

HUMAN RIGHTS COUNCIL

HUMAN RIGHTS IN PALESTINE AND OTHER OCCUPIED ARAB TERRITORIES

Report of the United Nations Fact Finding Mission on the Gaza Conflict*

A/HRC/12/48 - 15 September 2009. Head of Mission: Richard Goldstone

C. Facts investigated by the Mission, factual and legal findings

21. Repression of dissent in Israel, the right of access to information and treatment of human rights defenders

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112. The Mission urges the Government of Israel to ensure that the police authorities respect the rights of all its citizens, without **discrimination**, including freedom of expression and right to peaceful assembly, as guaranteed to them by the ICCPR. (*International Covenant on Civil and Political Rights*)

113. Of protesters brought before the Israeli courts, it was the Palestinian Israelis who were disproportionately held in detention pending trial. The element of **discrimination** and differential treatment between Palestinian and Jewish citizens of Israel by judicial authorities, as indicated in the reports received, is a substantial cause for concern.

B. Overview of Israel's pattern of policies and conduct relevant to the Occupied Palestinian Territory, and links between the situation in Gaza and in the West Bank

206. Despite prohibitions under international humanitarian law (IHL),⁵⁴ Israel has applied its domestic laws throughout the Occupied Palestinian Territory since 1967. Notably, existing planning and construction laws were annulled and replaced with military orders, and related civil powers transferred from local authorities to Israeli institutions, with ultimate discretion resting with military commanders.⁵⁵ The application of Israeli domestic laws has resulted in institutionalized **discrimination** against Palestinians in the Occupied Palestinian Territory to the benefit of Jewish settlers, both Israeli citizens and others. Exclusive benefits reserved for Jews derive from the two-tiered civil status under Israel's domestic legal regime based on a "Jewish nationality," which entitles "persons of Jewish race or descendency"⁵⁶ to superior rights and privileges, particularly in land use, housing, development, immigration and access to natural resources, as affirmed in key legislation.⁵⁷ Administrative procedures qualify indigenous inhabitants of the Occupied Palestinian Territory as "alien persons" and, thus, prohibited from building on, or renting, large portions of land designated by the Government of Israel as "State land".⁵⁸

207. The two-tiered civil status under Israeli law, favouring "Jewish nationals" (*le'om yehudi*) over persons holding Israeli citizenship (*ezrahut*), has been a subject of concern under the International Covenant on Economic, Social and Cultural Rights, particularly those forms of **discrimination** carried out through Israel's parastatal agencies (World Zionist Organization/Jewish Agency, Jewish National Fund and their affiliates), which dominate land use, housing and development.⁵⁹ The Committee on Economic, Social and Cultural Rights also has recognized that Israel's application of a "Jewish nationality" distinct from Israeli citizenship institutionalizes discrimination that disadvantages all Palestinians, in particular, refugees.⁶⁰

59. In 1998, the Committee on Economic, Social and Cultural Rights observed “with grave concern that the Status Law of 1952 authorizes the World Zionist Organization/Jewish Agency and its subsidiaries, including the Jewish National Fund, to control most of the land in Israel, since these institutions are chartered to benefit Jews exclusively. [...] large-scale and **systematic confiscation of Palestinian land and property by the State and the transfer of that property to these agencies constitute an institutionalized form of discrimination** because these agencies by definition would deny the use of these properties to non-Jews. Thus, these practices constitute a breach of Israel's obligations under the Covenant.” (E/C.12/1/Add.27, para. 11).

