers and other attackers from entering Israel from the West Bank.

However, the fence/wall is not being constructed on the Green Line⁴⁵, between Israel and the West Bank. Rather, most of it, over 80%, is being built inside the West Bank. The route of the fence/wall has been determined by the presence of Israeli settlements and has been specifically designed to encompass 56 Israeli settlements in which live some 76% of the Israeli settlers in the West Bank.⁴⁶ When finished, the fence/wall will cut off some 10% of West Bank land from the rest of the West Bank.

The construction of the fence/wall in its current location is a means of appropriating large swathes of fertile Palestinian land in the areas around Israeli settlements throughout the

⁴² Ibid at pages 30 and 31

⁴³ See UN OCHA Consolidated Appeal Process (CAP 2006, at: <http://ochaonline.un.org/cap2005/webpage.asp?MenuID=6843&Page=1328>)

⁴⁴ By February 2005, 209 km had been completed. See UN OCHA and UNWRWA, *The Humanitarian Impact of the West Bank Barrier on Palestinian Communities*, March 2005, Update No 5, para 4, <http://miftah.org/Doc/Reports/2005/ocha-opt-update5.pdf>

⁴⁵ The Armistice Line of 1949 separating Israel from the West Bank; this line is 315 km long

⁴⁶ UN OCHA and UNWRWA, *The Humanitarian Impact of the West Bank Barrier on Palestinian Communities*, March 2005, Update No 5, para 21

West Bank. It is intended to benefit the Israeli settlers and enhance their interests, while denying Palestinians access to a number of rights simply because they are Palestinian.

The fence/wall cuts off Palestinian towns and villages from one another and separates farmers from their land and people from their workplaces and from schools, hospitals and other crucial services. Some Palestinian towns, and communities, for example Qalqiliya, are completely encircled by the fence/wall. The first phase of construction left a number of encircled communities without access to schooling above primary level.⁴⁷

The fence/wall has also placed approximately one quarter of the 230,000 Palestinian residents of East Jerusalem to the east of the fence/wall, meaning they have to cross the fence/wall to reach work, family members, schools and hospitals. A number of gates have been positioned at intervals in the fence/wall for access. However, access by Palestinians through these gates is in practice very limited, as many open for short periods at a time (typically 30 minutes) and the openings or closings appear arbitrary.⁴⁸ In December 2005 UNRWA expressed concern “about the situation in the West Bank, where continuing construction of the barrier has deprived thousands of families, including many refugees, of access to jobs, essential services, agricultural land and the social networks necessary to maintain the life of a community. Particularly troubling is the isolation of East Jerusalem from the rest of the West Bank, severing historic, economic and spiritual links”.⁴⁹

Palestinian agricultural land has been appropriated and destroyed and Palestinian homes have been demolished by the Israeli army to make way for the fence/wall which has an average width of 60-80 metres across, though in places it extends to 100 metres. In addition, Israel has established a strip of up to 150-200 metres on the West Bank side of the fence/wall as a buffer zone where other construction is prohibited.⁵⁰ Thousands of Palestinians are trapped in enclaves between the Green Line and the fence/wall (these areas are known as the “seam zone”), or between the fence/wall and the buffer zone; these enclaves are isolated from one another as well as the rest of the West Bank. In 2003, nine of the 15 communities then in the seam zone had no access to medical facilities.⁵¹

In October 2003, the Israeli military designated the area between the first section of the fence/wall and the Green Line as closed military areas⁵², and imposed the requirement that Palestinian residents of those areas apply for permits of limited duration to remain living in their homes; they only have access to one particular gate to enter and leave their

⁴⁷ UNRWA *Emergency Appeal, Special report on the West Bank Barrier, Impact of the First Phase of the Barrier on Qalqiliya, Tulkarm and Jenin districts*, 2004 at page 5

<http://www.un.org/unrwa/emergency/barrier/index.html>

⁴⁸ John Dugard, *Israeli practices affecting the human rights of the Palestinian People in the Occupied Palestinian Territory, including East Jerusalem*, 18 August 2005, A/60/271, at para 18, <http://domino.un.org/UNISPAL.NSF/0/02bf82d785fe854a85257088004c374c?OpenDocument>

⁴⁹ See: http://www.un.org/unrwa/news/statements/pledging_conference_dec05.html

⁵⁰ UN OCHA and UNRWA, *The Humanitarian Impact of the West Bank Barrier on Palestinian Communities*, March 2005, Update No 5, para 17, <http://miftah.org/Doc/Reports/2005/ocha-opt-update5.pdf>

⁵¹ UNRWA: *Emergency Appeal, Special Report on the West Bank Barrier, Impact of the First Phase of the Barrier on the Qalqiliya, Tulkarm and Jenin Districts*, 2004, <http://www.un.org/unrwa/emergency/barrier/index.html>

⁵² See B'tselem, *Not all it seems: Preventing Palestinians Access to their Lands West of the Separation Barrier in the Tulkarm-Qalqiliya Area*, 2004, http://www.btselem.org/Download/200406_Qalqiliya_Tulkarm_Barrier_Eng.pdf

areas. In practice, this procedure applies to the whole of the seam zone.⁵³ However the restrictions, including the permit requirement, only apply to Palestinians, who should be entitled to unhindered access to their homes and land, and not to Israelis citizens or residents, Jews entitled to emigrate to Israel pursuant to the Law of Return, or Jewish settlers living in the West Bank.⁵⁴

Most of the land on which the fence/wall has been built is agricultural land, and the land between the fence/wall and the Green Line is some of the most fertile in the West Bank. With the severe restrictions on the movements of Palestinians and in particular the restrictions on access to the Israeli labour market, Palestinians have become heavily dependent on agriculture.⁵⁵ Since 500,000 Palestinians live within a one kilometre strip of the fence/wall, many Palestinians have been cut off from their means of subsistence.

In theory, Palestinian farmers who are separated from their land by the fence/wall can access their land through agricultural gates, conditional upon their obtaining a permit from the Israeli army. Yet permits are frequently refused arbitrarily, or are issued for very short periods, making it impossible for many Palestinians to cultivate their land. Moreover, permits are no guarantee of access to land since army officers often simply refuse passage through the gates, and when closures are imposed in the West Bank permits are suspended.

