



ISRAEL/OCCUPIED PALESTINIAN TERRITORIES

Separate and Unequal

Israel's Discriminatory Treatment of Palestinians
in the Occupied Palestinian Territories

HUMAN
RIGHTS
WATCH



Separate and Unequal

**Israel's Discriminatory Treatment of Palestinians
in the Occupied Palestinian Territories**

Copyright © 2010 Human Rights Watch
All rights reserved.
Printed in the United States of America
ISBN: 1-56432-729-9
Cover design by Rafael Jimenez

Human Rights Watch
350 Fifth Avenue, 34th floor
New York, NY 10118-3299 USA
Tel: +1 212 290 4700, Fax: +1 212 736 1300
hrwnyc@hrw.org

Poststraße 4-5
10178 Berlin, Germany
Tel: +49 30 2593 06-10, Fax: +49 30 2593 0629
berlin@hrw.org

Avenue des Gaulois, 7
1040 Brussels, Belgium
Tel: + 32 (2) 732 2009, Fax: + 32 (2) 732 0471
hrwbe@hrw.org

64-66 Rue de Lausanne
1202 Geneva, Switzerland
Tel: +41 22 738 0481, Fax: +41 22 738 1791
hrwgva@hrw.org

2-12 Pentonville Road, 2nd Floor
London N1 9HF, UK
Tel: +44 20 7713 1995, Fax: +44 20 7713 1800
hrwuk@hrw.org

27 Rue de Lisbonne
75008 Paris, France
Tel: +33 (1)43 59 55 35, Fax: +33 (1) 43 59 55 22
paris@hrw.org

1630 Connecticut Avenue, N.W., Suite 500
Washington, DC 20009 USA
Tel: +1 202 612 4321, Fax: +1 202 612 4333
hrwdc@hrw.org

Web Site Address: <http://www.hrw.org>



Separate and Unequal

Israel’s Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories

- I. Summary..... 1**
 - Background..... 8
 - Construction Permits, Zoning, and Demolitions 11
 - Freedom of Movement.....14
 - Water 17
 - Land Confiscation.....19

- II. Recommendations..... 21**
 - To the Government of Israel..... 21
 - To the Government of the United States..... 23
 - To the International community, Including the United States and European Union 23
 - To the United Nations Committee on the Elimination of Racial Discrimination 23
 - To Businesses Profiting from Settlements..... 24

- III. Methodology..... 25**

- IV. Background..... 26**
 - Israeli Jurisprudence and Discrimination 30
 - Land Confiscation.....35
 - Discriminatory Restrictions, Planning, and Forced Displacement in Area C..... 40
 - Discriminatory Enforcement..... 43
 - East Jerusalem..... 46
 - Settler Incentives and Funding Sources 51
 - Corporate Involvement in Settlements 61

- V. Northern Jordan Valley..... 66**

- VI. Bethlehem District 90**
 - Jubbet al-Dhib 90
 - Nahalin 95

VII. Nablus District	102
Yanun and Itamar	102
VIII. Ramallah District.....	113
Al-Janiya and Talmon	113
IX. Jahalin Bedouin and Ma’ale Adumim.....	121
X. East Jerusalem.....	131
Background: Overview of Israeli Planning and Building Policies in East Jerusalem	131
Al-Bustan and the City of David	137
Discrimination in Silwan	138
Coda: Increasing Harassment	143
Discrimination and Forcible Transfer in International Law	144
Forcible Transfer	149
XI. Rights to a Home, Adequate Housing and Property	152
Appendix: Human Rights Watch Letters to Israeli Authorities and Their Responses.....	154
Acknowledgments.....	165

I. Summary

This report consists of a series of case studies that compare Israel's different treatment of Jewish settlements to nearby Palestinian communities throughout the West Bank, including East Jerusalem. It describes the two-tier system of laws, rules, and services that Israel operates for the two populations in areas in the West Bank under its exclusive control, which provide preferential services, development, and benefits for Jewish settlers while imposing harsh conditions on Palestinians. The report highlights Israeli practices the only discernable purposes of which appear to be promoting life in the settlements while in many instances stifling growth in Palestinian communities and even forcibly displacing Palestinian residents. Such different treatment, on the basis of race, ethnicity, and national origin and not narrowly tailored to meet security or other justifiable goals, violates the fundamental prohibition against discrimination under human rights law.

It is widely acknowledged that Israel's settlements in the West Bank, including East Jerusalem, violate international humanitarian law, which prohibits the occupying power from transferring its civilian population into the territories it occupies; Israel appears to be the only country to contest that its settlements are illegal. Human Rights Watch continues to agree with the nearly universal position that Israel should cease its violation of international humanitarian law by removing its citizens from the West Bank. This report focuses on the less-discussed discriminatory aspect of Israeli settlement policies, and analyzes serious and ongoing violations of other rights in that context.

The case studies in this report show that discriminatory Israeli policies control many aspects of the day-to-day life of Palestinians who live in areas under exclusive Israeli control and that those policies often have no conceivable security justification. For example, Jubbet al-Dhib is a 160-person Palestinian village to the southeast of Bethlehem that is often accessible only by foot because its only connection to a paved road is a rough, 1.5 kilometer-long dirt track. Children from Jubbet al-Dhib must walk to schools in other villages several kilometers away because their own village has no school. Jubbet al-Dhib lacks electricity despite numerous requests to be connected to the Israeli electric grid, which Israeli authorities have rejected; Israeli authorities also rejected an internationally donor-funded project that would have provided the village with solar-powered streetlights. Any meat or milk in the village must be eaten the same day due to lack of refrigeration; residents often resort to eating preserved foods instead. Villagers depend for light on candles, kerosene lanterns, and, when they can afford to fill it with gasoline, a small generator.

Approximately 350 meters away is the Jewish community of Sde Bar. It has a paved access road for its population of around 50 people and is connected to Jerusalem by a new, multi-million dollar highway—the “Lieberman Road”—which bypasses Palestinian cities, towns, and villages like Jubbet al-Dhib. Sde Bar operates a high school, but Jubbet al-Dhib students are ineligible to attend; for Palestinians, settlements are closed military areas that may be entered only with special military permits. Residents of Sde Bar have the amenities common to any Israeli town, such as refrigerators and electric lights, which Jubbet al-Dhib villagers can see from their homes at night.

Both Jubbet al-Dhib and Sde Bar fall within “Area C” – land that was designated under the 1995 Oslo interim peace agreement to fall under Israeli civil and military control. But while Israel grants Sde Bar residents access to roads, electricity, and funds for housing development, it deprives residents of Jubbet al-Dhib of similar amenities. Since Sde Bar’s founding in 1997, Israel has invested millions of dollars in nearby Jewish settlements like Tekoa and Nokdim to build homes, schools, community centers, health clinics, and swimming pools. The same is not true for Jubbet al-Dhib, which dates to 1929. Development and infrastructure there are at a standstill, strictly prohibited by Israeli authorities who prevent villagers from building new houses or expanding those they already have.¹

Israel has human rights obligations towards all persons under its control, including those in territory it occupies, as has been stated by the International Court of Justice and other international bodies. Israel denies that its human rights obligations apply to Palestinians in the West Bank, except for East Jerusalem, which it considers part of Israel. It argues against the applicability of human rights law based on an interpretation that restricts its applicability to the territory of a state and not to occupied territories, and on the argument that the law of occupation applies to the West Bank to the exclusion of human rights law. The International Court of Justice as well as several UN human rights committees have rejected this interpretation, on the basis of the text of the relevant human rights treaties, which define their applicability based on the degree of a government’s control over a person rather than on a state’s borders, and on the principle that human rights law and the law of occupation, as written and interpreted, are not mutually exclusive but complementary obligations that may both apply to populations under a government’s effective control. International law does not require Israel to treat Palestinian residents of the West Bank as though they were Israeli citizens; for example, non-citizens do not have the right to vote. However, the rights of

¹ With the exception of settlements in East Jerusalem, where Israel has applied its civil law, Palestinians are virtually excluded from living in settlements by the requirement that they obtain renewable permits from the Israeli military to enter settlements; Human Rights Watch is not aware of cases of Palestinians applying for or the military granting permits allowing them to purchase homes in settlements.

Israeli citizens—including settlers—do not include the right to benefit from discriminatory treatment that violates the rights of Palestinians in Israeli-occupied territory.

Israel's differential treatment in law, regulations, and administrative practice directly affect the roughly 490,000 Jewish settlers and 420,000 Palestinians in areas under its exclusive control in the West Bank (including in Area C and East Jerusalem). In addition, the implications of Israel's discriminatory policies are far broader, affecting many of the roughly 2.4 million Palestinians living in the cities and towns in the occupied West Bank (known as Areas A and B) where Israel has ceded most civil responsibilities to the Palestinian Authority. That is because Area C contains substantial amounts of water resources, grazing and agricultural land, and the land reserves required for developing cities, towns, and infrastructure. It is also the only contiguous area in the West Bank, effectively isolating the cities and towns (which fall outside Area C) into disconnected enclaves.² As a result, Israel effectively controls movement and access between Palestinian population centers.³ Palestinians must cross checkpoints to travel through Area C and need permits to build infrastructure that would connect to cities, towns, and villages (including roads, water and sewage pipes, and electricity towers). It is often impossible for Palestinian cities, towns, and villages that have outgrown municipal lands to expand into Area C, where Israel strictly controls Palestinian construction.

To the extent that Israel, which remains ultimately responsible for persons in the territories it occupies, has conferred powers on the Palestinian Authority (PA) in certain areas, the PA also has human rights responsibilities.

Since 1967, when it seized the West Bank from Jordan during hostilities—and under a variety of governments, since the right-wing Likud party first came to power in 1977—Israel has expropriated land from Palestinians for Jewish-Israeli settlements and their supporting infrastructure, denied Palestinians building permits and demolished “illegal” Palestinian construction (i.e., Palestinian construction that the Israeli government chose not to authorize), prevented Palestinian villages from upgrading or building homes, schools, health clinics, wells, and water cisterns, blocked Palestinians from accessing roads and agricultural lands, failed to provide electricity, sewage, water, and other utilities to Palestinian communities, and rejected their applications for such services. Such measures have not only limited the expansion of Palestinian villages, but imposed severe hardships for residents,

² World Bank, *The Economic Effects of Restricted Access to Land in the West Bank*, October 21, 2008, p. 4.

³ See OCHA, *The Humanitarian Impact of Israeli Infrastructure in the West Bank*, 2007, Chapter 2; B'Tselem, *Land Grab: Israel's Settlement Policy in the West Bank*, May 2002, p. 50.

including forcing children to walk long distances for school, and leaving residents with limited access to medical care, which can often be accessed only by crossing multiple checkpoints, because there are no Palestinian general hospitals in Area C. Road blocks, checkpoints, and substandard roads delay ambulances and people seeking medical care, in addition to the costs they impose on the Palestinian economy. Since Palestinians need special military permits to enter settlements, usually as laborers, medical services there are effectively unavailable to them. In some cases, Israel's discriminatory policies have forcibly displaced Palestinians from their communities.

Such policies have not been applied to Jewish settlements. Notwithstanding Israel's evacuation of settlers from Gaza and four West Bank settlements in 2005, and its evacuation of a handful of "outposts" (unauthorized settlements), settlements have expanded in size—growing from approximately 241,500 inhabitants in 1992 to roughly 490,000 inhabitants in 2010 (including East Jerusalem). Settlers enjoy continuing government subsidies, including funding for housing, education, and infrastructure such as special roads.

In most cases where Israel has acknowledged differential treatment of Palestinians—such as barring them from accessing "settler-only" roads and subjecting them to 505 roadblocks and checkpoints within the West Bank (as of June 2010)—it has asserted that the measures are necessary to protect Jewish settlers and other Israelis who are subject to periodic attacks by Palestinian armed groups, particularly during the second Palestinian intifada, or uprising, from 2000 to around 2006.⁴

But no security or other legitimate rationale can explain many instances of differential treatment of Palestinians, such as permit denials that effectively prohibit Palestinians from building or repairing homes, schools, roads, and water tanks; repairing a home does not under any stretch of the imagination constitute a security threat. In cases where Israel has justified policies that harm Palestinians on the grounds of security (whether that of residents of Israel or of settlers), it has often done so based on policies that define all Palestinians as a security threat by virtue of their race and national origin, rather than on policies that are narrowly tailored to well-defined security interests. A government's differential treatment of different populations can sometimes be justified, but only to the extent that it serves a legitimate purpose and is narrowly tailored to have the least harmful impact possible.

⁴ Violent attacks by Palestinian armed groups killed 202 Israeli civilians in the West Bank between 2000 and August 31, 2010. During the same period, Israeli settlers killed 43 Palestinian civilians in the West Bank and Israeli security forces killed 1823 Palestinian civilians there, according to the Israeli human rights group B'Tselem.

In some cases, the harm caused to Palestinians by Israel's discriminatory policies has been vastly disproportionate to the stated goal and has been carried out despite less harmful alternatives. For example, the Israeli military requires many Palestinians to obtain military "coordination" in order to access their olive groves and other agricultural lands where those lands are located near settlements. Such a policy purportedly protects settlers from potential attacks, as well as protecting Palestinians from settler attacks, but in practice, the Israeli military prohibits (by refusing to "coordinate" access) Palestinian villagers from accessing their lands for almost the entire year. Residents of Al Janiya, a Palestinian village near the settlement of Talmon, cannot adequately cultivate their lands during the roughly two weeks per year that they have "coordinated" access to them, with the result that agricultural yields have declined sharply and their livelihoods have been harmed. The Israeli military has not attempted to alleviate this near-permanent exclusion of Palestinians from their lands by increasing the amount of time they are given access or by imposing restrictions on the settlers to enhance Palestinian access, effectively forcing Palestinians to bear the entire burden of ensuring settlers' security.

Israel's desire to protect settlers in the West Bank and East Jerusalem and citizens within Israel from the threat of attack by Palestinian armed groups does not justify policies that have nothing to do with security or that discriminate against all Palestinians as if they were all security threats.

Discriminatory practices also often violate Israel's obligations towards Palestinians under the law of occupation. As the occupying power in the West Bank, including East Jerusalem, Israel is obliged to ensure the welfare of the occupied population and to limit its actions according to the law of occupation as set forth in international humanitarian law. In some cases, Israeli policies have made Palestinian communities virtually uninhabitable and effectively forced residents to leave. According to a survey of households in Area C and East Jerusalem in June 2009, some 31 percent of Palestinian residents had been displaced since 2000.⁵ The unnecessary and effectively forcible transfer of the occupied population by the occupying power to other parts of the territory, by unlawfully demolishing homes or by other measures that make it impossible to remain in a given community, is a serious violation of Israel's obligations under the law of occupation. Israel's confiscation of land and natural resources for the benefit of settlements exceeds its authority as an occupying power, as

⁵ Save the Children UK, "Fact Sheet: Jordan Valley," October 2009, http://www.savethechildren.org.uk/en/docs/English_Jordan_Valley_Fact_Sheet_and_Citations.pdf p. 2 (accessed July 21, 2010). The survey found that Palestinian residents in Area C in the West Bank had been temporarily or permanently displaced primarily as a result of Israeli home demolitions, military orders, and other policies preventing development.

does its demolition of Palestinian homes and other property in any case except for urgent military necessity.