208. In 2007, **the Committee on the Elimination of Racial Discrimination highlighted another discriminatory policy imposed by the Israeli authorities on Palestinian residents of the Occupied Palestinian Territory** as well as those who are Israeli citizens (but denied a legal “nationality” status).⁶¹ The “Citizenship and Entry into Israel Law (Temporary Order)” of 31 May 2003 bars the possibility of granting Israeli citizenship and residence permits in Israel, including through family reunification, to residents of the Occupied Palestinian Territory. The Committee noted that such measures have a disproportionate impact on Arab Israeli citizens who marry Palestinians from the Occupied Palestinian Territory and wish to live together with their families in Israel. While noting the State party’s legitimate objective of guaranteeing the safety of its citizens, the Committee expressed concern about the fact that these “temporary” measures have systematically been renewed and have been expanded to citizens of “enemy States”.⁶²

61. The “Or” Commission, a panel appointed by the Israeli Government in 2000, **found that Arab citizens suffer discrimination in Israel** and levelled criticism at the Government for failing to give fair and equal attention to the needs of Arab citizens of Israel. See its full report at: http://elyon1.court.gov.il/heb/veadot/or/inside_index.htm (in Hebrew).

D. International human rights law

294. Israel has ratified several of the most important international human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination, ICCPR, ICESCR, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination against Women.

298. The International Court of Justice has also held that ICCPR applies “in respect of acts done by a State in the exercise of its jurisdiction outside its own territory”.¹⁷⁷ Accordingly, the Human Rights Committee has considered that ICCPR also applies to the benefit of people within the Occupied Palestinian Territory.¹⁷⁸ The Committees established to monitor compliance with the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination against Women by their States parties have equally determined that Israel’s human rights obligations extend to the population of the Occupied Palestinian Territory.¹⁷⁹

The right to food

937. The right to adequate food is also reflected in the Convention on the **Elimination of All Forms of Discrimination against Women**, which requires State parties to guarantee to women “adequate nutrition during pregnancy and lactation.”

938. **The Mission finds that**, as a result of its actions to destroy food and water supplies and infrastructure, **Israel has violated article 1 of the International Covenant on Civil and Political Rights, article 11 of the International Covenant on Economic, Social and Cultural Rights and article 12 (2) of the Convention on the Elimination of All Forms of Discrimination against Women.**

Legal findings

958. The Mission makes the same findings regarding article 147 of the Fourth Geneva Convention and article 54 (2) of Additional Protocol I, article 1 of the International Covenant on Civil and Political Rights, article 11 of the International Covenant on Economic, Social and Cultural Rights and article 12 (2) of the Convention on the Elimination of All Forms of **Discrimination** against Women as it made above in relation to the el-Bader flour mill.

K. Legal analysis

1298. Access to adequate food, shelter and clothing, as part of an adequate standard of living, are human rights recognized in article 11 of the International Covenant on Economic, Social and Cultural Rights. The same instrument recognizes the rights to education and to the highest attainable standard of physical and mental health (art. 12). The content of these rights and the corresponding State duties has been clarified by the United Nations Committee on Economic, Social and Cultural Rights. The Convention on the Rights of the Child protects the child's right to life, survival and development (art. 6) and to be protected from all forms of mental or physical violence (art. 19), to the highest standard of health (art. 24), to an adequate standard of living (art. 27) and to education (arts. 28 and 29). Although these instruments protect women and men, girls and boys alike, the Convention on the Elimination of All Forms of **Discrimination** against Women adds more specification and scope to those obligations with regard to women. All these human rights obligations are applicable to Israel with respect to its actions in the Gaza Strip since they apply also in situations of armed conflict.

1315. Article 54 of Additional Protocol I contains the prohibition:

to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas... , drinking water installations and supplies and irrigation works for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse party, whatever the motive [...].

The Mission regards this rule as reflective of international customary law. In this context, Israel's obligations to respect, protect and facilitate or provide for the realization of economic, social and cultural rights, and its obligations under the Convention on the Rights of the Child and the Convention on the Elimination of **All Forms of Discrimination** against Women are also relevant, and have been undermined by the blockade and restrictions on the Gaza Strip, as well as the actions taken during the military operations.