The construction of the fence/wall is inherently discriminatory. It does not serve a legitimate security purpose, being built almost entirely on Palestinian land inside the West Bank, and has severely negative consequences for hundreds of thousands of Palestinians. It prevents Palestinians from exercising their right to free movement between their homes, lands, businesses, medical care and schools. The fence/wall causes disproportionate and unnecessary damage to the Palestinian population in order to serve the interests of the Israeli settlers who live in the West Bank in violation of international law.⁵⁶

Israeli settlers in settlements to the West of the fence/wall openly acknowledge that the fence/wall is intended to serve their interests. For example, the website of the Israeli settlement of Revava states: "Join us in a new neighborhood in the planning stage of 70 half dunam lots for construction of houses... As this is closer to the Green Line and as a new highway is nearing completion, that renders Tel Aviv 15 minutes away, the building lots are not inexpensive, but will skyrocket if the anticipated annexation of this area occurs".⁵⁷ Similarly, the website of the Givat Yacov settlement states: "our area is well within the portion expected to be annexed. As the supply of available land is fixed and its

⁵³ John Dugard, *Israeli practices affecting the human rights of the Palestinian People in the Occupied Palestinian Territory, including East Jerusalem*, 18 August 2005, A/60/271, at para 17, <http://domino.un.org/UNISPAL.NSF/0/02bf82d785fe854a85257088004c374c?OpenDocument>

⁵⁴ *Declaration Concerning Closing an Area no. S/2/03* (Seam Zone), 2 October 2003, sections 1 and 4(1), <http://domino.un.org/unispal.nsf/0/c6114997e0ba34c885256ddc0077146a?OpenDocument>

⁵⁵ UNRWA *Emergency Appeal, Special report on the West Bank Barrier, Impact of the First Phase of the Barrier on Qalqiliya, Tulkarm and Jenin districts*, <http://www.un.org/unrwa/emergency/barrier/index.html>

⁵⁶ Amnesty International, *Under the Rubble, House Demolition and Destruction of Land and Property*, May 2004, (MDE 15/033/2004) at page 17,

<http://web.amnesty.org/library/Index/ENGMDE150332004>. and John Dugard, *Israeli practices affecting the human rights of the Palestinian People in the Occupied Palestinian Territory, including East Jerusalem*, 18 August 2005, A/60/271, at para 25,

<http://domino.un.org/UNISPAL.NSF/0/02bf82d785fe854a85257088004c374c?OpenDocument>

⁵⁷ See: <http://www.shomron.homestead.com/Revava.html>

security becomes intact the value of those properties within the annexed areas will increase sharply”.⁵⁸

1.2.4 Destruction of homes, land and property in the Occupied Territories

Violations of: Article 5(d)(v), Article 5(d) (vi); Article 5(e) (i), Article 5(e) (iii); Article 5(e)(ii), the right to housing

Israel has followed a policy of forced evictions and demolition of houses and other buildings belonging to Palestinians for decades. However, during the last five years the scale of destruction carried out by the Israeli army in the Occupied Territories has reached unprecedented levels. The majority of the victims have been families of refugees who were expelled or fled from Israel in 1948. By contrast, demolitions of homes of Jewish Israeli citizens are unheard of,⁵⁹ although thousands of homes have been built by Jewish settlers without permits; in response the Israel authorities tend to issue retroactive building permits to regularise them.⁶⁰ Four main purposes are served by the destruction of Palestinian homes, land and other properties:

- (i) use of land thereby obtained to accommodate an increase in the number and size of Israeli settlements and related infrastructure in the Occupied Territories;
- (ii) the creation of buffer zones around Israeli settlements and along roads used by Israeli settlers;
- (iii) punishment of families of persons involved or allegedly involved in attacks against Israelis;
- (iv) retaliation and collective punishment against Palestinian communities for attacks carried out by Palestinian armed groups against Israelis.

The legal justifications given for destruction are security/military needs, lack of building permit, and “deterrence”.

Some 25% of all the Palestinian houses destroyed in the Occupied Territories between 2000 and 2004 were destroyed for lack of building permits.⁶¹ Between 2001 and 2003, Israel demolished 768 structures in the West Bank and 161 in East Jerusalem on grounds of lack of permits.⁶² In 2004, 96 Palestinian houses in East Jerusalem (resulting in 356

⁵⁸ See:

<http://www.shomron.homestead.com/Investment.html><http://www.shomron.homestead.com/Location.html>

⁵⁹ Amnesty International, *Israel and the Occupied Territories, Under the rubble: house demolition and destruction of land and property*, May 2004, (AI Index: MDE 15/033/2004), at page 7, <http://web.amnesty.org/library/Index/ENGMDE150332004>

⁶⁰ B'tselem, *Planning and Building, Background*, http://www.btselem.org/english/Planning_and_Building/Index.asp

⁶¹ B'tselem, *Through No Fault of Their Own: Punitive House Demolitions during the al-Aqsa Intifada* (November 2004), at page 7,

http://www.btselem.org/download/200411_Punitive_House_Demolitions_Eng.pdf

⁶² *Ibid*, at page 13

people losing their homes) and 139 Palestinian houses and structures in the West Bank were destroyed for lack of building permits.⁶³

It is almost impossible for Palestinians to build any structure legally in most of the West Bank and in East Jerusalem, owing to the confluence of several factors.

First, Israel has classified as state land most of the land in the areas of the West Bank where it has jurisdiction over civil affairs (Area C under the Oslo Accords, which makes up 58% of the West Bank) and Palestinians are barred from building on state land, since the whole of the Palestinian population is regarded by Israel as “aliens”.⁶⁴ In addition, most of the privately-owned Palestinian land in Area C of the West Bank and in East Jerusalem has been zoned as “green land” on which Palestinians are not allowed to build.

By contrast, Israeli settlements continue to be built and expanded in these areas, some of them by official bodies and others by Israeli settlers without formal government approval or even in defiance of stated government policy not to build in certain areas. In the latter case, most often the unauthorized settlements have routinely been granted official recognition and re-zoning of the land *post-facto*.

Second, the confiscation of large areas of Palestinian land by Israel to make way for Israeli settlements, bypass roads for settlers and, more recently, the fence/wall has greatly diminished the reserves of available land on which Palestinians can build to accommodate the natural growth of their communities.

By contrast, the construction and expansion of Israeli settlements in the West Bank, including East Jerusalem, has continued unabated and has been stepped up in recent years. For example, the Jewish population of East Jerusalem rose from zero in 1967 when it was occupied by Israel, to 160,000 by 1999. By 1999, some 35% of the land in East Jerusalem had been confiscated from Palestinians. Successive Israeli governments have actively supported the establishment of settlements and have rarely taken action against Israeli settlers who built houses or other structures without building permits and/or on land zoned for agricultural use.