Israel's highest court has ruled that certain measures imposed against Palestinian citizens of Israel were illegal because they were discriminatory. The court has also ruled that certain Israeli military measures in the West Bank, including bans on Palestinian drivers using certain roads and the route of certain parts of Israel's separation barrier, have "disproportionately" harmed Palestinians when weighed against the benefit to settlers and other Israelis. However, Human Rights Watch is not aware that the courts have adjudicated on the merits of the question of whether any Israeli practice in the West Bank discriminated against Palestinians, although petitioners have raised such claims in a number of cases.⁶

In the cases that Human Rights Watch has examined, there appears to be no legal justification for Israel's differential treatment of Palestinians, which breaches Israel's obligations under international law, violating the prohibition against discrimination as well as a host of associated rights, including the right to freedom of movement, the right to a home, and the right to health.

This report is not a comprehensive overview of all instances of discrimination between settlers and Palestinians or a complete survey of all of the policies and practices that have resulted in the forcible displacement of Palestinians. Rather, it addresses a representative sample of discriminatory policies, laws, and regulations that privilege Jewish settlers to the detriment of Palestinians. As noted, Israel contests the illegality of its settlements. Quite apart from that isolated position, Israel should nonetheless immediately cease these discriminatory policies, and allow Palestinians to build and develop their land, travel and move freely, with equitable access to water, electricity, and basic infrastructure, except to the extent that limits are justified by narrowly-tailored security needs.

Israel's allies—above all the United States—should strongly encourage the Israeli government to abide by its obligations and should themselves ensure that they are not contributing to or complicit in the violations of international law caused by the settlements, such as the discriminatory human rights violations that are the focus of this report. Foreign governments that are export markets for settlement products should thus not provide incentives such as preferential tariff treatment for those products, particularly in cases

⁶ See "Israeli Jurisprudence and Discrimination," below. Israeli courts have not addressed the legality of the settlements under the law of occupation since 1979, or addressed whether security measures intended to protect settlers that harm Palestinians are legitimate alternatives to removing settlers to within Israel proper.

where ongoing discriminatory rights violations against Palestinians have contributed to the production of goods – for example, agricultural crops exported from settlements that use water from Israeli-drilled wells that have dried up nearby Palestinian wells, limiting Palestinians’ ability to continue cultivating their own agricultural lands and even gaining access to drinking water.

The United States should consider suspending financing to Israel in an amount equivalent to the costs of the Israeli government’s spending in support of settlements and the discriminatory policies documented in this report, since the US’s \$2.75 billion in annual military aid to Israel substantially offsets these costs.

Foreign governments also should ensure that laws and regulations granting tax exemptions for private, charitable donations or charitable organizations that support settlements are consistent with governmental obligations to ensure respect for international law, including human rights prohibitions against discrimination. For example, numerous US-registered tax-exempt organizations fund settlements that were established through discriminatory means of land confiscation, planning and construction, that exclude Palestinians from any similar benefits, and continue to violate the human rights of Palestinian residents of the West Bank through ongoing expansion and land confiscation, continued restrictions on freedom of movement, and other practices. The US Congress should request the General Accounting Office to prepare a report on the amounts and end-uses of tax-exempt funding flows to settlements, and the lawfulness of tax-exemptions for such support according to the US’s international obligations.

Israeli and multinational corporations and their subsidiaries profit from settlements in a variety of ways, including by receiving, producing, exporting, or marketing settlement agricultural and industrial goods, and by financing or constructing settlement buildings and infrastructure. Companies have directly contributed to discriminatory rights violations against Palestinians, for example through business activities based on lands that were unlawfully confiscated from Palestinians without compensation for the benefit of settlers, or activities that consume natural resources like water or rock quarries to which Israeli policies provide settlement industries preferential access, while denying equitable access to Palestinians. These businesses also benefit from Israeli governmental subsidies, tax abatements, and discriminatory access to infrastructure, permits, and export channels; Palestinian businesses deprived of equitable access to these government-provided benefits are sometimes as a result unable to compete against settlement-based companies in Palestinian, Israeli, or foreign markets.

Companies that benefit directly from discrimination should urgently and impartially review the impact of their activities on Palestinians' human rights and identify and implement plans to prevent and mitigate these violations, in accordance with their corporate codes of ethics and with international standards, such as the "Ruggie framework" developed by the Special Representative of the UN Secretary-General on business and human rights, and the Organization for Economic Co-operation and Development (OECD) guidelines for multinational enterprises, which require businesses to respect the human rights of those affected by their activities. In cases where companies' involvement in activities in the Occupied Palestinian Territories is found to contribute to serious violations of international law, including prohibitions against discrimination, companies should, in consultation with affected settlers and Palestinians, end such operations.

Background

This report focuses on East Jerusalem and on "Area C," the latter an administrative area that derives from the temporary agreement (known as "Oslo 2") signed by Israel and the Palestine Liberation Organization (PLO) in September 1995, which created and granted limited autonomy to the Palestinian Authority (PA) ahead of an as-yet unreached final status agreement. Oslo 2 divided the West Bank (excluding East Jerusalem) into three administrative areas—A, B, and C. As modified by subsequent agreements, Area A, which includes Palestinian cities and covers approximately 18 percent of the land of the West Bank, was transferred to the civil and military control of the PA.⁷ Israel retains military control over Area B, which covers 22 percent of the territory, including most of the built-up areas of the Palestinian villages, but transferred civil control to the PA.⁸ Israel retained full control of security, planning, and building in the remaining 60 percent of the West Bank (some 340,000 hectares of land), known as Area C, which includes Israeli settlements, main roads, and smaller Palestinian villages and agricultural lands. Most Palestinians live in Areas A and B. Some four percent live in Area C.

The rationale for the division was, in part, that the agreement granted the PA control of the majority of the Palestinian population, while leaving sparsely populated but extensive areas under Israeli control.⁹

⁷ Later Israeli-Palestinian agreements (the Wye agreement, 1998; the Sharm el-Sheikh memorandum, 1999) slightly altered the Oslo agreements' administrative division of the West Bank.

⁸ The Israeli NGO Bimkom notes that the 1998 Wye agreement effectively increased the size of Area C—over which Palestinians have no planning control—to 63 percent of the West Bank. The Wye agreement prohibited "new construction" in three percent of the total area of the West Bank designated as "green areas and/or nature reserves."

⁹ As noted above, the Oslo agreements and subsequent Israeli-Palestinian agreements do not affect Israel's obligations as the occupying power under international humanitarian law.

Israel controls civil matters related to planning and construction and access to utilities and other services in Area C. It has granted Jewish-only settlements control of roughly 70 percent of the area (or 42.8 percent of the West Bank, including settlements' built-up areas and land reserves), and offers settlers sizable subsidies to move, build, and invest there. Israel effectively allows Palestinians to build or improve their homes and agricultural lands in only one percent of Area C, by designating lands there according to several categories, all of which restrict Palestinians' ability to use them. In addition to areas controlled by settlers, Israel has designated roughly 18 to 20 percent of the West Bank closed military zones (often designated as firing zones that overlap with the large land areas designated as the territory of settlement regional councils) and 10 percent as nature reserves, where Palestinian and Israeli land use is prohibited. Only Palestinians with special permits may enter the settlements, usually for work such as construction, cleaning, or agriculture.

The PA is responsible under the 1995 Oslo accords for providing services to all Palestinian villages in the West Bank, including education and health services to communities in Area C. Under those agreements, Israel was to retain its military control but progressively to transfer its civil authority over Area C to the PA by 1999. Israel transferred small amounts of Area B to Area A, and of Area C to Area B, in 1999 and 2000 following agreements at Sharm el-Sheikh, Egypt, before the outbreak of the second Palestinian intifada (uprising) in 2000, but continues to maintain its absolute authority over Area C. The Civil Administration—the Israel military authority that governs civilian matters in the West Bank— and the IDF must approve any construction in Area C, from small-scale renovations and connections, to utilities, to the construction of homes, schools, and hospitals.

Israel's complete control over all construction in Area C has made it difficult for the PA to fulfill its limited educational and health responsibilities there. A survey conducted in 2009 by United Nations agencies found that the PA faced "difficulties in obtaining building permits" from the Israeli Civil Administration for building or expanding schools and health clinics, which "significantly impedes the fulfillment of this responsibility." As a result, Palestinians have generally been forced to fend for themselves in obtaining these services.

The Israeli Interior Ministry recognizes as official "communities" 121 settlements established in the West Bank after Israel occupied the territory in 1967. Israel considers as "neighborhoods" of Jerusalem 12 other settlements located in the part of the West Bank that Israel annexed to the Jerusalem municipality. Since the mid-1990s, Israel largely stopped officially recognizing new settlements, leading to the establishment of an additional 100 "unrecognized" settlements, usually referred to as "outposts."

Israel continues to expand and invest in the existing settlements. In addition to providing infrastructure to settlements and unrecognized outposts alike—such as connections to the road network and electricity grid, water supply, schools and hospitals, and devoting significant security expenditure in the form of IDF forces obliged to guard them—Israeli policies have provided a wide variety of financial incentives to Jews willing to live in settlements. A study by the Israeli daily newspaper *Haaretz* in 2003 found that government funding to settlements amounted to US\$1.4 billion annually (NIS 5.5 billion), including US\$526 million in security costs to protect settlers.

In East Jerusalem, which Israel unilaterally annexed from Jordan in the 1967 Middle East War (it remains occupied territory under international law), Israel exerts full governmental control over 190,000 Israeli and roughly 270,000 Palestinian residents. This report documents that Israel has sponsored the development of Jewish settlements in Palestinian areas of East Jerusalem, even in houses from which Palestinian residents are evicted, while strictly limiting Palestinian building and development, including by demolishing homes. Palestinian residents of East Jerusalem pay taxes but receive far fewer services than do residents of predominantly Jewish West Jerusalem.

Many Jews move to settlements due to their national-religious views; they believe that the West Bank is part of the historical, ancient land of Israel given to Jews by God. However, many ultra-orthodox and secular Jewish settlers move to the settlements primarily for economic reasons, such as the low cost of housing. Large government subsidies undoubtedly contribute to the high levels of immigration to settlements; in 2006, according to Israeli statistics, 20 percent of the population increase in the settlements resulted from migration from inside Israel (including new immigrants from other countries) rather than “natural growth,” a term the Israeli government uses to justify settlement construction. In 2007, 37 percent of settlement growth was due to such migration.

In addition to receiving support from the Israeli government, settlements receive support from private foreign donors, including Jewish and Christian individuals and non-profit organizations (NGOs) in the United States, the United Kingdom, and elsewhere. Donations to non-profit groups in foreign countries that fund Jewish settlements in the West Bank are often tax-deductible, including in the US. Charities have funded many aspects of settlements, including synagogues, water networks, vocational training for troubled settler youth, rifle scopes, thermal imaging systems, and other security equipment.

Settlers also benefit from Israeli government subsidies that attract investment and produce agricultural and industrial products, including for export to overseas markets. Several

multinational corporations have invested, usually through their subsidiaries, in settlement “industrial zones,” which receive massive subsidies and tax abatements from the Israeli government.

Construction Permits, Zoning, and Demolitions

Israel exercises complete control over planning procedures and construction in Area C of the West Bank and in East Jerusalem. Although the PA controls planning and construction in Areas A and B, in many cases these cover only the areas of Palestinian cities and towns that were already built-up in 1995, when the Oslo agreement was signed; over the past 15 years, Israel’s complete control over Area C has significantly affected residents of these cities and towns, particularly in cases where Israel has refused to approve Palestinian requests to build new homes beyond the limit of the built-up area, as necessary to accommodate the expanding population. For the 150,000 Palestinians whose villages lie partly or entirely inside Area C, Israel’s control over planning and construction has had severe consequences. Israeli authorities rarely permit residential construction intended to benefit Palestinians, who are effectively prevented from building outside built-up areas that in many cases are already over-crowded, and that amount to only one percent of Area C. Israel altered the Jordanian planning laws in place in the West Bank so as to exclude Palestinians from any participation in the planning process. As a result, only 18 of the 150 Palestinian communities in Area C have any plans, of which 16 were drafted by Israeli military authorities and which allow building in only very limited areas. In contrast, Israeli military orders have created a separate track for settlers, who participate in planning their own communities.

Palestinian homes and buildings that are not constructed in accordance with an approved Israeli plan are not eligible for building permits and are subject to demolition. When Palestinians construct, repair, or renovate homes, mosques, schools, medical clinics, animal pens, electricity poles, water pipes, wells, and cisterns without prior Israeli authorization—which is often impossible to obtain—the Israeli Civil Administration distributes “stop work” orders and may then authorize demolition. From 2000 to 2007, Israeli authorities rejected more than 94 percent of Palestinian building permit requests in Area C; according to government statistics, for every building permit application granted to Palestinians by the Israeli authorities during this period, 18 Palestinian structures were demolished and demolition orders were issued for 55 more. The UN reported in 2009 that Israeli authorities had delayed granting permits or had ordered the demolition of at least 25 schools in Area C with over 6,000 students.

In contrast, in several cases where Jewish settlers have built buildings, roads, and other infrastructure—and entire settlement outposts—without necessary permits, Israeli authorities did not demolish the buildings, but retroactively approved their construction. An Israeli governmental report in 2005 identified more than 100 settlement outposts that had been built illegally, without the required permits; a few have been demolished—after which settlers often rebuilt them—but virtually the same number of outposts remains today.

In several cases documented in this report, Israeli settlements and outposts continued to expand near Palestinian communities, which some residents were effectively forced to leave due to Israeli planning restrictions that prevented them from remaining in homes they had occupied for years or from building homes to accommodate expanding families. Repeated Israeli demolitions have permanently displaced Palestinian families from communities in the West Bank on the grounds that the communities are located inside “closed military zones,” which the communities pre-dated and which the Israeli military imposed despite the availability of large, uninhabited areas of land nearby and in other areas of the Jordan Valley.

Israel also applies discriminatory policies to housing in East Jerusalem, which unlike the rest of the West Bank it considers to be part of Israel. Israeli zoning laws reserve some 25 percent of the land in East Jerusalem for Israeli settlements, while zoning only 13 percent of the land for Palestinian construction, according to UN figures. In some Palestinian neighborhoods, as a result, Israel has issued no construction permits since 1967, and has demolished hundreds of Palestinian homes and buildings on the grounds that they were built illegally. According to the UN, Israeli authorities destroyed 730 Palestinian houses in East Jerusalem from 2000 to the end of 2009 due to lack of building permits. In contrast, Israeli authorities have in several cases failed to implement court orders to seal or demolish unlawful construction by settlers in East Jerusalem. In 2004, for example, 85 percent of recorded building violations in Jerusalem were located in the western part of the city, yet 91 percent of all administrative demolitions orders were for buildings in East Jerusalem, according to the Association for Civil Rights in Israel (ACRI), an Israeli human rights organization.