1326. The Mission has also considered the question of whether the crime of persecution as a form of crime against humanity had been committed against the civilian population of the Gaza Strip. To establish that a crime against humanity was committed it would have to be established that there was a widespread or systematic attack on a civilian population that blatantly discriminated and infringed a fundamental right recognized under international customary law or treaty, and was carried out deliberately with the intention so to **discriminate**.⁶⁷⁷

The crime of persecution encompasses a variety of acts, including, inter alia, those of physical, economic or judicial nature, that violate an individual's right to the equal enjoyment of his basic rights.⁶⁷⁸

1327. In *Prosecutor v. Kupreskic* judgement, the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia describes the types of acts that would constitute the crime of persecution in the following terms:

[...] (c) **Persecution can also involve a variety of other discriminatory acts,**

involving attacks on political, social, and economic rights. [...]

(d) Persecution is commonly used to describe a series of acts rather than a single act. Acts of persecution will usually form part of a policy or at least of a patterned practice, and must be regarded in their context. [...]

(e) [...] **discriminatory acts charged as persecution must not be considered in isolation.**

Some of the acts mentioned above may not, in and of themselves, be so serious as to constitute a crime against humanity. For example, restrictions placed on a particular group to curtail their rights to participate in particular aspects of social life (such as visits to public parks, theatres or libraries) **constitute discrimination**, which is in itself a reprehensible act; however, they may not in and of themselves amount to persecution. These acts must not be considered in isolation but examined in their context and weighed for their cumulative effect.⁶⁷⁹

1. Violence by settlers against Palestinians in the West Bank

1406. Israel also has obligations under international human rights law to protect Palestinians from violence by private individuals, and to investigate and punish acts of violence through the application of criminal law, **without discrimination**.

1427. **The discrimination in the open-fire regulations for security forces** dealing with demonstrations based on the presence of persons of a particular nationality, **violates the principle of non-discrimination of article 2 of the International Covenant on Civil and Political Rights** and article 27 of the Fourth Geneva Convention. **These violations are all the more serious insofar as the regulations reflect a State policy based on discrimination.**

The use of detention in the context of the Mission's Mandate

1524. **The detention of PLC members** and their conviction for being members of a particular political party, both **violates the prohibition on discrimination** based on political belief that is contrary to Article 26 of the ICCPR: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law, In this respect, **the law shall prohibit any discrimination** and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, political or other opinion, national or social origin, property, birth or other status".

Additional legal issues

1534. The **systematic discrimination**, both in law and in practice, against Palestinians, in legislation (including the existence of an entirely separate legal and court system which offers systematically worse conditions compared with that applicable to Israelis), and practice during arrest, detention, trial and sentence compared with Israeli citizens⁸⁵⁹ is contrary to ICCPR article

2 and potentially in violation of the prohibition on persecution as a crime against humanity.⁸⁶⁰

859 As between Israeli citizens **there is also discrimination between Jewish Israeli citizens and Palestinian citizens of Israel**, in law and practice.

860 Art. 7 of the Rome Statute of the International Criminal Court, 1998.

XXII. ISRAELI VIOLATIONS OF THE RIGHT TO FREE MOVEMENT AND ACCESS

Jerusalem: accelerating the “silent transfer”

1569. In a report reviewed by the Mission, the Association for Civil Rights in Israel stated that, in Jerusalem “**discrimination in planning and building, expropriation of lands**, and minimal investment in physical infrastructure and government and municipal services - these are concrete expressions of an Israeli policy designed to secure a Jewish majority in Jerusalem and push Palestinian residents outside the city's borders.”⁸⁹⁷

897 The report concludes that “for decades, the legal possibility of issuing building permits for new construction on East Jerusalem has been practically non-existent. (...) **The discrimination is clear**, its purpose to limit legal construction in the Palestinian areas and constrict the space available for the development of Arab neighborhoods, The City's Outline Plan, ‘Jerusalem 2000’, approved in 2006 (...) **perpetuates the discriminatory policies** by failing to provide adequate housing units, employment sources, and infrastructure in East Jerusalem”. “The state of human rights in East Jerusalem - Facts and Figures”, Association for Civil Rights in Israel report, May 2009.