Most of the destruction of Palestinians homes, cultivated land and commercial properties has been carried out ostensibly for military/security needs. The practice of destroying the homes of families of Palestinians known or suspected of attacks against Israelis has been widely used in the past four years. This practice has never been used against Israeli Jews convicted of serious politically-motivated crimes, such as the murder of the Israeli Prime Minister, or bomb attacks and murders of Palestinians or Israeli Arabs.⁶⁵ Thousands of Palestinian homes and large areas of cultivated land have also been destroyed to clear areas around Israeli settlements and along roads used by settlers, especially in the Gaza Strip. For example, close to 1,000 Palestinian homes were destroyed between the end of 2000 and 2005 in the Khan Younes refugee camp, in southern Gaza, to create a buffer

⁶³ B'tselem, *Planning and Building, Statistics*,

http://www.btselem.org/english/Planning_and_Building/Statistics.asp

⁶⁴ Israel has declared as state land most land in Area C of the West Bank. See AI, Israel and the Occupied Territories, *Under the rubble: house demolition and destruction of land and property*, May 2004(AI Index: MDE 15/033/2004), at page 40, <http://web.amnesty.org/library/Index/ENGMDE150332004>

⁶⁵ See Amnesty International, Israel and the Occupied Territories, *Under the Rubble: House Demolition and destruction of land and property*, May 2004,(AI Index: MDE 15/033/2004), at page 11 <http://web.amnesty.org/library/Index/ENGMDE150332004>

zone between the refugee camp and the nearby Israeli settlement block of Gush Katif and along the roads used by settlers.

Palestinian land seized for military/security needs is ostensibly to be retained temporarily. However, in practice it is never returned. The homes, buildings and agricultural land seized is destroyed and the land most often used to expand Jewish settlements, to build access roads and to construct the fence/wall separating settlements from Palestinian towns and villages.⁶⁶ In practice, land temporarily seized is permanently lost, and the military/security justification appears fictitious. In the process, hundreds of thousands of olive, citrus, almond date and other trees have been uprooted by Israeli bulldozers, thereby depriving many Palestinians of their livelihoods.

Frequently, house demolitions take place at night, with little or no warning given to the inhabitants. Sometimes, the destruction of a targeted house has led to the collapse of neighbouring houses and at times even killing those inside.⁶⁷

In January 2005, the UN calculated that nearly 12,000 Palestinian homes had been destroyed or damaged in the West Bank and that between September 2000 and September 2004, some 24,000 Palestinians in the Gaza Strip had been made homeless by Israeli house demolitions, at an average rate of 120 per month.⁶⁸ One of the largest single demolition operations was carried out in Jenin refugee camp in 2002, in which approximately 4000 people were made homeless.⁶⁹ The most extensive destruction of homes was in the Gaza Strip; in the period October 2000-October 2003, more than 2150 homes were destroyed and more than 16,000 were damaged by the Israeli army in the Gaza Strip.⁷⁰ UNRWA estimated that an average of 73 homes per month were destroyed in the first half of 2003.⁷¹

Forced evictions and demolition of homes for punitive reasons are forms of collective punishment and as such are contrary to international humanitarian law. They also violate several provisions of CERD.

1.3 IMPUNITY IN THE OCCUPIED TERRITORIES

Violations of: *Article 5 (a) and Article 5 (b)*

The measures taken by the Israeli authorities against those responsible for killing and injuring civilians, and for other violent attacks has usually depended entirely on the respective identities of the perpetrators and victims. Attacks and killings perpetrated by Palestinians against Israelis have resulted in tens of thousands of arrests, detentions, prosecutions and convictions, as well as thousands of retaliatory killings, injuries and

⁶⁶ *Ibid*, at page 26

⁶⁷ *Ibid*, at page 10, relating to the collapse of a neighbouring house during demolition, in which a pregnant mother of ten was killed.

⁶⁸ UN OCHA, *Humanitarian Affairs Fact Sheet*, January 2005,

⁶⁹ AI, *Israel and the Occupied Territories, Under the rubble: house demolition and destruction of land and property*, May 2004, (AI Index: MDE 15/033/2004), at page 15
<http://web.amnesty.org/library/Index/ENGMDE150332004>

⁷⁰ UNRWA *Emergency Appeal* 2004, at page 19, <http://www.un.org/unrwa/emergency/appeals/7th-appeal.pdf>

⁷¹ *Ibid*

large scale destruction by the Israeli army. Killings, injuries, destruction of buildings and other violations committed by Israeli security forces and settlers against Palestinians in the Occupied Territories, are seldom investigated and very rarely punished.

During the past five years, Palestinian armed groups have killed close to 1,000 Israelis, including some 680 civilians and among them 118 children.⁷² Tens of thousands of Palestinians have been arrested and thousands have been prosecuted and jailed for up to life imprisonment (often multiple life-sentences) on charges of involvement in such attacks or for their alleged support of or involvement with armed groups responsible for such attacks. Hundreds of others have been held in administrative detention, without charge or trial for up to four years.⁷³

Over the same period, Israeli forces have killed more than 3,300 Palestinians, including more than 600 children; more than half of the victims were killed unlawfully, including by means of extrajudicial executions and as a result of excessive use of force and reckless shooting and shelling. However, not a single Israeli soldier or member of the security forces has been prosecuted for murder. One soldier has been convicted of manslaughter for the murder of a British peace activist and a handful have been convicted on charges such as “illegal use of a weapon”, or “unbecoming conduct”. In the very rare cases where Israeli soldiers have been punished, the penalties have been light. The harshest sentence handed out was an eight-year prison term for the soldier convicted of killing British peace activist Tom Hurndall. In May 2005, an Israeli military court convicted a soldier to 20 months in prison for shooting an unarmed Palestinian in Gaza. The Israeli newspaper carrying the story, *Ha'aretz*, reported that this was the harshest punishment imposed on a member of the security forces during four-and-a-half years of the *intifada*.⁷⁴