Israeli authorities have also repeatedly refused to approve town plans submitted on behalf of Palestinian residents of East Jerusalem neighborhoods. In the neighborhood of al-Bustan, municipal authorities rejected local residents’ plans but commissioned and approved a plan that would have razed 88 Palestinian homes to create a “garden” park area adjoining the “City of David,” a settler-run tourist and archaeological site nearby (under international pressure, the municipality revised the plan, which will now destroy between 20 and 40 homes and allow displaced Palestinians to move into the remaining structures already occupied by other families.) El Ad, the settler group operating the archaeological site, has

built a settlement that includes several Palestinian homes it obtained on the basis of Israel's "absentee property" law, which strips ownership rights from Palestinians who were not physically present in East Jerusalem on the date Israel occupied the area in 1967. El Ad has caused property damage and collapses by tunneling and conducting unapproved excavations underneath Palestinian homes.

In 2009, the Jerusalem municipality adopted a master plan ("Jerusalem Outline Plan 2000") intended "to guide and outline the city's development in the next decades," that embraced the goal of "maintain[ing] a ratio of 70% Jews and 30% Arabs" in the city. The plan's introduction acknowledged that the "goal is not attainable—the demographic ratio was already 65:35 in 2008—and that a 60:40 demographic ratio of Jews to Arabs would emerge by 2020. The plan identified "maintaining a solid Jewish majority in the city" by improving services and affordable housing for Jews as a "main policy goal." According to the Israeli NGO Ir Amim, which focuses on Jerusalem issues, based on current demographic trends the plan would create a massive projected housing shortage that would affect 150,000 Palestinians by 2030. Israeli authorities have not invoked a security rationale for the political goal of altering the demographic balance in Jerusalem, which does not justify the different treatment of the populations in Jerusalem.

Seen in their totality, Israeli plans aim to alter the demographic balance in Jerusalem as a whole by lowering the number of the city's Palestinian residents (including Christians as well as Muslims). Israeli authorities cancelled the Jerusalem residency permits of some 4,500 Palestinians in 2008 alone; the interior ministry allows only those Palestinians whom it determines have their "center of life" in Jerusalem to retain their residency permits. (Palestinian residents of East Jerusalem have special residency permits, which are distinct from Israeli citizenship or from PA identity cards held by other residents of the West Bank.)

The government's housing and construction policies in the West Bank (including East Jerusalem) violate the state's obligation not to discriminate in policies relating to housing, and have led to home demolitions that amount to arbitrary violations of the rights to a home, to housing, and to property; they also violate prohibitions against forced displacement of a population under occupation. Further, as an occupying power, Israel is prohibited from altering the legislation of the occupied territories, including planning laws, and from destroying property except as needed to maintain orderly governance of the territory and for military necessity. Rather than issuing demolition orders against schools, Israel is obliged to "facilitate the proper working" of educational institutions. Israel's human rights obligations require it to destroy homes only as a last resort and to provide alternative housing at least equivalent to that which it destroyed. Unless and until an agreement is reached that

respects the rights of the persons forcibly displaced without due process, Israel is obligated to pay them compensation and allow them to return to their lands.

Freedom of Movement

Israel has imposed an extensive network of movement restrictions on Palestinians, including checkpoints, roadblocks, and the separation barrier, in many cases solely or primarily for the benefit of settlers. As a result, large sections of the West Bank remain barred to Palestinians except those with special permits or residency in those areas. This segregation of territory limits the movement of Palestinians and effectively isolates them in residential pockets from which entry and exit is restricted and can be extremely difficult.

In contrast, settlers enjoy virtually unfettered freedom of movement, with easy access to roads, built for them at considerable expense, that bypass Palestinian populated areas and connect settlements to the Israeli road network, other settlements, and major metropolitan areas inside Israel. In some cases, Palestinians are not only barred from these roads, but are effectively cut off from their lands and other villages and cities. According to the Israeli rights group B'Tselem, as of August 2009, Palestinian vehicles were completely prohibited from traveling on 105 kilometers of West Bank roads, and only permitted vehicles, VIP card holders, and ambulances could travel on another 180 kilometers of roads. The primary road construction projects that Israel has undertaken for the benefit of West Bank Palestinians are “fabric of life roads”—usually underpasses beneath settler bypass roads that allow Palestinians to move between enclaves.

Settlers also typically enjoy easy passage through checkpoints, or travel on roads without any checkpoints, whereas Palestinian travel is inhibited by more than 500 earth mounds, checkpoints, and roadblocks, as well as by the separation barrier. According to numerous media, UN, and NGO reports, Israeli soldiers often fail to open the checkpoints and gates in the separation barrier that they are manning, or subject Palestinians to arbitrary and humiliating treatment.¹⁰ Israeli restrictions on movement have led to the “gradual funneling of Palestinian traffic onto a secondary road network,” the UN reported in June 2010.

The World Bank noted that movement restrictions on Palestinians contributed to a 60 percent decline in per capita GDP from 1999 to 2008, and argued that “a fundamental

¹⁰ In July 2010, for example, an Israeli soldier reportedly prevented a Palestinian man who lived in Azzun Atme, a Palestinian village south of Qalqilya, from carrying two kilograms of meat and a 50-kilogram sack of flour through a checkpoint controlling the only access to his home, on the grounds that these amounts exceeded allowable limits for personal consumption, although no such limits have been published. Ma'an News Agency, “‘No comment’ on arbitrary treatment,” June 16, 2010.

reassessment of closure, and a restoration of the *presumption of movement*, as embodied in the many agreements between [Israel] and the Palestinian Authority,” was necessary to allow “the Palestinian private sector be able to recover and fuel sustainable growth.”

In many West Bank areas, Israeli authorities allow Jewish settlers to travel freely but require Palestinians to present permits, usually for security reasons, which are often difficult to obtain. This is particularly salient in the areas of the West Bank that lie to the west (i.e., on the “Israeli side”) of the separation barrier. Israel began to construct the barrier during the second intifada for the stated purpose of preventing Palestinians from entering Israel to carry out suicide bombings or other attacks; however, 85 percent of the wall’s route falls inside the West Bank. A report by the Israeli NGO Bimkom found that the barrier’s path “almost totally ignores the daily needs of the Palestinian population” and is “focused almost exclusively on the desire to maintain the fabric of life of Israeli settlers.” Israelis may enter and exit these areas—including East Jerusalem—freely, without passing through checkpoints or presenting identification. An estimated 7,800 Palestinians living in these “seam zone” areas where the barrier has been completed (not including East Jerusalem) and an unknown number of others own agricultural lands there.

Palestinians may enter the seam zone only with special permits from the Israeli military, which must be renewed and are granted only to persons who can prove “permanent residence” in the area. The UN found in November 2006 that Israeli military authorities had denied 60 percent of Palestinian applicants permits to access land they owned in these “seam zone” areas. Palestinians may enter the seam zone through fewer than half of the 67 special gates that are spaced at intervals in the 425 kilometers of the separation barrier’s 709-kilometer route constructed to date, and that are often open only seasonally or for limited hours each day (this report does not consider in detail unlawful restrictions on freedom of movement imposed by Israel’s separation barrier, which have been reported extensively).

Palestinians wishing to enter Jewish settlements, usually for work purposes, also must obtain individual permits from an IDF commander, according to a military order that declares settlements to be closed military zones only to Palestinians. In cases of agricultural settlements, Israeli authorities allow settlers to transport agricultural goods directly and freely from the settlement to locations in Israel, from where they are often exported abroad. Palestinian farmers must unload and re-load their produce at checkpoints inside the West Bank, and when they cross checkpoints into Israel. The delay and labor involved raises costs, and may damage the products.

The Israeli government argues that its restriction of the freedom of West Bank Palestinians' freedom of movement is justified on security grounds. For instance, the Israeli rights group HaMoked petitioned against the "seam zone" policy, which requires Palestinians to obtain special permits to access their lands in areas of the West Bank located between the Israeli separation barrier and the 1949 armistice line (the "green line"), while Israelis and foreigners visiting Israel need no such permits. In its response to the petition, the state argued:

... it is contended that the declaration on closing area and the accompanying orders constitute systematic discrimination.... This contention ignores the fact that the said declaration and orders were issued after Palestinian residents from the region carried out dozens and hundreds of deadly terrorist attacks on a purely racist bias against Israel and Israelis; thus, substantive security reasons required a distinction be made between Palestinians and other persons who move about in the territory.¹¹

However, the Israeli policies in question restrict the movement of all Palestinians, rather than being targeted to particular persons deemed to present security risks. Further, these policies as implemented often require Palestinians to bear the entire burden of security, their own as well as the settlers'; for example, the IDF requires Palestinians who own agricultural lands near settlements to obtain the IDF's agreement to "coordinate" visits to these lands, ostensibly to prevent settlers from attacking Palestinians, and only grants such coordination during a few weeks per year.

In two cases where the Israeli military barred Palestinians from using the roads due to Palestinian attacks that killed Israeli drivers during the second intifada, the Israeli high court has recently ordered the re-opening of "settler-only" roads. In other cases, Israeli courts ordered the military to re-route sections of the separation barrier. In such cases, the court's rulings have been based on findings that the burden imposed on Palestinians was "disproportionate" to the security or other benefits to settlers. However, whereas the high court has directly addressed discrimination against Arab citizens of Israel, it has failed to address the discriminatory nature of the restrictions imposed on Palestinians in the West Bank, with the result that its rulings have addressed the impact of the implementation of policies that treat all Palestinians as security risks, but not the discriminatory nature of the policies themselves (see "Israeli jurisprudence on discrimination," below). In addition, in

¹¹ State's response to petitioners, HCJ 9961/03 (case pending), available at http://www.hamoked.org/items/3827_eng.pdf (accessed November 20, 2010).

several cases, the Israeli military has failed to implement court decisions requiring it to reduce harms affecting thousands of Palestinians, even years after the verdicts were delivered.¹²

As the UN Committee for the Elimination of Racial Discrimination noted in 2007, Israeli policies “targeting a particular national or ethnic group, especially through the wall, checkpoints, restricted roads, and permit system, have ... had a highly detrimental impact on the enjoyment of human rights by Palestinians, in particular their rights to freedom of movement, family life, work, education, and health.”

Water

Water has long been a scarce resource in the semi-arid region, and is under increased threat of over-extraction; a symbol of the pressure on regional water resources is the fact that the level of the Dead Sea is dropping by one meter per year. Israeli authorities have controlled West Bank water resources since they seized the land from Jordan in 1967, and continue to control completely all Palestinian access to water resources in the West Bank, including in Areas A, B and C. Israel provides Jewish settlers with access to water for domestic and agricultural use that it denies Palestinians. This policy has benefited the Jewish settler economy while damaging that of Palestinians, whose agricultural sector has lost up to 110,800 jobs compared to its potential with adequate access to water resources, according to the World Bank.

Jewish settlements—which use a significant proportion of the water to produce agricultural goods for export by a government-run private export company, Agrexco—are serviced by wells in the West Bank (largely in the Jordan Valley), and by the Israeli national water network (Mekorot), which itself extracts water flowing from aquifers lying beneath the

¹² For example: Yehudit Karp, a former deputy attorney general, notified the Ministry of Justice on February 7, 2010 of 12 recent court rulings the government has refused to implement, including three cases relating to Palestinians in the West Bank (HCJ 1748/06, ordering the state to remove a cement railing constructed near a road in South Mt. Hebron that severely impeded Palestinian movement; HCJ 8414/05, ordering the state to re-route the separation barrier around the village of Bil'in; HCJ 2732/05, invalidating part of the barrier's route near the settlement of Tzufin north; the ministry's letter in response is available at <http://www.news1.co.il/uploadFiles/109020411968232.doc>, accessed November 12, 2010). The Supreme Court in October 2010 criticized the State's failure to evacuate or halt construction on six illegal West Bank outposts, which the court had already ruled against in response to petition filed by Peace Now in 2007. Aviad Glickman, “Cour chides state over West Bank outposts,” Ynet News, October 19, 2010, <http://www.ynetnews.com/articles/0,7340,L-3971965,00.html> (accessed November 10, 2010). The state has failed to stop construction or survey land ownership at the Derekh Ha'avot outpost in Gush Etzion despite state promises to do so in 2004 in response to a petition submitted by Palestinian residents of the nearby village of El Khader, who claim to own the land, and Peace Now. Akiva Eldar, “Border Control / Minister of contempt,” Haaretz, October 19, 2010, <http://www.haaretz.com/print-edition/features/border-control-minister-of-contempt-1.319916> (accessed November 11, 2010).

occupied West Bank.¹³ Even many unauthorized settlement outposts are connected to the national water network. In general, Israeli subsidies for settlers, including those for settlement agriculture products, help offset costs of water and other utilities.

Average Israeli per capita consumption of water—including water consumption by settlers—is 4.3 times that of Palestinians in the occupied territories (including Gaza), according to the World Health Organization. In the Jordan Valley, an estimated 9,000 settlers in Israeli agricultural settlements use one-quarter the total amount of water consumed by the entire Palestinian population of the West Bank, some 2.5 million people.

Over-extraction of water by Israel has caused a drop in the water table in the West Bank, which contributed to a 4 percent decrease in the total amount of water Palestinians extracted from 1995 to 2007, even as the Palestinian population increased by as much as 50 percent, according to the World Bank. According to UN estimates, some 60,000 Palestinians currently living in Area C lack any access to running water and must pay high prices – up to one-sixth of their income – to bring in water tankers, which in turn require special permits from the Israeli authorities.

In 1995, according to the Oslo accords, Israel granted the PA a role in developing and regulating the use of some water resources in the West Bank, by creating a joint Israeli-PA water commission with equal representation for both sides, which must approve West Bank water projects. However, the commission's history indicates that in reality Israel and the PA are not equal partners. As of April 2009, the World Bank reported the commission had approved all but one Israeli-proposed projects in the West Bank, but only half of the projects (by dollar value) proposed by the PA for the benefit of Palestinians, of which only one-third had been implemented or begun implementation.