1577. If the decision **to restrict movement is based on a person's belonging to an ethnic or national group, this constitutes unlawful discrimination** contrary to articles 1 and 2 of the Universal Declaration of Human Rights, article 2 of the International Covenant on Civil and Political Rights and article 75 of Additional Protocol I to the Geneva Conventions, which is part of customary international law. Israel allows Israeli citizens to move around the West Bank including the settlements, relatively freely. According to B'Tselem, the Israeli military has openly admitted that the restrictions on Palestinians are there to enable Jewish settlers to move about freely.⁹⁰⁸

1579. **Settlements are contrary to article 49(6) of the Fourth Geneva Convention.⁹⁰⁹ Furthermore, they violate Palestinian property rights and the prohibition on the occupying Power of changing the nature and legal status of the Occupied Palestinian Territory (art. 55 of the Hague Regulations), may constitute direct discrimination against Palestinians**, besides causing restriction of movement, hindering economic and social development, and access to health, education and social services. In addition, the extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly, amount to a “grave breach” of article 147 of the Geneva Convention. The Wall, which, to the extent it is built inside the West Bank is contrary to international law,⁹¹⁰ the de facto annexation of the parts of the West Bank that fall on the “Israeli side” of the Wall (9.5 per cent of the West Bank)⁹¹¹, five years since the advisory opinion of the International Court of Justice that the Wall must be dismantled, now amount to the acquisition of territory by force, contrary to the Charter of the United Nations.⁹¹²

1616. Interference with the constitution of boards of associations, or the registration of certain associations on grounds of political allegiance, would, if confirmed, indicate a violation of the right to form associations (article 20 of the Universal Declaration). Dismissal from public appointment on the basis of (presumed) political affiliation violates the right to work, to just and

favourable conditions of work and to protection against unemployment (art. 23) and **the right to non-discrimination** (art. 1).

E. Conclusions

1796. Owing to the failure to cooperate by the Government of Israel, the Mission does not have sufficient information to determine whether there were sound public order or security reasons for the decisions made by the police. It however takes note of the reports received and urges the Government of Israel to ensure that the police authorities, throughout Israel, **respect the rights of all its citizens, without discrimination**, including the freedom of expression and the right to peaceful assembly, as guaranteed to them by the International Covenant on Civil and Political Rights.

2. Judicial Responses

1798. The Mission does not have sufficient information about individual cases brought to its attention to come to a definitive finding. Nevertheless, the **element of discrimination between the and differential treatment of Palestinian and Jewish citizens of Israel** by the judicial authorities, as reflected in the reports received, is a substantial cause for concern.

1662. Reparation as part of the right to a remedy has been enshrined in article 2 (3) of ICCPR, article 6 of the International Convention on the Elimination of All Forms of Racial **Discrimination**, article 14 of the Convention against Torture and article 39 of the Convention on the Rights of the Child. The Rome Statute also provides for the right of victims to participation in the proceedings (art. 68 (3)) and to reparations (art. 75).1208

1730. In addition to the above general findings, the Mission also considers that Israel has violated its specific obligations under the Convention on the Rights of the Child and the Convention on the Elimination of Discrimination against Women, including to peace and security, free movement, livelihood and health.

(a) Treatment of Palestinians in the West Bank by Israeli security forces, including use of excessive or lethal force during demonstrations

1734. With regard to acts of violence by settlers against Palestinians, the Mission concludes that Israel has failed to fulfill its international obligations to protect the Palestinians from violence by private individuals under both international human rights law and international humanitarian law. In some instances security forces acquiesced to the acts of violence in violation of the prohibition against cruel, inhuman or degrading treatment. When this acquiescence only occurs **in respect of violence against Palestinians by settlers and not viceversa, it would amount to discrimination on the basis of national origin prohibited under the ICCPR.**