The Israeli NGO B'tselem pointed out that while 3,185 Palestinians were killed by Israeli forces between 29 September 2000 and 30 June 2005, including 645 minors, the Israeli Military Police investigated only 131 cases involving shooting by Israeli soldiers, and only 18 of these investigations resulted in the filing of indictments.⁷⁵ The organisation concluded that at least 1,722 of those killed were not participating in fighting at the time, including more than 500 children.⁷⁶ Human Rights Watch also reported that between 29 September 2000 and 30 November 2004, the Israeli army had investigated fewer than 4 % of the more than 1600 Palestinians killed by Israeli troops while not involved in hostilities (that is 2% of the total number killed).⁷⁷

In addition to unlawful killings, committed by both sides, Israeli forces have also committed a substantial number of other violations of human rights and international humanitarian law, including deliberate and wanton large-scale destruction and damage to Palestinian homes, property and infrastructure, denial of access to medical care and humanitarian relief for the civilian population, torture and ill-treatment of Palestinian detainees, the use of Palestinians as human shields, and air strikes and tank shelling

⁷² See for example Amnesty International, Israel, the Occupied Territories and the Palestinian Authority, Without distinction - attacks on civilians by Palestinian armed groups, July 2002, (AI Index: MDE 02/003/2002) <http://web.amnesty.org/library/index/engmde020032002>

⁷³ AI, Israel and the Occupied Territories, *Israel must end its policy of assassinations*, 4 July 2003, page 3, (AI Index MDE: 15/056/2003), <http://web.amnesty.org/library/index/engmde150562003>

⁷⁴ *Ha'aretz*, 14 July 2005, Taysir al-Heib conviction sets double precedent, by Yuval Yoaz

⁷⁵ B'tselem, Use of Firearms, at: http://www.btselem.org/english/Firearms/Jag_Investigations.asp

⁷⁶ B'tselem, Use of Firearms, at: <http://www.btselem.org/english/Firearms/Index.asp>

⁷⁷ See Human Rights Watch, *Promoting Impunity: The Israeli Military's Failure to Investigate Wrongdoing*, June 2005, at p 32, <http://hrw.org/reports/2005/iotp0605/>

against densely populated Palestinian refugee camps and residential neighbourhood. These abuses have not been investigated, let alone prosecuted, save in exceptional cases.

As well as legal and judicial means, such as the arrest and prosecution of Palestinians accused of involvement in killings and attacks against Israeli civilians, Israel has also routinely engaged in extrajudicial practices which violate international law against Palestinians suspected of involvement in attacks on Israelis. These include extrajudicial executions/assassinations (referred to by the Israeli authorities and army as “targeted killings), in the course of which scores of bystanders, including children, have been killed and injured;⁷⁸ and other measures, such as the destruction of homes, land and other properties, which constitute collective punishment and which are unnecessary and disproportionate, and are contrary to international humanitarian law.⁷⁹

By contrast, assaults on and killings of Palestinians by Israeli settlers and the destruction of Palestinian property and crops by settlers, have gone unpunished by the Israeli authorities in the overwhelming majority of cases. The impunity routinely granted to Israeli settlers for their attacks on Palestinians and their properties over the years has led to a proliferation of such abuses. According to B'tselem, the Israeli authorities employ “an undeclared policy of leniency and compromise” towards settler violence.⁸⁰ Other forms of attack by Israeli settlers have included shooting solar panels and water tanks on Palestinian buildings, torching cars, uprooting and burning trees, spraying toxic chemicals on Palestinian crops,⁸¹ building road blocks and attacking Palestinian houses with rocks. In recent years Israeli and international human rights activists have witnessed and documented numerous attacks by Israeli settlers on Palestinians and their properties in the town of Hebron and in villages throughout the West Bank. On many occasions Israeli forces (army, police and border guards) were present at the scene, but did nothing to prevent or stop the attacks or to apprehend the settlers who perpetrated the attacks.⁸² On some occasions, the security forces informed Palestinians that they would not intervene to protect them against settler violence, effectively assisting the settlers in their objective to remove them from their land. In the past two years, Israeli human rights organizations, such as Rabbis for Human Rights, have liaised with the Israeli army in advance of the olive harvest to arrange for soldiers to be present on agreed days in Palestinian olive groves near Israeli settlements, so as to allow Palestinian farmers to harvest their olives without being attacked by Israeli settlers. However, on several occasions, when Israeli settlers came to attack the Palestinian farmers, the Israeli soldiers failed to deal with the attackers and instead advised the Palestinian farmer to leave, making it clear that they were not prepared to enter into a confrontation with the Israeli settlers in order to protect the Palestinian farmers.

⁷⁸ Amnesty International, Israel and the Occupied Territories, *Israel must end its policy of assassinations*, 4 July 2003, (AI Index MDE 15/056/2003), <http://web.amnesty.org/library/index/engmde150562003>

⁷⁹ Article 33 of the Fourth Geneva Convention provides that 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.

⁸⁰ B'tselem, Settler Violence, at http://www.btselem.org/english/Settler_violence/Index.asp

⁸¹ B'tselem, *Settler Violence: The Nature of the Violence* at http://www.btselem.org/english/Settler_Violence/Nature_of_the_Violence.asp, and Amnesty International Press Release 25 April 2005, Israel/Occupied Territories: *Israel must put an immediate end to settler violence* (AI Index: MDE 15/027/2005)

⁸² See eg Association for Civil Rights in Israel, Urgent appeal against settler attacks on Palestinians in Hebron, 27 October 2005, <http://www.acri.org.il/english-acri/engine/story.asp?id=233>

Over the past two years Israeli settlers have also carried out increasingly frequent attacks on human rights workers and peace activists but these attacks have not been investigated or punished by the Israeli authorities.⁸³ Rather, Israeli security forces have tended to respond by imposing further restrictions on the Palestinian population, such as banning their access to their fields and orchards.⁸⁴ Even when Israeli settlers are arrested for violent attacks on Palestinians, they are treated very leniently.⁸⁵ The consistent failure of the Israeli authorities to prevent attacks by Israeli settlers against Palestinians in the Occupied Territories, and to investigate such attacks and bring to justice settlers who perpetrated such attacks has created an atmosphere of impunity thereby encouraging further attacks.⁸⁶

2. ISRAEL and OCCUPIED TERRITORIES

DISCRIMINATORY LAWS AND PROPOSED LAWS

A number of laws adopted by Israel serve to discriminate against non-Jews in general, and against Palestinians in particular. This section focuses on the discriminatory provisions contained in several laws adopted in recent years, as well as in a draft law currently before the Israeli Knesset (parliament).