One reason for the unequal approval of projects is that Israel often proposes infrastructure projects that will provide water to Palestinian communities only if pipes are first laid to service Israeli settlements. Fewer projects are implemented than approved because, in addition to approval by the joint water commission, Palestinian water projects in Area C must also be approved by the Israeli Civil Administration, which often cites security grounds for refusing requests, such as ruling that Palestinian wells would be drilled in areas considered too close to settlements. Moreover, the majority of Palestinian projects that have

¹³ Israel's use of water resources originating in the West Bank includes substantial runoff from the Western and Northeastern aquifers into areas inside Israel; Palestinians are barred from using more than a small fraction of the resources of these aquifers before they flow into Israel. The joint Israeli-PA water commission does not have authority over such water resources when extracted inside Israel.

been approved involve improvements to water networks rather than drilling new wells or increasing the amount of water available to those networks; as noted, total Palestinian water consumption has decreased over the past decade even as the population has grown.

Israeli planning restrictions and military orders have forced Palestinians in Area C to spend up to one-sixth of their income to purchase water at significant expense from small, portable water tankers; water restrictions have severely affected Palestinian Bedouin communities, many of which have no reliable access to water sources. In one case discussed in this report, Israeli authorities cut water pipes leading from a spring to a Palestinian farm in the northern Jordan Valley, which now has no access to water other than via expensive tankers. The spring now supplies water for a nearby settlement through pipes that run through the farmer's land, which he cannot touch.

The creation of water infrastructure to service Jewish settlers, and the diversion of water resources away from Palestinians, is discriminatory. Israel's unequal provision of access to water resources is unjustified by any reasonable security concern or other necessity (severe water shortages affecting tens of thousands of Palestinians, notably in Area C, also violates Israel's obligations as an occupying power to ensure the welfare of the occupied population).

Its policy of exploiting the occupied territory's natural resources to benefit its own citizens violates its obligations under customary international law to alter such laws and policies in the occupied territory only where doing so benefits the local population, does not permanently deplete resources, or is required by reasons of strict military necessity (to the knowledge of Human Rights Watch, Israel has not invoked the justification of military necessity regarding its exploitation of natural resources in the West Bank, and recently ordered a temporary halt to quarrying activities by Israeli and multinational companies in the West Bank after a petition filed by Yesh Din, an Israeli human rights NGO.) The effects of Israel's discriminatory restrictions on access to water, including prohibitions on well drilling, access to the Jordan River, and the destruction of water pipes, tanks, and cisterns, have been so severe that they have forcibly displaced residents of several Palestinian communities, which also amounts to a serious violation of the prohibition against involuntarily transferring residents of an occupied territory from their homes.

Land Confiscation

Palestinians interviewed for this report stated that Israeli authorities had confiscated their lands without compensation and transferred their ownership to settlements, or protected and supported settlers who had taken their lands without official authorization or

recognition. The law of occupation permits the confiscation of private property only in cases of urgent military necessity. Human rights law permits confiscation of property only where it is non-discriminatory and proportionate to justifiable need, and where fair compensation is paid; the instances documented in this report fail to meet these criteria.

Israel has confiscated West Bank land through a variety of means. For example, it has designated 26.7 percent of the West Bank “state lands,” based on laws and procedures that make it extremely difficult for Palestinian residents to prove their ownership of an area, even when they have resided there for generations. Other Israeli laws and practices have made it virtually impossible for Palestinians to register ownership on their own initiative (which they attempt most often in response to attempts to expropriate their land). Israeli plans and maps that in some cases provide the legal basis for confiscation or demolition orders are written only in Hebrew and stored inside a settlement, which, as with other settlements, Palestinians need a special military permit to enter.

At the same time, Israeli authorities have transferred confiscated lands to the control of settlers. As noted, Israel has granted 70 percent of Area C to settlements and confiscated large areas to build road networks for settlers. No Palestinian land use is allowed in areas controlled by settlements, in closed military zones, in nature reserves, or in areas not zoned for Palestinian construction.

Even where Israel recognizes Palestinian land rights, owners may be unable to exercise them: for instance, in numerous cases where Palestinian-owned olive groves lie near a settlement, Palestinians are able to access them for only brief periods twice or three times a year, requiring Israeli military coordination and escorts. Israeli NGOs have also found, based on government documents, that numerous Israeli settlements have been partly built on privately owned Palestinian property, violating Israeli and international law.

The legal bases for land confiscation, the processes by which Israel confiscated lands, and the difficulty involved in appealing the confiscations are described in the “Background” section below. Many of Israel’s numerous alterations, through military orders, of applicable land laws and regulations in the West Bank violate the limitation of its authority as an occupying power to alter local laws except as necessary to maintain and restore order. Israel’s unjustified confiscation and transfer of property from Palestinians to settlers—the basis for demolitions and other measures that create forced displacement—is discriminatory and violates the prohibition on confiscation of property, except for reasons of military necessity.

II. Recommendations

To the Government of Israel

Israel should accept its obligations as an occupying power to cease support and subsidies for settlers, settlements, and regional councils in the West Bank, including East Jerusalem, dismantle the settlements, and ensure the welfare of the Palestinian population. Pending fulfillment of those obligations, Israel should:

- Accept that human rights prohibitions against discrimination, including with regard to the rights to housing, education, medical care, freedom of movement, access to water, and other rights, apply to Israel's actions in the West Bank, including East Jerusalem.
- Immediately suspend discriminatory policies that privilege settlers and harm Palestinians, and afford Palestinians treatment that is at least equal to that afforded to settlers, including by:
 - Ending policies that arbitrarily prevent Palestinians from obtaining construction permits, and ensuring that permitted building is adequate to Palestinian needs, taking into account the urgent need for construction to compensate for over-crowding in built-up areas and inadequate infrastructure for residential and agricultural land use due to prior restrictions;
 - Ensuring that plans for development include adequate and equitable development for Palestinians, including by reforming the planning system to incorporate meaningful Palestinian representation on planning bodies;
 - Ending selective enforcement of planning, permit, and building laws and regulations that subject Palestinian property to higher rates of demolition orders and demolitions while Jewish settlement homes are retroactively authorized;
 - Ensuring that demolitions of Palestinian homes and other property are carried out only as a last resort, are strictly necessary as required by a legitimate state purpose in accordance with Israel's human rights obligations and its obligations as an occupying power, and are fully compensated;
 - Ending policies that arbitrarily confiscate Palestinian lands by expelling residents from, or preventing land use in, areas declared "closed military zones" or nature reserves or areas under the control of settlements or settlement regional councils unless such actions can be justified by narrowly tailored military necessity;
 - Suspending policies that arbitrarily determine land ownership by refusing to recognize the land ownership rights of Palestinians who were "absentees" on the

- date Israel occupied the West Bank, or who cannot prove to have continuously cultivated their agricultural lands at all times since 1967;
- Suspending all declarations of Israeli control over land except in cases of genuine military necessity, and in such cases limiting control of land in time and area to the shortest and smallest amount possible;
 - Reevaluating and limiting the areas reserved exclusively for settlers (including the jurisdictional areas of individual settlements and of regional settlement councils) or military authorities for the benefit of settlers, including “closed military zones,” to areas strictly necessary for security;
 - Ensuring that policies restricting freedom of movement are narrowly limited to current security needs, that the burden of achieving security goals is borne equitably by Jewish settlers rather than imposed in a discriminatory fashion on Palestinians, and that security policies are narrowly tailored to address clearly defined security threats, with restrictive measures proportionate to such threats;
 - Ceasing the discriminatory extraction and allocation of natural resources such as water; and
 - Providing equitable access to water, electricity, road networks, educational and health care facilities, and other essential services for Palestinian residents living under Israeli control.
- In East Jerusalem, in addition to ceasing support for settlements and suspending discriminatory policies as described above:
 - Ensure that municipal and other resources are expended proportionately to the needs of the population, including by urgently redressing Palestinians’ lack of equitable access to paved roads, sanitation networks and other infrastructure, and to schools, hospitals, and other public services;
 - Repudiate and suspend as inherently discriminatory planning policies intended to “maintain” a demographic majority of Jewish residents; and
 - Ensure planning solutions on a non-discriminatory basis for the over-crowded Palestinians sector.
 - To ensure that policies of discrimination and forced displacement are discontinued and that victims are properly compensated, and considering Israeli courts’ failure to adjudicate claims that settlements and their associated infrastructure are discriminatory, create a national commission of inquiry, empowered to subpoena Israeli officials and documents as necessary, that will receive and investigate complaints from Palestinian residents of the West Bank who have been harmed by Israeli policies, and recommend

changes in government policy to end such unlawful discrimination and forced displacement pending withdrawal of Israeli settlements from the West Bank.

To the Government of the United States

Avoid policies that support the features of Israeli settlement policies that are inherently discriminatory and otherwise violate international law, including by:

- Avoiding offsetting the costs of Israeli expenditures on settlements by withholding U.S. funding from the Israeli government in an amount equivalent to its expenditures on settlements and related infrastructure in the West Bank;
- Assessing and analyzing the role played by donations from tax-exempt charities in supporting discriminatory and other illegal aspects of the settlements. To this end Congress should request a report from the General Accounting Office on the subject of tax-exempt organizations that support settlements and settlement-related activities. Such a study should include specific assessments of the amounts and types of donations involved and the actual end-uses of such donations in the settlements. The report should also address whether current laws and regulations regarding charitable organizations ensure that tax-exempt status is not granted to organizations that facilitate human rights violations or violations of international humanitarian law, are adequately enforced, and whether they are adequate or require revision.

To the International community, Including the United States and European Union

Ensure that policies do not promote settlement activity, such as the discriminatory violations of Palestinian human rights documented in this report, by enforcing tariff agreements in accordance with international law, such that Israeli settlement goods are not given preferential treatment, including by requiring and enforcing clear origin labeling.

To the United Nations Committee on the Elimination of Racial Discrimination

Follow up and provide early warning on the discriminatory impact of Israeli settlement policies and practices on the Palestinian population of the West Bank.

To Businesses Profiting from Settlements

In accordance with their corporate codes of ethics and with international guidelines, such as the Ruggie Framework, stating that businesses should respect the human rights of those affected by their activities:

- Review involvement in settlements to determine the degree to which they contribute to and/or benefit from violations of Palestinian residents' human rights;
- Identify and implement strategies to prevent and mitigate any corporate involvement in such abuses; and
- In cases where business activity directly contributes to serious violations of international law, including prohibitions against discrimination, take action to end such involvement in legal violations, including where necessary ending such operations altogether.

III. Methodology

This report examines the Israeli government's application of different laws and policies to a number of otherwise similarly and closely situated Palestinian and Jewish communities in the West Bank.

It is based on case studies that are intended to illustrate the discriminatory impact of Israeli policies regarding settlements. They were selected for examination on the basis of media accounts or reports by nongovernmental or international organizations indicating that they illustrate discriminatory treatment by the state between the Jewish and Palestinian communities.

Human Rights Watch interviewed 66 Palestinians and 8 settlers, often with the help of a Hebrew or Arabic interpreter.

We also interviewed a member of the Jerusalem municipality and three Civil Administration officials, and visited the site of each area discussed. The majority of interviews with Palestinians began in small group settings of two to three persons, after which researchers followed up with individual interviews. Researchers sought responses to questions about each case from the relevant Israeli authorities. Wherever possible, we took information about settlements from Israeli government sources. Three Human Rights Watch staff conducted field research from February to July 2010.

Many case studies included in the report discuss land areas that have either been physically built up by settlement construction or declared to be part of the jurisdictional area of settlements and thus off-limits to Palestinians. In these cases we relied on a variety of sources, including testimony, Israeli government figures, information resulting from Freedom of Information Law requests, and as visual aids, Geographical Information System (GIS) layers (a mapping technology used by planners) provided to Israeli NGOs by the Israeli government.

Details about the hardships suffered by people in individual communities have been excluded where they did not relate to discrimination.

Note on currency conversion: this report used an exchange rate of 3.8 New Israeli Shekels (NIS) per US dollar.

IV. Background

Israel began building settlements in the West Bank almost immediately after defeating Jordanian forces and occupying the territory in 1967. Since then, the number of Jewish settlers and settlements in the West Bank has grown continuously under a series of Israeli governments. At the time Israel and the Palestinian Liberation Organization signed a “Declaration of Principles” at the end of 1993, the population of the settlements in the West Bank (including settlements in East Jerusalem) totaled some 247,000 residents.¹⁴ By the end of 2009, the figure had risen to roughly 490,000 people.¹⁵

Israel also annexed 72 square kilometers of the West Bank from Jordan in 1967 that it declared part of the Israeli municipality of Jerusalem. Commonly called “East Jerusalem,” the area now includes settlements in which 188,232 Jewish settlers resided at the end of 2008 (the last year for which figures are available).¹⁶

The first Jewish settlement to be established after Israel occupied the West Bank in 1967 was Kfar Etzion, named after a Jewish community in the area that pre-existed the State of Israel that Arab armed forces destroyed during the Israeli-Arab war in 1948.¹⁷ Some of the settlement’s founders were related to the original community’s members. Other early settlements in the rest of the West Bank (not including East Jerusalem) were either military bases or “Nahal settlements” founded by IDF soldiers whose duties combined military service and forming the “core” of agricultural settlements, which were later expanded and became wholly civilian.

There are currently four types of officially recognized settlements as defined by their organizational structure: community (which tend to be middle-class, and are registered as cooperative associations and managed by general meetings); cooperative (which to some

¹⁴ B’Tselem, *Land Grab*, 2002, p. 8.

¹⁵ According to the Israeli Central Bureau of Statistics, by 2009, 301,200 settlers lived in the West Bank excluding East Jerusalem. Figures for East Jerusalem in 2009 are not available, but 184, 707 settlers lived there in 2007, according to the Jerusalem municipality and the Jerusalem Institute for Israel Studies. Figures compiled by B’Tselem, *By Hook and by Crook: Israel’s Settlement Policy in the West Bank*, July 2010, pp. 6-7, http://www.btselem.org/Download/201007_By_Hook_and_by_Crook_Eng.pdf (note: Human Rights Watch citations are to an advance edited version of the B’Tselem report; pagination may be slightly different in the version available online).

¹⁶ See B’Tselem, http://www.btselem.org/English/Settlements/Settlement_population.xls (accessed May 12, 2010).

¹⁷ Some members of the Israeli government opposed the settlement, and Foreign Ministry legal advisor Theodor Meron argued in a 1967 memo to Prime Minister Levi Eshkol that “civilian settlement in the administered territories contravenes explicit provisions of the Fourth Geneva Convention.” An English translation of Meron’s memo is available at <http://www.soas.ac.uk/lawpeacemideast/resources/file48485.pdf> (accessed April 3, 2010).

extent share ownership of means of production); urban (which have more than 2,000 residents and are managed by elected committees); and rural (which have fewer than 2,000 residents and are managed similarly).¹⁸ There are also unofficial settlements, or “outposts,” that Israel does not officially recognize (but which it has nonetheless supported by providing housing, roads, connections to electricity and water networks, and other benefits).

Early settlements were influenced by an unofficial plan developed by Yigal Alon, labor minister and head of the Ministerial Committee on Settlements in 1967, to establish a “Jewish presence” in areas of the West Bank not densely populated by Palestinians, encompassing the eastern parts of the West Bank (the Jordan Valley and the desert area east of Jerusalem). Settlement and annexation of these areas was initially conceived as necessary for state security and as part of a plan to hold on to certain areas of the West Bank as part of the Jewish state.¹⁹ In 1974, religious-nationalist Israelis formed Gush Emunim (“Bloc of the Faithful”), a settler lobbying group, which sought to pressure the government to establish settlements in far larger areas of the occupied West Bank on the basis of asserted Jewish religious rights to the area.²⁰ In January 1981, the Israeli cabinet adopted the “Drobless Plan,” which called for increased civilian settlement in the occupied West Bank.²¹

The Israeli government established many settlements in the early 1980s. Beginning in 1977, Ariel Sharon, as agriculture minister and chairman of the Ministerial Committee for Settlement, created 67 new settlements. In a departure from earlier plans to settle sparsely populated areas such as the Jordan Valley, Sharon established many settlements in the geographical center of the West Bank.²² As of 2009, Israel recognized 121 settlements in the West Bank; it considers another 12 settlements in East Jerusalem (including annexed areas of the West Bank) as part of Israel rather than as settlements.

¹⁸ B’Tselem, *Land Grab*, 2002, pp. 23-24.

¹⁹ See Yigal Alon, “Israel: the Case for Defensible Borders,” *Foreign Affairs*, October 1976, <http://www.foreignaffairs.com/articles/26601/yigal-allon/israel-the-case-for-defensible-borders> (accessed September 30, 2010).

²⁰ The history of the settlement movement has been described by, inter alia, Akiva Eldar and Idith Zertal, *Lords of the Land: The War for Israel’s Settlements in the Occupied Territories* (English trans.), Nation Books, 2007; B’Tselem, *Land Grab*, 2002; and Gershom Gorenberg, *The Accidental Empire: Israel and the Birth of the Settlements* (Times Books, 2006).

²¹ Mattityahu Drobless, “Settlement in Judea and Samaria – Strategy, Policy and Plans,” World Zionist Organization, Settlement Division, September 1980. The plan, originally published in 1978, states, for example: “The civilian presence of Jewish communities is vital for the security of the state.... There must not be the slightest doubt regarding our intention to hold the areas of Judea and Samaria forever.... The best and most effective way to remove any shred of doubt regarding our intention to hold Judea and Samaria forever is a rapid settlement drive in these areas.”

²² Shaul Arieli, Roby Nathanson, Ziv Rubin, Hagar Tzameret-Kertcher, “Historical political and economic impact of Jewish settlements in the occupied territories,” Israeli-European Policy Network (article), June 2009, p. 3, http://annaveeder.files.wordpress.com/2009/07/iepn_16-6-09.pdf (accessed July 8, 2010).

Israel also built 17 residential and agricultural settlements in Gaza, most of which were referred to as “Gush Katif,” but abandoned them in 2005 when it withdrew from the coastal strip, in addition to four settlements in the northern West Bank.²³ The government subsequently moved some of the former Gaza settlers to an unauthorized settlement “outpost” in the West Bank, Maskiyot, and subsequently officially “recognized” the settlement.²⁴

With the exception of Maskiyot and settlements in East Jerusalem, “since the mid-1990s, successive Israeli governments had adhered to a policy of not authorizing the establishment of new settlements” in the West Bank, due to international criticism of Israel’s settlements policy, according to Daniel Kurtzer, a former US ambassador to Israel.²⁵ Indeed, Israel has established only four officially recognized settlements since 1991. However, it has continued to “expand” existing settlements based on what it terms “natural growth,” although Israeli government statistics show that a significant proportion of the growth in the settlement population results from Jewish immigration. From 1993 to 2009, the settlement population almost trebled, from 109,100 to 301,200 (or 490,000 including East Jerusalem). Moreover, Israel has “turned a blind eye to the outposts set up with the sponsorship of the Settlement Department of the [World Zionist Organization], which receives its budget from the government.”²⁶

²³ Many commentators have speculated as to why Prime Minister Ariel Sharon, “the father of the settlements,” took the decision to unilaterally withdraw settlers from Gaza and areas of the West Bank; the Israeli position was that the withdrawal, which Palestinians opposed because it was done unilaterally, was intended to restart a stalled peace process, while other Israeli officials stated that it was the price for holding on to other West Bank settlements; see “Q & A: Sharon’s Gaza plan,” *BBC*, February 20, 2005, http://news.bbc.co.uk/2/hi/middle_east/3774765.stm (accessed September 5, 2010). According to Prime Minister Sharon’s evacuation plan of May 28, 2004, Israel evacuated the settlements of Ganim, Kadim, Sa-Nur and Homesh, and all military installations in the northern West Bank. An army decree declaring northern Samaria a closed military zone went into effect at midnight, August 15, 2005, *Ynet*, August 15 2005, <http://www.ynetnews.com/articles/0,7340,-3127274,00.html> (accessed September 5, 2010).

²⁴ In 2008, according to the *Jerusalem Post* newspaper, the Israeli Defense Ministry allowed an outpost in the Jordan Valley known as Maskiyot to install six caravans intended for settlers who had previously been evicted from Gaza settlements. The Interior Ministry allowed the families living there to register Maskiyot as their permanent address and authorized final building plans for the 20 homes. Maskiyot is the most recent settlement to be recognized in the West Bank (not including East Jerusalem, which Israel, as noted, considers part of its territory). “Ground broken for first 20 homes in new Jordan Valley settlement,” *Jerusalem Post*, August 7, 2009, <http://www.jpost.com/Home/Article.aspx?id=154047> (accessed April 25, 2010).

²⁵ Daniel Kurtzer, “Behind the Settlements,” *The American Interest*, Spring (March/April) 2010, pp.4-14. Israeli commentators note that in the 1993 Oslo Accords, Israel promised to halt settlement growth “so as to refrain from changes which may influence the final agreements.” Arieli, Nathanson, Rubin and Tzameret-Kertcher, “Historical, political and economic impact of Jewish settlement,” p. 4.

²⁶ Arieli, Nathanson, Rubin and Tzameret-Kertcher, “Historical, political and economic impact of Jewish settlement,” p. 5, citing the report of Talya Sasson, *Report: Opinion Concerning Unauthorized Outposts*. An English summary of the Sasson Report is available at <http://www.mfa.gov.il/MFA/Government/Law/Legal+Issues+and+Rulings/Summary+of+Opinion+Concerning+Unauthorized+Outposts+-+Talya+Sason+Adv.htm> (accessed on April 4, 2010). Human Rights Watch drew on the full Sasson Report, available in Hebrew, in writing this report.

In response to the dwindling number of new “authorized” settlements, settlement activists have created an increasing number of “outposts,” or settlements constructed without prior Israeli approval. Thanks to the combination of new outpost construction and the continuing enlargement of existing settlements, the number of settlers has continued to accelerate since 2001.²⁷

The fastest-growing sectors among settlers include “national-religious” Jews, who believe in a Biblical right to expand the boundaries of Israel to include the West Bank.²⁸ National-religious settlers comprise more than 80 percent of the 70,000 settlers east of Israel’s “separation barrier” in and around the West Bank.²⁹

The second fastest-growing sector is ultra-Orthodox Jews, who are the majority of the population in settlements to the west of Israel’s separation barrier. Most live there for economic rather than ideological reasons.

In 2005, an Israeli government report on the outposts identified 105 outposts, including 15 located wholly on Palestinian private property and 39 partly on Palestinian private property. Written by Talya Sasson, an Israeli Justice Ministry official, at the request of Prime Minister Ariel Sharon, the report sharply criticized the government for providing the outposts, which are illegal under Israeli as well as international law, with support and services that in some cases rivaled those offered to officially recognized settlements. The Sasson report also criticized the role of the settlement division of the World Zionist Organization (WZO) – an international, non-governmental body, whose settlement division is funded by the Israeli government and leases lands to settle in the West Bank from the Civil Administration. The report found that the WZO had improperly provided lands it administered to settlers, who erected outposts without necessary approvals and notifications and had even established settlements on privately owned Palestinian lands; the report recommended that the Civil Administration immediately cancel any outstanding land allotments to the WZO, among

²⁷ “From 1992-2001, the number of Jewish settlers increased by approximately 93,000 and four settlements were added; in the period from 2001-2009, another 95,000 settlers were added to the population and 100 additional outposts established.” Akiva Eldar, “Border control / Nothing natural about it,” *Haaretz*, June 2, 2009, <http://www.haaretz.com/hasen/spages/1089778.html> (accessed July 15, 2010), citing Col (Res.) Shaul Arieli, former deputy military secretary to then-prime minister Ehud Barak.

²⁸ For example, a settler website, Yesha Homestead, encourages Jews to “reclaim Judea and Samaria” by “buying out ... the Arab population”; the website offers settlement lands for sale. The website adds, “With so called Palestinians confined to Cantons, the option remains open for them to sell and find a better life elsewhere. The United Nations Charter gives them this right. Their right to emigrate is an inalienable basic human right.” “Yesha Homestead: Reclaim Judea and Samaria,” <http://yesha.homestead.com/buyshomron.html>, accessed October 31, 2010. The website advertises land for sale in “Galil, Golan, Samaria, Jordan Valley Jerusalem, [and] Judea.” “Perpetual Homestead,” <http://perpetual.homestead.com/index.html>, accessed October 31, 2010.

²⁹ International Crisis Group, *Israel’s religious right and the question of settlements*, July 20, 2009, p. 8.

other measures.³⁰ The Civil Administration, the report found, had in turn allocated settlements privately owned lands and lands whose ownership Israel had not determined (a category that Israel refers to as “survey land”), and had authorized the connection of outposts to water and electricity networks. Subsequent Israeli governments have not implemented the report’s recommendations.

The Rural Building Administration branch of the Ministry of Construction and Housing provided financing to settler regional councils for activities including “land preparation, development, road break through and paving, connecting water, electricity and other facilities, preparing infrastructure for caravans [trailer homes], etc., and establishing public buildings in unauthorized outposts.”³¹ In one example, in 2003 the ministry gave settlers more than 33 million shekels (US\$ 8.7 million) to buy 520 caravans or trailer homes to place in outposts. The aid “was disguised as building new neighborhoods within existing settlements.”³² The government report notes that the housing ministry “never bothered to check” the land registry to see whether Palestinians had title to the lands where it was financing outpost construction. As of June 2009, the current Israeli government under Prime Minister Benjamin Netanyahu of the right-wing Likud Party failed to appoint any staff to a ministerial committee that had been established to follow up on the recommendations of the critical report.³³

Key features of Israel’s settlements policy are also discriminatory against Palestinians and have forcibly displaced Palestinians from their homes and villages. As discussed below, these features include: the means used to confiscate Palestinian land and the transfer of that land to build settlements; restrictions on Palestinians’ ability to plan and build on land they retain as opposed to the permissive planning and building of settlements; and the combination of state support for Jewish settlers with lax enforcement of relevant Israeli laws that regulate settlement construction.

Israeli Jurisprudence and Discrimination

The Israeli Supreme Court (which typically sits as the High Court of Justice when dealing with cases relating to state actions, including in the occupied territories) ruled in 1979 that

³⁰ For a description of the role and origins of the World Zionist Organization, see B’Tselem, *Land Grab*, pp. 20-21.

³¹ The ministry’s disguised aid was significant, although only partial figures are available. In the period between 2000 and 2004 alone, and not including financing for planning, infrastructure and public buildings, costs amounted to 71,870,000 shekels (US\$19 million). Sasson, *Summary of the Opinion Concerning Unauthorized Outposts* [the English translation of the summary has no pagination].

³² *Id.*

³³ B’Tselem, *By Hook and by Crook*, p. 20.

settlements could not be established on land privately owned by Palestinians on the grounds of “military necessity,” as they had been previously.³⁴ As a result the Israeli military began to transfer to settler control lands that had been declared “state lands.” The Court later refused to accept petitions against such settlement policies on the basis that the settlements issue was primarily political.³⁵ The Court has never ruled that all civilian settlements are unlawful under the laws of occupation, although it overruled the Israeli government’s position that Israel’s obligations under the Geneva Conventions and customary international humanitarian law did not apply to the occupied West Bank.³⁶

The Court has adopted a distinctly different approach to discrimination cases between cases inside Israel involving Arab (Palestinian) citizens of Israel and those in the West Bank.

Inside Israel, the Court has stated that “the principle according to which one may not discriminate on the basis of...nationality... [or] religion... is a basic constitutional principle, which is an essential and indispensable part of our fundamental legal perceptions and an integral part of them”.³⁷ In 2006, the Supreme Court struck down a National Priority Areas scheme to provide a variety of benefits to certain communities on the basis that only four of 500 communities that would benefit were Arab Israeli, despite the fact that a high

³⁴ The Court approved the establishment of several Jewish settlements on the grounds of “military necessity” in several cases (H.C.J. 606/78, *Ayub v. Minister of Defense* 33 (2) P.D. 113) until 1979, when the Court ruled against the establishment of a civilian settlement on these grounds. (H.C.J. 390/79 *Dweikat v. Government of Israel* 34 (1) P.D. 1.)

³⁵ The Court refrained from ruling on the legality of the settlements under international law, but constrained the military commander’s power to requisition private land for civilian settlements. The Court has since refused to adjudicate the legality of settlements subsequently established on land that Israel claims as “state land,” on the basis that the issue was political. (“The unsuitability of the questions raised in the petition for a judicial determination by the High Court of Justice derives in the present case from a combination of three aspects that make the issue unjusticiable: intervention in questions of policy that are in the jurisdiction of another branch of Government, the absence of a concrete dispute and the predominantly political nature of the issue.” H.C.J. 4481/91 *Bargil v. Government of Israel* 47 (4) P.D. 210, http://www.takdin.co.il/search/HCI%20448191%20Bargil%20v.%20Government%20of%20Israel_hd_oL34rDp8qN3GqE34kQ7Hj.html, accessed November 18, 2010.)

³⁶ Israel’s official position, stated in 1971 by then Attorney General Meir Shamgar, is that international humanitarian law, which prohibits settlements, does not apply to the West Bank to because its annexation by Jordan never received international recognition. The land occupied was not therefore “the territory of a High Contracting Party,” a requirement for application of the Fourth Geneva Convention. However, Israel undertook voluntarily to comply with what it referred to as the “humanitarian provisions” of the Fourth Geneva Convention, although it never specified what constituted the convention’s “humanitarian provisions.” Israeli authorities have argued that it is possible to “strike a delicate balance between the basic assumption regarding the temporary nature of the regime of belligerent occupation in the area and the status of Israeli civilian settlements in the area.” “Complementary Argument on Behalf of the State,” HCJ 1526/07, *Yassin v. Civil Administration*, July 5, 2007. The Israeli High Court of Justice has repeatedly stated that the laws of occupation apply to Israel’s belligerent occupation of the West Bank. See B’Tselem, *Land Grab*, pp. 37-38, citing Shamgar, “The Observance of International Law in the Administered Territories,” 1 *Israel Yearbook of Human Rights* (1971) 262, pp. 262-266, and HCJ 785/87, *Afo v. Commander of IDF Forces in the West Bank, Piskei Din* 42(2) 4. See also, e.g., HCJ 2056/04, *Beit Surik Village Council v. Government of Israel, June 20, 2004* (“The authority of the military commander flows from the provisions of public international law regarding belligerent occupation,” citing the Hague Regulations of 1907 and IV Geneva Convention of 1949).