2.1 Citizenship and Entry into Israel Law (Temporary Order) (including Amendment 2005)

Violations of: *Article 5(d) (iv), Article 5(d) (iv), Article 5(d) (i), Article 5(d) (iii) and Article 5(e) (iv)*

A new law passed by the Knesset on 31 July 2003 bars family unification for Israelis who are married to Palestinians from the Occupied Territories. The Citizenship and Entry into Israel Law⁸⁷ explicitly discriminates against Palestinians from the West Bank and Gaza Strip. It also implicitly discriminates against Palestinian citizens of Israel, who constitute some 20% of the Israeli population, and against Palestinian residents of Jerusalem,⁸⁸ for it

⁸³ Amnesty International, Israel/Occupied Territories: *Israel must put an immediate end to settler violence*, 25 April 2005 (AI Index: MDE 15/027/2005) at:

<http://web.amnesty.org/library/Index/ENGMDE150272005>

⁸⁴ Amnesty International, Israel/Occupied Territories, *Israeli settlers wage campaign of intimidation on Palestinians and Internationals alike* Press Release 25 October 2004, (AI Index: MDE 15/099/2004) <http://web.amnesty.org/library/index/ENGMDE150992004>

⁸⁵ An Israeli settler who shot dead an unarmed Palestinian taxi driver on 27 September 2004 was released on bail within 24 hours of the killing. Though the shooting was deliberate he was only convicted of manslaughter in November 2005. He not imprisoned as he went AWOL. Also see AI Press release 25 October 2004, *Ibid*

⁸⁶ Amnesty International Public Statement, Israel/Occupied Territories: *Amnesty International condemns killing of Palestinians by Israeli settler, calls for urgent measures to end settlers' impunity* 18 August 2005, (AI Index: MDE 15/046/2005) <http://web.amnesty.org/library/Index/ENGMDE150462005>

⁸⁷ Citizenship and Entry into Israel Law (Temporary Order), 5763 – 2003. See English translation at: http://www.hamoked.org/items/5727_eng.pdf

⁸⁸ Palestinians who remained in Israel after the establishment of the state in 1948 became Israeli citizens. After Israel occupied the West Bank and Gaza Strip in 1967, it annexed East Jerusalem and the Palestinians who continued to live there became permanent residents. Today there are some 230,000 Palestinians residents of Jerusalem. They are liable to lose their permanent resident status, and

is they who most frequently marry Palestinians from the Occupied Territories. As such, the law formally institutionalizes a form of racial discrimination based on ethnicity or nationality.

Article 1 of the law defines "resident of the region" as residents of the West Bank and Gaza Strip, specifically excluding residents of Jewish settlements in these areas. According to Article 2 of the law: "...*the Minister of the Interior shall not grant citizenship to a resident of the region pursuant to the Citizenship Law and shall not give a resident of the region a permit to reside in Israeli pursuant to the Entry into Israel Law, and the regional commander shall not give such residents a permit to stay in Israel pursuant to the defense legislation in the region*".

The law was initially adopted for a period of one year, but has been repeatedly extended (the current extension covers the period to March 2006). When it was last extended in July 2005, an amendment was included according to which Palestinian men over the age of 35 and women over the age of 25 may apply for temporary permits to join their Israeli/Jerusalemite spouses as "visitors".⁸⁹ However, such permits are temporary and do not confer the right to work, to study or to receive medical care. In addition, such permits can be denied if the applicant or a member of his/her family is considered to be "*liable to constitute a security threat to the State of Israel; in this article, 'member of family' means spouse, parent, child, brother, sister, and their spouses*".⁹⁰ Given Israel's very broad characterization of "security threat", and given that the exclusion provision applies to Palestinians because of their relatives, in practice very few Palestinians would qualify for such permits.

The law applies not only to persons who married after July 2003, but also to all couples whose applications for family unification under the old procedure had not been approved prior to May 2002, or who had not submitted applications before that date.

This law does not apply to residents of the Israeli settlements in the Occupied Territories. It constitutes a further step in Israel's long-standing policy aimed at restricting the number of Palestinians who are allowed to live in Israel and in East Jerusalem.

While a different legal framework applies to family unification in the Occupied Territories, Israel has pursued a similar policy there, making it impossible for Palestinians resident in the Occupied Territories to be joined there legally by their foreign spouses (many of these spouses are Palestinian refugees resident in Jordan).⁹¹ In the Occupied Territories, no new law was implemented; the policy on the ground was simply changed. Family unification procedures for Palestinians that had operated there were simply suspended in 2000, and remain suspended.

The government justified the *Citizenship and Entry into Israel Law* by reference to security considerations. It publicly asserted that some 23 to 25 Palestinians granted family

with it the right to live in Jerusalem, if they cannot prove that they have not been away from Jerusalem for a period of seven years.

⁸⁹ Citizenship and Entry into Israel Law (Temporary Order), (Amendment) 5765 – 2005. See English translation at: http://www.hamoked.org/items/1147_eng.pdf

⁹⁰ Article 3D (Security Impediment) of the Citizenship and Entry into Israel Law (Temporary Order), (Amendment) 5765 – 2005. *Ibid.*

⁹¹ Amnesty International: Israel and the Occupied Territories, Torn Apart: Families split by discriminatory policies, 13 July 2004, (AI Index: MDE 15/063/2004), <http://web.amnesty.org/library/index/ENGMDE150632004>

unification had been involved in hostile activities in Israel. However, it failed to provide any hard evidence in support. Imposing a general ban on family unification for three and a half million of Palestinians residents of the West Bank and Gaza Strip cannot be considered a proportionate response to a very few individual cases of Palestinians who acquired residency or citizenship in Israel and who committed acts of violence. All Palestinians living in East Jerusalem and all Israelis of Palestinian origin are automatically affected if they marry persons from the Occupied Territories, regardless of the actual security risk posed by any of them.

In fact, frequent references by government officials, ministers and parliamentarians to Israeli Arabs as a “demographic problem/threat”, and in some cases even calling for their expulsion, suggest that such considerations were instrumental in the decision to enact this discriminatory law. Indeed, some officials have publicly stated that the real reason for the law is Israel’s desire to reduce the number of Palestinians living in Israel. In 2002, following the suspension of family unification procedures, press reports stated that the Minister of the Interior was seeking ways to reduce the number of non-Jews in Israel since he feared that non-Jews threatened the Jewish character of the State.⁹² The next Minister of Interior one year later explained the reasons for the suspension of family unification: “A decision was reached at the time that for now, family unification would cease as it was felt that it would be exploited to achieve a creeping right of return. ... That is, tens of thousands of Palestinian Arabs are coming into the State of Israel”.⁹³ The Population Administration presentation to the Israeli Cabinet ahead of the government vote on the decision to freeze family unification for Palestinian spouses in May 2002 referred to: “the immigration of non-Jews from around the world and primarily from neighbouring Arab countries and areas of the Palestinian Authority” as “an economic burden on the State of Israel and primarily a demographic burden” and concluded that: “The growing number of alien Palestinians obtaining legal status in Israel requires review and statutory change”.⁹⁴

The *Citizenship and Entry into Israel Law* has created an impossible situation for thousands of mixed Israeli-Palestinian families. Palestinians who manage to enter Israel or East Jerusalem illegally to be with their Israelis/Jerusalemite spouses without a residence permit are permanently at risk of being arrested and expelled, and thus separated from their families. Another option, for families to move to the Occupied Territories, is fraught with difficulty. Israeli law prohibits Israeli citizens from entering Area A of the Occupied Territories (where the majority of Palestinians live) and Israeli Arabs must obtain a special temporary permits to visit relatives there. Palestinian Jerusalemites who leave Jerusalem to join their spouses in the Occupied Territories face a real risk of losing their Jerusalem residency permit, and with it the right to ever live in Jerusalem again as well as the opportunity to register their children as Jerusalem

⁹² B’tselem and HaMoked, *Forbidden Families; Family Unification and Child Registration in East Jerusalem*, January 2004, at page 17,

http://www.btselem.org/English/Publications/Summaries/200401_Forbidden_Families.asp

⁹³ Proposal to agenda –The family unification policy and handling by the Minister of Interior of matters regarding residents of East Jerusalem, 26 March 2003; as quoted in B’tselem and HaMoked, *Forbidden Families; Family Unification and Child Registration in East Jerusalem*, January 2004, at page 17

⁹⁴ Jerusalem Population Administration, Ministry of the Interior, Immigration and Settlement of Foreign Nationals in Israel, May 2002, as cited in B’Tselem and HaMoked; *ibid*, at page 18.

residents.⁹⁵ Ultimately, for many families the only way to live together would be to leave the country and seek asylum abroad.

2.2 The Civil Torts (Liability of the State) Law 2005,⁹⁶

Violations of: *Article 5 (a) and Article 6*

The *Civil Torts (Liability of the State) Law 2005*, passed by the Knesset in July 2005, denies Palestinians living in the Occupied Territories the right to compensation for any wrongs committed against them by Israeli security forces, including death, injury or damage to property. According to this law, some three and a half million Palestinians who have been living under Israeli occupation in the West Bank and Gaza Strip for more than 38 years, are “residents of a conflict zone” and are prevented from bringing any civil action for compensation. Thus, any injury inflicted on Palestinians in the Occupied Territories, even murder, will no longer be a legitimate subject for civil litigation in Israeli courts.

The law is applied retroactively, covering the period since the beginning of the *intifada* in September 2000. Accordingly, the law applies to all civil actions pending at the time the law was passed (apart from those in which evidence had already been heard). Several hundreds of Palestinian bystanders have been killed and thousands have been injured in the Occupied Territories by Israeli forces in situations where there were no armed clashes.⁹⁷

The law discriminates against Palestinians, for it applies only to them. Israeli settlers who reside in the Occupied Territories in violation of international law are excluded from the reach of this law. Indeed, the law was intended to discriminate against Palestinians. Human Rights Watch delegates who attended the hearings of the Knesset Constitutional Law and Justice Committee reported that the Ministries of Justice and Defence intended to use the then Bill drastically to reduce the right of Palestinians from the Occupied Territories to sue the state for damages inflicted by state agents since September 2000.⁹⁸

The right to an effective remedy, a cornerstone principle of international human rights law which is reiterated in a series of other human rights instruments, is also violated by this law. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the UN General Assembly in December 2005, provides that those who claim to be victims of a human rights or humanitarian law violation must have “equal and effective access to justice, irrespective of who may ultimately be the bearer of responsibility for the violation” and that states should “provide effective remedies to victims, including reparation.”⁹⁹ In addition to

⁹⁵ Palestinian Jerusalemites can lose their Jerusalem residency if they spend seven years away from the city. Thousands of Palestinian Jerusalemites have lost their Jerusalem residency.

⁹⁶ For English translation see:

http://www.hamoked.org/items_en.asp?cat_id=4&sub_cat_id=6§ion01_id=1§ion02_id=2

⁹⁷ See AI reports at: <http://web.amnesty.org/library/Index/ENGMDE020022004>
and <http://web.amnesty.org/library/Index/ENGMDE020052002>

⁹⁸ Human Rights Watch, *Knesset Should reject Amendment to the Civil Wrongs law*, 27 July 2005, <http://hrw.org/english/docs/2005/07/27/isrlpa11466.htm>

⁹⁹ Article 3 c and d.

violating these provisions, the law has the effect of encouraging impunity and discouraging the conduct of investigations into allegations of wrong-doing.

2.3 The Draft Detention Law: Criminal Procedure (Enforcement Powers – Special Provisions for Investigating Security Offences of Non-Residents) (Temporary Provisions), 5765 – 2005

Potential violations: *Article 5.*

A draft law on detention currently being debated by the Knesset, will, if passed, discriminate against all non-residents of Israel. The draft law is designed to consign non-residents of Israel suspected of security related offences to a far lower level of protection in detention than Israeli citizens and residents who are suspected of the same offences. By the government's own admission, the proposed law is chiefly aimed at Palestinians from the Gaza Strip, though it would also apply to other non-Israelis detained on suspicion of security offences. Discriminatory aspects of the draft law include the provisions to:

- extend the initial period of incommunicado detention of non-residents by security forces from a maximum of 48 hours to 96 hours, followed by two additional periods of incommunicado detention of up to a further 16 and 20 days, for a total of 40 days. The law currently in force in Israel allows a total maximum of 30 days. The law would also extend the period during which a detainee under interrogation may be denied access to a lawyer from the 21-day period permitted under the current law to 50 days.
- deny non-resident detainees the right, as guaranteed by the law currently in force, to be present at court hearings held to consider an extension of their incommunicado detention, except for the first hearing (96 hours after arrest) and the hearing on expiry of the first 20-day period, as well as any appeal hearing against the said extensions. The law would therefore allow for detained suspects to be completely cut off from the outside world for up to 50 days, with the exception of two appearances before a judge on the fifth and 21st days of detention.