³⁷ HCJ 114/78, *Burkan v. Minister of Finance* PD 32(2) 800, 806.

percentage of poor communities in Israel are Arab Israeli. Then-Chief Justice Aharon Barak ruled that the “invalid and discriminatory... effect” of the policy was an “essential matter”:

The government’s decision deals with one of the most basic rights – the right to education. Its result is infected with one of the most “suspect” distinctions, which is the distinction made on the basis of nationality and race. It should be expected that governmental policy in this area will maintain equality between Jews and Arabs.³⁸

Similarly, in 2000 the Supreme Court struck down the Israel Land Administration (ILA) policy of transferring lands inside Israel to the Jewish Agency (JA) because the JA did not allow non-Jews to buy lands.³⁹ It clarified that the discrimination test is not one of intent but of outcome:

The outcome (“effect”) of the policy of differentiation now in place is discriminatory, even if the motivation for differentiating is not the desire to discriminate. The existence of discrimination is determined, inter alia, by the effect of the decision or policies, and the outcome in the matter at hand is discriminatory....⁴⁰

Six of 11 judges on the Court ruled in 2006 that the Citizenship and Entry into Israel Law, which denies Palestinian and other Arab spouses of Israeli citizens or residents the possibility of securing legal status in Israel, and so prevents family reunification, violated the constitutional guarantee of equality, since the law would affect Arab- citizens of Israel almost exclusively. The Chief Justice suggested that only individual security assessments might justify differential treatment, and not sweeping bans on the basis of race, which are not forms of “permissible distinction”:

This distinction is not based on the security risk presented by the Palestinian spouse from the [occupied territories], since even if there is no information with regard to the risk that he presents, and even were it proved de facto that he presents no danger, his entry into Israel is prohibited. My conclusion is, therefore, that the serious violation of the realization of the right of Israeli

³⁸ H.C. 2773/98 and H.C. 11163/03, The High Follow-up Committee for the Arab Citizens in Israel, et. al. v. the Prime Minister of Israel.

³⁹ HCJ 6698/95 Ka’adan v. Israel Lands Authority, PD 54(1) 258, March 8, 2000.

⁴⁰ Ka’adan, para. 30 of Chief Justice Barak’s judgment.

Arab spouses—and them alone—caused by the Citizenship and Entry into Israel Law is not based on a relevant distinction.⁴¹

However, the same Court has not, to Human Rights Watch’s knowledge, ever ruled on the specific issue of discrimination in claims by petitioners in cases regarding Palestinians in the West Bank or addressed the issue of discrimination when it comes to state policies in the occupied Palestinian territories.

In a number of cases the Court has ruled against the Israeli military for policies that harm Palestinian residents of the West Bank illegally. But in none of these cases has the court addressed discrimination; it has instead typically applied a judicial “proportionality” test, which has focused on the question of whether the harm or restriction in question is proportional to the stated purpose, without first analyzing the legality of the policy or practice under the discrimination test, according to which differential treatment on the basis of race, ethnicity or religion would have to be narrowly justified.⁴²

In at least two cases, the Court has not ruled on specific discrimination arguments brought by the petitions. The Association for Civil Rights in Israel (ACRI) raised this argument in a case concerning highway 443, a road running through the West Bank which the IDF closed to all Palestinian traffic following killings of Israelis on the road during the first years of the second intifada. The Court ruled the road closures exceeded the military commander’s authority on grounds of disproportionately, and because although the military had initially claimed in the 1980s that the road would be built for the benefit of Palestinians as well as Israelis, the total ban on Palestinian traffic imposed in 2002 rendered the road solely for Israeli use, a step that exceeded the authority of the military commander in the occupied territories. The President of the Court noted, in her concurrence with the opinion, that:

...these security mechanisms, which create total separation between different populations and prevent an entire population group from using the road, lead to a sense of inequality and the connotation of faulty motives. The

⁴¹ HCJ 7052/03, *Adalah v. Minister of Interior*, para. 50 of Chief Justice Barak’s judgment.

⁴² Human Rights Watch interview with Limor Yehuda, lawyer, ACRI, March 25, 2010. For example, in the “Beit Surik” case in 2004, issued a week before the International Court of Justice’s Advisory Opinion on the separation barrier Israel is building in the West Bank, the Israeli High Court of Justice determined that the decision to construct the barrier was based on legitimate military needs, but that the route of the barrier in certain areas was disproportionate due to its impact on the daily fabric of life of the local Palestinian population, and the State was accordingly ordered to change the route. The justices “ignored the question of the illegality, in international law, of the settlements that Israel established in the West Bank. Thus, the High Court did not examine the effect of this illegal action on the legitimacy of the considerations underlying the construction of the barrier.” Nasrat Dakwar, “The Separation Barrier and International Law,” ACRI, June 17, 2008, <http://www.acri.org.il/eng/story.aspx?id=496> (accessed August 10, 2010).

consequence of pushing an entire population off from using a public resource is extremely harsh. Thus, the military commander must do all in his power to minimize such situations and prevent the harsh impact and the feeling of discrimination that accompanies them.⁴³

However, neither the opinion nor the President's concurrence adjudicated ACRI's claim of discrimination in its ruling. Instead, the President of the Court warned that:

...we must be careful and restrained in using definitions that give the security mechanisms used to protect those using the road a meaning of separation based on illegitimate bases such as race and nationality.⁴⁴

In another case, the Court similarly found that the harm of a travel ban the military imposed on the Palestinian population was "disproportionate" compared to the relevant security considerations. The military had banned the residents of 12 Palestinian villages (comprising approximately 25,000 people) in the western Hebron governorate from access to a three kilometer-long segment of a road (Road 3265) that connected them to the city of Hebron, in order to protect settlers from the nearby settlement of Negohot and its illegal outpost (a total of approximately 200 people) after a settler was shot and killed on the road in 2000.⁴⁵ The court did not address the argument raised by the petitioners regarding racial discrimination, and did not apply the basic principle that differential treatment on the basis of race or religion needs a very high level of justification, in particular if it is applied to all Palestinians.

Several other cases where discrimination against Palestinians in the West Bank is claimed are currently before the Court.⁴⁶

⁴³ HCJ 2150/07, Concurring opinion of President Beinisch, para. 5; available (full text in Hebrew only) at <http://elyon2.court.gov.il/files/07/500/021/M19/07021500.M19.htm> (accessed December 12, 2010).

⁴⁴ *Id.*, para. 6. The English summary of the concurrence provides an overview of the President's position: "[She] warned [the petitioners] against referring to security measures adopted in order to protect persons travelling on the roads as segregation based on improper reasons of race and ethnicity, and she held that the comparison made by the petitioners between preventing the traffic of Palestinian inhabitants along road 443 and the crime of Apartheid was so extreme and radical that there was no basis for raising it at all." Summary available at http://elyon1.court.gov.il/files_eng/07/500/021/m19/07021500.m19.pdf (accessed November 20, 2010).

⁴⁵ HCJ 3969/06, *Al-Kharub v Commander of IDF Forces in Judea and Samaria*, 22 Oct 2009.

⁴⁶ E.g., HCJ 11235/04, *City of Hebron vs. the State of Israel*, regarding the ban on Palestinian movement in city center of Hebron; HCJ 4057/10, *ACRI v. Commander of IDF Forces in Judea and Samaria*, and HCJ 3368/10, *The Palestinian Ministry for Prisoners Affairs v. Israeli Minister of Defense*, regarding the length of periods of arrest in military regulations in the Occupied Territories, which only apply to Palestinian residents and not settlers.

Israel's High Court has repeatedly referred to human rights law in rulings regarding the Israeli military's actions in the West Bank, and in at least one case based its decision on the norms of the International Covenant on Civil and Political Rights (ICCPR).⁴⁷ However, it has not clearly ruled that Israel's international human rights obligations apply there.⁴⁸ The Israeli government has repeatedly rejected the applicability of its human rights obligations to the territories it occupies, despite rulings by the International Court of Justice and the findings of other UN human rights bodies, including the committees that oversee the application of the Covenant on Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights, and the Convention on the Elimination of Racial Discrimination.⁴⁹

Land Confiscation

Israel asserts military and civil control over Area C. But it also asserts de facto property rights over land, which it often confiscates from Palestinian owners and hands the contractual rights over to settlers. In total, according to the Israeli human rights group B'Tselem, settlers control some 42.8 percent of the West Bank (all of which falls inside Area C), including the built-up areas of settlements (1 percent of the West Bank); lands inside settlement municipal boundaries (9.3 percent of the West Bank, which is almost always gated and fenced and which Palestinians require military permits to enter); and lands controlled by settler regional councils that oversee multiple settlements (33.5 percent, including large land reserves for settlements).⁵⁰

In the vast majority of cases, settlers who purchase homes in the West Bank do not obtain full title to the property, but sign contracts with the "settling body," usually the World Zionist Organization, according to which they receive the right to use the property for a specified time. The settling body was granted authority to settle the area by the Israeli Civil Administration.⁵¹ In a few cases, according to an Israeli lawyer who has litigated on behalf of Palestinians affected by settlements, "purchasers contracted to waive their right to know that their home has received all the necessary approvals and permits from the Israeli

⁴⁷ HCJ 3239/02, *M a'arab v. The IDF Commander in Judea and Samaria*, 57(2) PD 349.

http://elyon1.court.gov.il/files_eng/02/390/032/a04/02032390.a04.pdf (accessed October 20, 2010).

⁴⁸ See discussion in Aeyal Gross, "Human Proportions: Are Human Rights the Emperor's New Clothes of the International Law of Occupation?," *European Journal of International Law*, 2007 (18) no.1, pp. 1-35, citing among other cases HCJ 7957/04, *Mara'abe v. The Prime Minister of Israel* ("we shall assume – without deciding the matter – that the international conventions on human rights apply in the area"), <http://www.ejil.org/pdfs/18/1/212.pdf> (accessed October 14, 2010).

⁴⁹ For a full discussion, see section "Discrimination and Forcible Transfer in International Law," below.

⁵⁰ B'Tselem, *By Hook and by Crook*, p. 9.

⁵¹ Human Rights Watch reviewed copies of several contracts for residential property in one settlement. Human Rights Watch telephone discussion with Dror Etkes, head of the settlements project at Yesh Din, an Israeli NGO, Jerusalem, October 20, 2010.

authorities due to the complexity of the land authorizing process.”⁵² In some cases, contracts for settlement homes include a clause stipulating that the settlers agree to receive compensation in the case of Israel’s withdrawal from the West Bank.⁵³ In a minority of cases, settlers have purchased title to property directly from registered Palestinian owners.

The processes by which Israel has confiscated land in the West Bank and granted it to settlements—thoroughly described elsewhere⁵⁴—include seizing or requisitioning private Palestinian lands for military purposes; expropriating Palestinian land for “public needs”; declaring Palestinian property as “absentee property”;⁵⁵ and registering Palestinian land as “state land.”⁵⁶

In all these instances, the government subsequently transferred land it had confiscated from Palestinians to Jewish settlements. For example, according to an Israeli government database that was leaked to the press in 2004, the government has built 42 settlements on some 31,000 dunams of land it seized purportedly for “military purposes” (one of the 42 was evacuated in 2005).⁵⁷

⁵² Human Rights Watch discussion with Michael Sfard, lawyer, Spain, October 15, 2010.

⁵³ *Id.*

⁵⁴ See, e.g., B’Tselem, *Land Grab*, 2002, chapter 3, and *By Hook and by Crook*, 2009, chapter 3; Bimkom, *The Prohibited Zone*, 2008.

⁵⁵ A military order transferred all Palestinian property whose owner had left the West Bank at the time of the 1967 war, regardless of the circumstances, whose owner was unknown, or whose owner was a resident of an “enemy country,” which at the time included Jordan, Egypt, Lebanon, Syria, and others, to the Custodian for Abandoned Property. The Custodian is responsible for protecting the property pending the owner’s return, but as a general rule, Israel has forbidden the return of refugees to the West Bank, making it impossible for Palestinians displaced by conflict to reclaim their property. As was the case with “state lands,” discussed below, Israel’s survey of the West Bank was conducted in an effort to claim lands over which Palestinians could not prove ownership.

⁵⁶ Since 1967, Israel has designated close to 18 percent of the West Bank as a closed military zone for the purposes of military training. In addition, over two percent of the West Bank is taken up by Israeli military bases and by a security zone along the border with Jordan. These areas, which fall under full Israeli control and lie within “Area C” as determined by the Oslo agreements, are generally closed to Palestinians. In the southern Hebron Mountains, for example, the Israeli army declared some 3,000 hectares of land as a firing zone as early as the 1970s. This notice has been renewed ever since. The area of the proclaimed firing zone includes 12 Palestinian villages. (Bimkom, *The Prohibited Zone*.) In addition, approximately 10 percent of the West Bank is an Israeli-designated nature reserve, in which Palestinian construction is prohibited. Of land designated as a nature reserve, some 48 percent overlaps with the closed military training zones; some of the remainder falls within “Area B,” despite the fact that under the Oslo agreements, the Palestinian Authority nominally has civil control over this area and thus the authority to authorize building. OCHA, *Restricting Space: The Planning Regime Applied by Israel in Area C of the West Bank*, December 2009, http://www.ochaopt.org/documents/special_focus_area_c_demolitions_december_2009.pdf (accessed April 18, 2010.)

⁵⁷ Spiegel Database (prepared in 2004 at the request of the Israeli government by Gen. Baruch Spiegel), available at <http://www.haaretz.com/hasen/spages/1060043.html> (in Hebrew, accessed June 14, 2010. Human Rights Watch consulted the full Spiegel database in preparing this report. See B’Tselem, *By Hook and by Crook*, p. 22, citing the Spiegel database and a Civil Administration map of appropriated land.