The proposed law poses a real risk that detainees may be subject to torture or other forms of ill-treatment while held incommunicado. The status of detainees as non-residents or non-citizens cannot be used as a grounds to justify the impairment of their rights under international human rights treaties.¹⁰⁰

¹⁰⁰ In addition to CERD General Comment 20 (2004) and 21 (2005), also see the UN Human Rights Committee's General Comment 15: "Aliens are entitled to equal protection by the law. There shall be no discrimination between aliens and citizens in the application of these rights." , *The Position of Aliens under the Covenant*, at para 7

3. ISRAEL

3.1. LAND AND DISCRIMINATION

Violations of: Article 5(e)(iii), Article 5(d) (v), Article 5(e)(iii); Article 5(d) (vi), Article 5(e) (iv); Article 5(e) (i) and Article 5(d) (i)

In Israel, hundreds of Palestinian homes and buildings have been destroyed in recent years by Israeli forces on grounds that they were built without building permits. As with the Occupied Territories, Israeli policies have consistently been aimed at reducing access to land for Israeli Arabs, through both the enactment and the implementation of law and regulations. As a result it has been very difficult and often impossible for Israeli Arabs to build legally. Vast areas of land surrounding Arab communities have been confiscated by Israel and most of the remaining Arab owned land has been zoned as agricultural land on which it is forbidden to build. As in East Jerusalem, attempts by Israeli Arabs to change the zoning of the land from agricultural to building status have met with failure. By contrast, in the Jewish sector it has been possible to re-zone agricultural land, including *post-facto*, for the construction of houses and commercial buildings.¹⁰¹ Government policies have expressly curtailed the growth and development of Arab towns and villages, whereas they have encouraged the expansion of existing Jewish communities, as well as the establishment of numerous new Jewish villages.

Since the establishment of the State of Israel in 1948, over 700 Jewish towns and villages have been established in Israel. At the same time, no new Arab towns or villages have been established.¹⁰² Israeli Arabs face an intractable problem in relation to land. Some 93 % of the land in Israel is state land, much of it administered by the Jewish National Fund and the Jewish Agency, neither of which lease land to non-Jews. By contrast, only 3% of the land is Arab-owned, with Arabs making up close to 20% of the population of Israel. Further, these organisations do not accept non-Jews in the housing projects or communities they establish, and other housing projects on state land that have been developed specifically for new Jewish immigrants also exclude Israeli Arabs.¹⁰³ Many Arab villages that existed prior to the establishment of the State of Israel have been re-classified as non-residential, and/or placed under the jurisdiction of adjacent Jewish village councils. As the Orr Commission noted, in the first 50 years of Israel's existence, the Arab population grew seven-fold and at the same time, the amount of land allocated for housing construction for Arabs remained almost unchanged.¹⁰⁴ All of these factors have resulted in a housing crisis in the Arab sector in Israel and in East Jerusalem. Faced with a situation in which they have no hope of obtaining a building permit, many Israeli

¹⁰¹ Amnesty International, Israel and the Occupied Territories, *Under the rubble: house demolition and destruction of land and property*, May 2004, (AI Index: MDE 15/033/2004) at page 41, <http://web.amnesty.org/library/Index/ENGMDE150332004>

¹⁰² Amnesty International, Israel and the Occupied Territories, *Under the rubble: house demolition and destruction of land and property*, *ibid* at page 34

¹⁰³ For example, see the case of the Kaadan family who were refused permission to buy land in the Katzir Jewish Agency housing project because they are Arabs and Jewish Agency land is for Jews only: <http://www.adalah.org/eng/legaladvocacyland.php#9205>. Also see [ADD FULL TITLE] by Tom Segev, Haaretz 29 September 2005. See also, Association for Civil Rights In Israel, A Status Report – *Equality for Arab Citizens of Israel*, 2002, <http://www.acri.org.il/english-acri/engine/story.asp?id=100>

¹⁰⁴ Orr Commission Report, quoted in Amnesty International, Israel and the Occupied Territories, *Under the rubble: house demolition and destruction of land and property*, May 2004, (AI Index: MDE 15/040/2004) at page 35 <http://web.amnesty.org/library/index/ENGMDE150402004>

Arabs and Palestinian Jerusalemites have built their homes without permits and they now face the risk of forced destruction of their homes and sources of livelihood.

In Israel the problem is acute in all the areas where Israeli Arabs live, but it is most dire in the “unrecognized” Bedouin villages in the Negev, a desert region in the south of the country. Some 60-70,000 Bedouins in the Negev region live in approximately 45 “unrecognised” villages. Despite having lived there for generations prior to the establishment of the State of Israel, the Israeli authorities do not recognise their villages and have not provided them with even the most basic services such as water, electricity, and sewage. Health problems and child mortality rates in these villages are the highest in Israel. The Israeli authorities claim the land on which the Bedouin live is state land. The inhabitants of these villages are not permitted to build houses, or farm their lands. During 2002-2005, scores of Bedouin homes were demolished by Israeli security forces and Israeli helicopters sprayed crops in the unrecognized villages several times with herbicides, without warning to the local inhabitants, placing their health at risk.¹⁰⁵ The inhabitants of these villages live in constant fear of having their homes and livelihoods destroyed; with permanent structures more likely to be demolished by the Israeli authorities, many live in shed-like homes. The Israeli Land Administration stated in 2000 that the number of unlicensed buildings in these villages was 60,000, of which 25,000 were houses.¹⁰⁶

In recent years Israeli forces have stepped up the destruction of Bedouin homes and crops in the Negev, increasing the pressure on the inhabitants of the “unrecognized” Bedouin villages to give up their claims to the land and agree to move to six or seven small townships which Israel is planning to establish for the Bedouin in a confined area of the region. At the same time, Israel has designated the area as a high priority development area for the establishment of new Jewish villages. The authorities have long granted significant privileges to Jewish inhabitants of the area. For example, single family Jewish farms in remote areas of the Negev desert receive services such as water, electricity, sewage, health facilities and paved roads, whereas entire Bedouin villages, which were there long before, do not have water, electricity, roads and other basic services. The high tension electricity cables which bring the electricity to far away Jewish villages and single family farms pass right above the Bedouin villages but the latter have no right to be connected to the electricity grid.¹⁰⁷

3.2 MIGRANT WORKERS

Violations of: *Article 5 (e) (i) Article 5 (e) (i), Article 6 and Article 5(e) (iv)*

Migrant workers in Israel, suffer discrimination in rates of pay, access to health and social security, and in their exercise of their right to family life.