The majority of Israeli settlements in the West Bank (not including in East Jerusalem) were founded on “state land.”⁵⁸ Israeli authorities consider 26.7 percent of the West Bank to be state land and have consistently financed settlement construction and control over state land, while refusing to allocate such land for Palestinian use (with one exception, the Jahalin Bedouins near Ma’ale Adumim, discussed in this report).⁵⁹

The term “state land” derives from the Ottoman Land Law of 1858, which remained in force during British and Jordanian rule over the West Bank, and which Israel continues to apply, with significant amendments made by military orders. (Israel, as an occupying power, is prohibited with limited exceptions from altering the laws in force in the West Bank).⁶⁰

A 1967 Israeli military order authorized the government to seize as “state lands” any lands that had been claimed by the territory’s previous rulers, pursuant to the Ottoman Land Law.⁶¹ Israel thus initially appropriated at least 600,000 dunams (600 square kilometers) that the Ottoman, British and Jordanian rulers of the West Bank had claimed as state lands, primarily in the Jordan Valley.⁶²

After a 1979 court ruling prohibited the Israeli Civil Administration from using other methods to seize lands for settlement construction, Israel expanded its definition of what constituted state land in a way that would allow it to seize property over which Palestinians could not prove individual ownership; at the same time, Israel imposed highly restrictive criteria of proof.⁶³

⁵⁸ Large amounts of territory claimed as “absentee property” were later categorized as “state lands” on the basis that they were not cultivated (see discussion below). In total, the Israeli military declared some 11,000 buildings and 42,00 hectares of land as “absentee property” in the first years of the occupation. State Comptroller, Annual Report 37, p. 1189, cited in B’Tselem, *Land Grab*, p. 59.

⁵⁹ B’Tselem, *By Hook and by Crook*, p. 24.

⁶⁰ Fourth Hague Convention of 1907, art. 43 (the occupying power must respect, “unless absolutely prevented, the laws in force in the country”).

⁶¹ The Israeli military Order Concerning Government Property defined state land as land that, on the “determining date” (June 7, 1967), belonged to an enemy country (Jordan) or was registered in its name. Military Order Concerning Government Property (Judea and Samaria) (No. 59), 1967. As discussed below, the definition of state property later expanded. State land thus includes the roughly 13 percent of the West Bank that was registered as belonging to the Jordanian government, which Israel took possession of when it occupied the West Bank in 1967.

⁶² B’Tselem, *By Hook and by Crook*, p. 27; Bimkom, *The Prohibited Zone*, p. 27.

⁶³ Israeli authorities accelerated the amount of territory they denominated as “state land” following a 1979 court ruling that invalidated another method of seizing land: namely, seizure for “military purposes.” Between 1967 and 1979, Israel used military orders to expropriate land for the establishment of both military bases and settlements. During this period Israel claimed that the civilian settlements established on land expropriated through military orders were intended to serve a security function, therefore the expropriation was legal. The 1979 high court ruling invalidated this practice (HCJ 390/79, Dweikat et al. v. Government of Israel et al., Piskei Din 34(1) 1, also known as the “Elon Moreh” case). In the aftermath of the ruling, the government alternatively turned to declaring vast parts of the West Bank as “state lands”: from 1980 to 1984, it declared approximately 800,000 dunams, or 800 square kilometers, of the West Bank to be state land. As well, Israel continued to build settlements on lands expropriated through military orders issued prior to the 1979 court ruling. While military requisition orders are supposed to be temporary, they often have no end-date, according to information obtained by

The new procedure was based on a different section of the Ottoman law, according to which Palestinians could claim ownership of land even if they were not officially registered as its owner on the basis of having continuously cultivated it for 10 years. Under the law, this category of agricultural land would revert from private to state ownership if it lay fallow for three years. Beginning in 1979, the Israeli military Custodian of Government Property conducted a massive survey of the West Bank, including an examination of land ownership records and aerial photographs, which was intended in part to document lands that had been uncultivated with the goal of claiming those lands as state lands.

In addition to the formerly Ottoman-, British- and Jordanian-owned territories it had previously claimed as state land, Israel thus claimed state property rights in large areas amounting to some 913,000 dunams (913 square kilometers), over which it asserted that Palestinians had no individual ownership rights, such that these lands were state lands by default.⁶⁴

Moreover, Israel suspended a practice of the former British and Jordanian rulers of the West Bank, of conducting and partly completing surveys intended to register private land ownership on the basis of its cultivation (as well as various other provisions of the Ottoman land law). Israel froze this survey upon occupying the West Bank in 1967 and has not conducted one since.⁶⁵ Instead, as noted, beginning in 1979 it conducted a survey specifically designed to identify uncultivated land as the basis for seizing it, rather than allow Palestinians to claim ownership of lands on the basis of cultivation or other grounds. In the case of the vast areas seized as state lands, Israel has not paid Palestinians compensation, since it views the lands as never having been privately owned.

Israel transferred the majority of the seized lands to settlements, whether as built-up settlement areas, municipal areas, or land reserves under the control of settlement regional councils. As B'Tselem has pointed out, “Exclusively using the seized lands to benefit the

the Israeli human rights group Yesh Din from the government; Human Rights Watch interview with Dror Etkes, Yesh Din settlements researcher, Jerusalem, December 21, 2009.

⁶⁴ State Comptroller, *Report 56A*, 31 August 2005, p. 190, cited in B'Tselem, *By Hook and by Crook*, p. 24. The Ottoman Land Law allowed individuals to claim ownership of lands that they had cultivated for ten years, but under certain conditions, allowed the state to confiscate the land as “state land” and sell it if the owner of the land failed to cultivate it for three or more years. Section 78, “Ottoman Land Law,” in *Planning, Building and Land Laws in Judea and Samaria*, ed. Maj. Aharon Mishnayot (Judge Advocate's Office and Civil Administration of Judea and Samaria) (in Hebrew), cited in B'Tselem, *Land Grab*, p. 52.

⁶⁵ A systematic survey and registration of the ownership of state lands began during the British Mandate over Palestine from 1923 to 1948, but only one-third of the West Bank had been surveyed by 1967, when Israel issued a military order freezing the process of surveying and registering land, purportedly to prevent the fraudulent registration of land that belonged to people who had left the West Bank during the war. (Israeli military orders allowed the government to register confiscated land, however.) Order Regarding the Regulation of Land and Water (Judea and Samaria) (No. 291), 5729-1968, cited by B'Tselem, *Land Grab*, p. 54.

settlements, while prohibiting the Palestinian public from using them in any way, is ... illegal in itself. This would be the case even if the process by which the lands were seized were done fairly and in accordance with international and Jordanian law.”⁶⁶ In fact, Israeli law creates severe hurdles to Palestinians seeking to regain ownership of lands confiscated by the Israeli authorities.

Palestinians have only 45 days to submit an appeal from the date of the declared seizure of their lands to a military appeals committee, but as human rights groups have documented, they often learn of the land seizure much later, when they attempt to build on the land and receive stop-work orders from the Civil Administration.⁶⁷ Palestinians notified on time would still face costs to appeal, including paying a court fee, submitting a precise map of the contested land prepared by a qualified surveyor, and retaining a lawyer to represent them. Many cannot afford this.

Nor can many Palestinians meet the burden of proof of ownership to show they are the registered owner of the land. Many Palestinians did not register their ownership of lands while under Ottoman rule, although many have receipts for payment of land tax to the Jordanian authorities or the Civil Administration.⁶⁸ According to Israeli jurisprudence, such records do not constitute evidence of ownership for purposes of appeal against the Israeli state.⁶⁹

Those Palestinians identified as “unregistered” owners of land could appeal the confiscation of their land only by meeting a high burden of proving that they continuously cultivated the land in question for 10 years. But courts have presumptively treated land shown to be uncultivated at any point by government aerial photographs as though it had been fallow for three years, the period permitted for confiscation as “state land” under Ottoman land law.⁷⁰ It often has been impossible for Palestinian farmers to produce evidence that would disprove such a presumption.

The majority of lands thus confiscated without compensation were formally transferred to the Israeli Ministry of Housing and Construction or to the settlement division of the WZO (the

⁶⁶ B’Tselem, *Land Grab*, p. 47.

⁶⁷ The Israeli military authorities typically informed the mukhtar, or local Palestinian village head, of the declaration that lands were state lands, leaving it to the mukhtar to inform any potential Palestinian owner. Order Regarding Appeals Committees (Judea and Samaria) (No. 172), 5727-1967, cited by B’Tselem, *Land Grab*, p. 54.

⁶⁸ B’Tselem, *Land Grab*, p. 54.

⁶⁹ Avraham Sochovolsky, Eliyahu Cohen and Avi Ehrlich, *Judea and Samaria – Land Rights and Law in Israel* (Tel Aviv, 1986), cited by B’Tselem, *Land Grab*, p. 56.

⁷⁰ *Id.*

choice was made on an ad hoc basis), which would subsequently transfer the lands to settlers.⁷¹ (The WZO's activities supporting settlements and outposts are discussed below.)

Israel's expropriation of West Bank lands is based on regulations, laws and practices that violate Israel's obligation as the occupying power to limit its actions in the occupied territory to those required by military necessity, to maintain public order, and to ensure the welfare of the population, as well as the prohibition of transferring civilians into the occupied territory. Instead, Israel has granted itself control over enormous areas in the West Bank, in many cases by dispossessing Palestinian owners to whom it never granted a fair hearing to contest the loss of their property, and transferred those lands for the sole benefit of Jewish settlers.

Discriminatory Restrictions, Planning, and Forced Displacement in Area C

Israeli policies not only directly affect Palestinians' ability to use and improve land that has been confiscated, they also affect land that has not been seized. Moreover, similar restrictions either do not exist for or are not enforced against Jewish settlers.

The West Bank lands that Israeli authorities seized according to the policies discussed above are all located within Area C. In addition to property that Israel declared "state land," Area C includes land that the Israeli military acquired control of by other means (such as by military requisition orders) as well as land that Israel has not officially confiscated but over which it asserts full control.⁷²

Israel has facilitated the construction of 121 officially recognized settlements in Area C. These include the cities of Ma'ale Adumim, near Jerusalem, with roughly 35,000 residents; Ariel, in the central West Bank, with roughly 17,000 people; as well as the ultra-Orthodox settlements of Beitar Illit, near Jerusalem, with close to 35,000 people, and Modi'in Illit, between Jerusalem and Tel Aviv, with more than 40,000 residents. It has also supported – by, in various cases, providing caravans, building access roads, approving connections to utility networks, and providing IDF soldiers as guards – more than 100 outposts there, even though they are illegal under Israeli law.

⁷¹ For an example of the Israeli government's use of the WZO to act as an agent in leasing privately-owned Palestinian lands to the settlement of Ofra, see Amy Teibel, "Lawsuit brings murky West Bank land deals to light," Associated Press, June 20, 2009, http://seattletimes.nwsourc.com/html/nationworld/2009363393_apmlisraeldisputeddeal.html (accessed July 15, 2010). See also Tovah Lazaroff, "WZO to spend NIS 20 m. on agriculture over the green line," Jerusalem Post, July 20, 2009, <http://www.jpost.com/Home/Article.aspx?id=149303> (accessed July 13, 2010).

⁷² The administrative division of the West Bank into different "areas" has no bearing on Israel's obligations under international law, including its obligations not to discriminate unlawfully against a given group and its obligations as an occupying power.

At the same time, Israel controls and severely restricts land use of the 150,000 Palestinians who live in Area C.⁷³ Israeli restrictions and demolitions of Palestinian property in Area C have forcibly displaced thousands of residents, some of them permanently.⁷⁴ In these areas, the main displacement triggers were Israeli military orders, house demolitions, and inadequate shelter (where this category included lack of access to water, electricity and sanitation).⁷⁵

Israeli restrictions on Palestinian building in Area C reflect a change of policy that is apparently linked to reservation of land for settlement construction. Until the late 1970s, Israeli authorities approved most Palestinian building applications in rural areas.⁷⁶ According to figures from the Civil Administration Planning Bureau, in 1972 and 1973, when there were few Israeli settlements in the West Bank, the Civil Administration approved, respectively, 97 percent of 2,199 and 96 percent of 1,466 Palestinian residential building permit applications in the “rural sector” of the West Bank.⁷⁷ During the 1980s, Israeli authorities gradually adopted a position that opposed Palestinian construction, while simultaneously earmarking land for the settlements.⁷⁸ From 2000 to 2007, the Civil Administration approved just 5.6 percent of 1,624 Palestinian building applications in Area C.⁷⁹ One effect of this policy has been to create a striking disparity between the population density of Palestinian communities versus Israeli settlements in Area C: under the town plans that Israel applies to Area C, the density levels of Palestinian villages range from 24 to 70 housing units per hectare compared to 2.7 to 12.8 units for Israeli settlements located in the same area.⁸⁰

⁷³ According to Bimkom, 47,000 Palestinians live in 149 villages that lie entirely within Area C, and another 100,000 Palestinians live in homes that fall within Area C even though other parts of their villages lie within Area B or A. *The Prohibited Zone*, p. 16.

⁷⁴ Save the Children UK, “Fact Sheet: Jordan Valley,” October 2009, http://www.savethechildren.org.uk/en/docs/English_Jordan_Valley_Fact_Sheet_and_Citations.pdf p. 2 (accessed July 21, 2010).

⁷⁵ Save the Children UK, “Forced Displacement in the Occupied Palestinian Territory: Briefing Paper,” October 2009, p. 6, [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/D34676711347A0C9C125768D005B1076/\\$file/Save+the+Children_BriefingpaperOct09.pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/D34676711347A0C9C125768D005B1076/$file/Save+the+Children_BriefingpaperOct09.pdf) (accessed August 24, 2010).

⁷⁶ Israel applies regional plans dating from the British Mandate to Area C. Under these plans, much of Area C is an “agricultural zone,” but building for residential and other purposes is permitted. Israel formerly approved numerous Palestinian building permit applications on the basis of the Mandatory plans, but since the 1980s has rejected an increasing percentage of such applications for contradicting the Mandatory plans, according to Bimkom. Israel’s planning scheme has allowed settlers to participate in planning committees that have created detailed plans for settlements, thus changing their status from the broad Mandate-era regional plans that are still applied to Palestinian areas. See, e.g., Bimkom, *The Prohibited Zone*, p. 56.

⁷⁷ Unit for Coordination of Operations in the Territories, Ministry of Defense, *The Administered Territories 1972/1973: Statistics on Civilian Activities in Judea and Samaria, the Gaza Strip, and Northern Sinai*, p. 217, cited in Bimkom, *The Prohibited Zone*, p. 11.

⁷⁸ *Id.*, p. 11.

⁷⁹ *Id.*, p. 11.

⁸⁰ Bimkom, *The Prohibited Zone*, p. 132.

Another effect, discussed below, is that Palestinians who need new homes have been left with no option but to build without Israeli permits. These “illegal” structures are then subject to demolition orders. Under Israeli military orders implementing planning and building laws in the West Bank, Palestinian villagers in Area C may not build new homes unless these fall within approved plans. Israeli military orders exclude Palestinian participation from the planning bodies responsible for taking the steps necessary to authorize any construction in Area C. The Israeli Civil Administration has sole control over the planning process; there are no Palestinians on the planning committees whose approval is required for such plans.