¹⁰⁵ Amnesty International, Israel and the Occupied Territories, Under the rubble: house demolition and destruction of land and property, *ibid* at page 44.

¹⁰⁶ *Ibid* at page 44. See also, Physicians for Human Rights (PHR)-Israel: *No Man’s Land: Health in the Unrecognized Villages in the Negev*, July 2003, <http://www.phr.org.il/phr/article.asp?articleid=97&catid=47&pcat=47&lang=ENG>

¹⁰⁷ *Ibid* at page 45. See also PHR-Israel: *High Court Petition: Connect Pediatric Cancer Patient’s Home to Electricity*, 24 August 2005 <http://www.phr.org.il/phr/article.asp?articleid=258&catid=60&pcat=47&lang=ENG>

Israeli protective labour laws apply to all workers within the country. Accordingly, basic provisions regarding minimum wages, paid annual leave and other rights apply to migrant workers. However, in practice, the law is not always applied, particularly in the care-giving sector, in which 90% of female migrant workers are employed. Such workers may be on call for 24 hours per day, six days per week, yet they have been awarded wages by the Labour Court at a level well below the official minimum rate.¹⁰⁸ Further, private employers often do not pay care givers the salaries set by the Labour Court.¹⁰⁹ Even though complaints regarding wages and conditions of work are frequent, the Ministry of Industry, Trade and Labour tends to intervene only when salaries are not paid at all.

Israel has ratified the ILO Convention No 93, Article 6 of which relates to social security and remuneration on the basis of equality with nationals for regular migrants. Israel does not comply with this provision. According to Article 2(A)(b)(3) of the National Insurance Law 1995, migrant workers are not entitled to the same level of health care services from the National Insurance Institute as Israelis. Women are particularly at risk. Exclusions for migrant workers include high risk pregnancy benefit (the payment of 96% of their salary for a 30-day period of complete bed-rest for women at risk during pregnancy); or the right to an amniocentesis test. Maternity-related hospital costs for migrant workers are covered (provided that their employer has paid the workers' social security fees) only if they have worked until 42 days before giving birth, a requirement that does not apply to Israeli women. This condition puts pressure on pregnant migrant workers to work until 42 days prior to giving birth, even if they are unwell.

As migrant workers do not have equal access to health care as a matter of right, by law, private employers must arrange health insurance for all migrant workers.¹¹⁰ Private insurance companies, however, often do not guarantee comprehensive medical cover during pregnancy, leaving pregnant migrant workers at risk of not having access to necessary medical care.

Many migrant workers do not receive maternity benefits from the NII, because their private employers have not paid the necessary contribution to the NII. The women are often not aware of the problem until it is too late, and in other cases they are reluctant to complain for fear of losing their job, their visa and work permit. These difficulties compound other violations and pressures to which pregnant migrant workers are subjected, such as arbitrary dismissal during pregnancy, refusal to extend the work permits of pregnant women, exploitative working conditions, and being liable to be deported if they have children, even if their work permit is still valid.

According to the Population Registry's "*procedure to deal with pregnant foreign workers*," female foreign workers who are legally present in Israel with a valid permit to work in Israel are nonetheless required to leave the country within three months of giving birth. On 13

¹⁰⁸ In 2004, the National Labour Court ruled that care workers were to be paid the minimum wages for an eight-hour day, plus a 30% extra, irrespective of the actual number of hours workers. Kav LaOved has appealed this decision and the case is pending.

¹⁰⁹ Most of the salary is paid by the National Insurance Institute (NII), while the employer covers the difference between the NII payment and the total salary.

¹¹⁰ According to Chapter Two "Medical Insurance" (I(d)(a) of the Foreign Workers Law (1991)), employers have to arrange at their own expenses medical insurance that "shall include such baskets of services as the Minister of Health shall prescribe for this purpose by order"

December 2005 five Israeli human rights NGOs petitioned the High Court of Justice seeking to overturn the policy.¹¹¹

Migrant workers are vulnerable to deportation in a number of circumstances, including instances where they complain that their employer has failed to pay them their wages. Migrant workers frequently arrive in Israel with legal work permits conditional on their working for a specific employer who has obtained a permit to employ a migrant worker. All workers possessing such work permits, who change employer, even where the employer mistreats them, automatically invalidate their work permit and they are known as run-away workers.¹¹² Two Israeli organisations, Kav La'Oved and Hotline for Migrant Workers, reported that they received many complaints from migrant workers alleging that their employers used the services of the Immigration authorities to avoid paying them.¹¹³ Migrant workers in the caregiver or construction sectors seem to be particularly at risk in this respect. The organisations detected a distinct pattern. Where the migrant worker complains about his/her employer's failure to pay his/her wages, or refuses to work until s/he is paid, the employer alerts the immigration offices alleging the worker has run away; the latter then apprehends and detains the worker, with a view to deportation. Migrant workers suffering abuse by employers can also find themselves in a similar situation. In the circumstances, the employer is absolved from all responsibility for paying the migrant worker, or from any criminal responsibility in respect of any abuse.

The failure to accord migrant workers basic employment rights on a par with Israeli citizens and to protect them from unscrupulous employers, constitutes a violation of the principle of non-discrimination.

¹¹¹ Previously, migrant workers were forced to choose between being separated from their babies or leaving the country, as within three months of giving birth they had to choose between being deported or send their baby away. See: http://www.kavlaoved.org.il/katava_main.asp?news_id=1635&shivug_id=4

¹¹² Hotline for Migrant Workers, *For You Were Strangers: Modern Slavery And Trafficking In Human Beings In Israel*, February 2003,

http://www.hotline.org.il/english/pdf/For_you_were_strangers_2nd_edition_Eng.pdf. Note also that where manpower agencies transfer a migrant worker from one employer to another, the worker will also lose his/her legal status and is therefore vulnerable to deportation if discovered by the immigration authorities.

¹¹³ Kav La'Oved and Hotline for Migrant Workers, *Immigration Administration Or Expulsion Unit? Joint Report – May 2003* and Kav La'Oved and Hotline for Migrant Workers, 11/08/2004 *Case Studies: Immigration authorities play into the hands of abusive employers*, <http://www.kavlaoved.org.il/word/110804.html>