The lack of Palestinian participation derives from changes Israel made to the Jordanian Planning Law applicable in the West Bank.⁸¹ In 1971, an Israeli military order modified the Jordanian law on the grounds that the law required the inclusion of Jordanian government representatives in the planning process, and nullified provisions that provided for Palestinian participation in planning.⁸² As a result, when Israeli policy shifted in the 1980s and Israeli authorities began denying the vast majority of Palestinian building applications, Israel also controlled the planning bodies that would determine the legality of Palestinian building.⁸³ Since 1967, Israeli authorities have created outline plans for only 16 of 149 Palestinian communities in Area C.⁸⁴

By contrast, Israeli settlers participate fully in planning settlements and are responsible for licensing and inspecting building activities in these areas.⁸⁵ The 1971 Israeli military order

⁸¹ The Jordanian law created a hierarchical structure of local, district, and national-level planning institutions, and ensured local participation in the planning process. City, town or village councils served as the local planning committee; the district planning committee included a local committee representative; and local government officials served on the national-level planning council. The district committee approves detailed plans; hears objections to regional and outline plans and submits opinions on these to the national planning committee; as well as various functions relating to building inspection. Bimkom, *The Prohibited Zone*, pp. 35-38.

⁸² Military Order 418 abolished district-level committees and transferred their powers to the national planning council, which is staffed by the Israeli Civil Administration. There are no Palestinian members of the national council or on its planning and inspection subcommittees, which serve a variety of functions such as issuing demolition orders against Palestinian buildings. Military Order 418 replaced the district committees with subcommittees, but at least half of their members must be members of the national planning council (i.e. members of the Civil Administration), and the subcommittees in practice are not distinct institutions, but simply parts of the centralized process dominated by the national planning council. Military Order 418 Concerning Towns, Villages, and Buildings Planning Law (1971), Art. 7A, cited in Bimkom, *The Prohibited Zone*, p. 39.

⁸³ On January 26, 2008, the Israeli High Court of Justice rejected a petition by the Association for Civil Rights in Israel (ACRI) for the state to provide any building or development plan for the Palestinian village of Khirbet Tana, near Nablus, in Area C. The village’s 200 residents had built homes without an outline plan approved by the Civil Administration; as such their homes were illegal and subject to demolition. According to ACRI, “In 2008 the State announced its intention to destroy all the houses but one, claiming the area - where people have been living since 1967 - is used as a firing zone for the army.” ACRI, “High Court Approves Demolition of West Bank Village,” February 5, 2008, <http://www.acri.org.il/eng/story.aspx?id=606> (accessed July 30, 2010).

⁸⁴ *Id.*

⁸⁵ OCHA, *Restricting Space*, p. 11.

created a separate planning framework for settlements by establishing a fourth category of planning committee (called a “special local planning committee”) reserved for settlements.⁸⁶

The plans that Israeli authorities draft for Palestinian communities without their participation sharply limit the territory or area allocated to a town and into which it could expand in the future; in several cases, such plans actually exclude parts of Palestinian communities that were already built-up before the plan was imposed, retroactively rendering those buildings outside the planned area “illegal.” By comparison, Israeli planning allows settlements to be built and to expand on large tracts in Area C, parts of which may have been confiscated from Palestinian owners.⁸⁷

The plans applied to Palestinian communities are also of much poorer quality than those applied to Israeli settlements. While the Jordanian Planning Law dictated that villages and small towns should have detailed outline plans, Israeli authorities create such detailed plans only for settlements. Israeli plans for Palestinian communities in Area C merely divide the town or village into residential zones that may differ from each other in permissible housing densities. These “special plans” do not allocate lands for public buildings, parks, or even roads. According to Bimkom, “not a single [Israeli] settlement has a special plan” of the kind applied to Palestinians.

Discriminatory Enforcement

Israel’s settlement policy also discriminates in its differential enforcement of law where that law applies to both settlers and Palestinians.⁸⁸

For example, Israeli authorities are far more likely to demolish Palestinian buildings that they have declared illegal than they are to demolish Israeli buildings declared illegal.

⁸⁶ Under the 1971 military order, the IDF commander of the West Bank can appoint a special committee for any area other than a city or a village. This “ostensibly neutral wording,” according to Bimkom, in practice refers only to planning areas that do not include Palestinian cities or village councils: the planning area of settlements. Bimkom, *The Prohibited Zone*, p. 40.

⁸⁷ Palestinians are theoretically able to contest plans for Israeli settlements, but in practice, they cannot inspect the plans as is required to challenge them. Plans for settlements are deposited either at the Civil Administration’s Planning Bureau, located at the Israeli military base in Beit El, near Ramallah, or at the office of the Special Local Planning Committee in the relevant settlement. It is almost impossible for Palestinians to obtain the necessary permissions to enter the military base at Beit El. It is also difficult for Palestinians to access the plans deposited in Israeli settlements, which have been defined since 1996 as military zones closed to Palestinians without special permits. Palestinians wishing to enter a settlement to inspect a deposited plan must go through a protracted bureaucratic procedure to request a special permit. The maps of the plans for settlements and other documents are written in Hebrew and not in Arabic.

⁸⁸ This report does not address the different treatment of Palestinians and Israeli settlers in the occupied Palestinian territories suspected of having committed crimes – the former are subject to military orders, while the latter are subject to Israeli criminal legislation – which has been extensively addressed elsewhere.

Because Israeli authorities grant so few building permits to Palestinians in Area C, an increasing proportion of Palestinian construction is deemed illegal under Israeli law and subject to demolition. Between January 2000 and September 2007, Israeli planning institutions approved just 5.6 percent of 1,624 Palestinian building permit applications.⁸⁹ During the same period, the Israeli Civil Administration carried out 34 percent of the demolition orders it issued against 4,820 Palestinian buildings—an average of 240 buildings a year.⁹⁰ However, from 1997 to 2009, Israeli authorities executed only 3 percent of 3,449 demolition orders issued against buildings in settlements and outposts, according to Civil Administration records cited by Peace Now, an Israeli anti-settlement group.⁹¹ An Israeli government database documented illegal construction in more than 4,300 illegal structures in at least 87 settlements (not including outposts, all of which are by definition illegal under Israeli law).⁹² Israel's state comptroller found that from 2000 to 2004, the Israeli authorities were notified of 2,104 illegal construction sites in settlements, but took no action at all in between 77 to 92 percent of these cases.⁹³ Unlike home demolitions carried out against Palestinian structures, the execution of the orders against illegal construction in Israeli settlements must be approved by the defense minister; while Israeli authorities have demolished illegal buildings in settlements and outposts, as the Sasson report notes, the minister's approval "is generally not given" to carry out demolitions.⁹⁴

There is no indication that Israeli settlers are building illegally due to an overall lack of approved building permits inside settlements (not including outposts, which violate Israeli laws). In any case, many settlers voluntarily moved to the West Bank from Israel or overseas, while many Palestinians have no choice but to build illegally if they wish to remain on their land.

In addition to failing to enforce demolition orders against Israeli settlements and outposts, Israeli authorities have failed to enforce planning and other laws against them, with the result that settlements have been built in violation of Israeli law not only on "state land" but also on

⁸⁹ Israeli planning institutions approved 91 of 1,624 Palestinian applications for building permits in Area C. Bimkom, *The Prohibited Zone*, p. 7.

⁹⁰ Bimkom, *The Prohibited Zone*, p. 7.

⁹¹ The Civil Administration released the records to Peace Now after the group filed a lawsuit under Israel's freedom of information act. Nadav Shragai, "Peace Now: IDF carried out only 3 percent of settlement demolition orders," <http://www.haaretz.com/news/peace-now-idf-carried-out-only-3-of-settlement-demolition-orders-1.234550> (accessed May 3, 2010).

⁹² Spiegel Database, op cit. Human Rights Watch drew on the full Spiegel database, available in Hebrew, in writing this report

⁹³ State Comptroller, Report 56A, August 31, 2005, pp. 240-2, cited by B'Tselem, *By Hook and by Crook*, p.42.

⁹⁴ Sasson Report: Summary of the Opinion Concerning Unauthorized Outposts, p. 221.

private Palestinian land. In 2004, then-Minister of Defense Shaul Mofaz requested Brig. Gen. (Res.) Baruch Spiegel to assemble a database that would include current information regarding the status under Israeli planning laws and other regulations of each settlement in the West Bank. The database, which was leaked to the public in 2009, lists 118 settlements, including more than 30 settlements that were to some extent built on private Palestinian land, as well as many others that violated Israeli legal requirements regarding their construction.⁹⁵

Israeli governmental support for “outposts,” or settlements built without official approval and so illegal under Israeli law, presents an even more striking contrast to Israel’s enforcement of restrictive building codes against Palestinian communities. An Israeli governmental report, published in 2005, sharply criticized Israeli agencies and ministries for providing significant support to the outposts. Former US ambassador Kurtzer summarized the findings of the report (written by Talya Sasson) as follows:

Sasson outlined systematic and systemic illegalities and misconduct on the part of the government in support of settlement outpost activity. Indeed, the Sasson report indicted an array of Israeli official behavior, spread over many years. Sasson found that the settlers themselves had in some cases [gained employment in] government offices responsible for various aspects of settlement activity, including the housing ministry, or they had found allies ready to circumvent the law, even lawyers to make legal what clearly was not. Budgets were redesigned to divert funds to the outposts. Indeed, the pattern of outpost activity was transparent and patently illegal: Settlers would stake an unauthorized claim to a piece of land and bring in caravans in which to live. Shortly after that, the authorities would establish linkages to electricity and other infrastructure, including paving some roads. In short order, the “illegal” or unauthorized outpost was being treated to essentially the same level of government services and support enjoyed by settlements that had gone through the formal processes of approval.

In several cases, Israeli authorities have retroactively recognized outposts as “neighborhoods” of settlements in the same area, a form of post-hoc authorization for illegal construction not enjoyed by Palestinian communities. An example is the outpost of Sansana in the southern Hebron hills, which was built without an approved plan but was nonetheless recognized in 2009 as a neighborhood of the settlement of Eshkolot, even though the

⁹⁵ Yesh Din, “*Spiegel Database*” of West Bank Settlements and Outposts, <http://www.yesh-din.org/sys/images/File/SpiegelDatabaseEng.pdf> (accessed April 19, 2010).

outpost is located some three kilometers away, is not linked to the settlement by road, and is separated from it by Israel's separation barrier.⁹⁶ The most recent instance is the outpost of Givat Hayovel, north of Jerusalem; the High Court of Justice ordered the demolition of illegal structures there, but on May 7, 2010, the state announced to the court that it would legalize the outpost if it was located on state land rather than private Palestinian land, and requested an extension to conduct a survey.⁹⁷

Sasson found that decisions “to establish outposts ... probably” originate with “regional [settler] councils” in the West Bank, but received significant support and were even “inspired” by government policies and officials.

Some of the officials working in the Settlement Division of the World Zionist Organization and in the Ministry of Construction and Housing cooperate [with settlers] to promote the unauthorized outposts phenomenon. After the mid nineties, these actions were apparently inspired by different Ministers of Housing, either by overlooking or by actual encouragement and support, with additional support from other Ministries, initiated either by officials or by the political echelon of each Ministry ... The establishment of unauthorized outposts violates standard procedure, good governing rules, and is especially an ongoing bold violation of law.⁹⁸

As noted, there are currently approximately 100 Jewish settlement outposts in the West Bank, all of them illegal under Israeli law, which have not been demolished. Israeli authorities have not acknowledged the pattern of differential enforcement measures against illegal construction in Palestinian communities and in settlements.⁹⁹

East Jerusalem

Discriminatory rights violations similar to those affecting Palestinian residents of Area C – including land confiscation, building restrictions, and unequal application of law than can lead to home demolitions and forced displacement—also affect the 270,000 Palestinian

⁹⁶ Akiva Eldar, “Border control / Nothing natural about it,” *Haaretz*, June 2, 2009, <http://www.haaretz.com/hasen/spages/1089778.html> (accessed July 5, 2010)

⁹⁷ Chaim Levinson, “State to Court: we’ll authorize illegal West Bank outpost,” *Haaretz*, May 8, 2010, <http://www.haaretz.com/news/national/state-to-high-court-we-ll-authorize-illegal-west-bank-outpost-1.288961> (accessed May 8, 2010).

⁹⁸ Sasson Report: Summary of the Opinion Concerning Unauthorized Outposts, op. cit.

⁹⁹ Israeli authorities have on numerous occasions denied allegations of unlawful home demolitions against Palestinian property in the context of military operations.

residents of East Jerusalem, who comprise 35 percent of the total Jerusalem population but are confined to just 13 percent of its land area.¹⁰⁰ Around 190,000 Jewish settlers, living in 12 settlements, have access to 25 percent of the land area of East Jerusalem that is zoned for settlement construction.¹⁰¹ Municipal plans thus allot 2.8 times more land to each settler than they provide to each Palestinian.

Planning in East Jerusalem is driven explicitly by concerns about the ratio of Jewish to Palestinian residents of the city. The most recent municipal plan, “Jerusalem 2000,” stated that “according to state decisions,” municipal planning should attempt to maintain a “demographic balance” of 70 percent Jews to 30 percent Arabs in the city, but that demographic trends indicated a ratio of 60:40 by the year 2020.¹⁰² To address this problem, the plan proposed a number of means to “maintain a Jewish majority in the city while attending to the needs of the Arab minority,” such as building new Jewish neighborhoods, providing subsidized planned housing units to lower housing costs, “densification” of existing Jewish neighborhoods, and incentivizing Jewish Israelis to move to the city by addressing such issues as “personal security, employment, [...] education, quality of the environment, cultural life and society, [and] municipal services.” The plan recognizes the “acute housing shortage” affecting “the Arab population,” but proposes “thickening and densification” of existing Palestinian neighborhoods as a response, and building new residential areas only for “wealthy Arab households”; the plan also emphasizes that “it would be necessary to firmly enforce the prohibition of illegal building, a phenomenon that is widespread within the Arab sector in the city.”

Israel considers Palestinian residents of East Jerusalem to be a special category of permit-holders who are residents of the city and may vote in municipal elections, but are not Israeli citizens.¹⁰³ Israeli authorities cancel the residency permits of East Jerusalem Palestinians who cannot prove that the city is their “center of life,” including those who hold foreign

¹⁰⁰ Israel annexed 70.5 square kilometers of the West Bank to the city in 1967. Currently Jerusalem’s municipal boundaries cover some 126 square kilometers. While precise overall figures are not available, relatively few Palestinians live in West Jerusalem, which is predominantly Jewish. At least 79 percent of the lands planned for residential development in Jewish settlements and in West Jerusalem are owned by the Israel Lands Authority and are legally off-limits to Palestinians. Bimkom and Ir Amim, “Jerusalem: An Open City?”, June 2010, p. 5.

¹⁰¹ There were 184,707 settlers in East Jerusalem as of 2007 (when figures were last available). Palestinian residents of East Jerusalem numbered 268,400 in 2008. See e.g. Jerusalem Institute for Israel Studies, “Press Release – Jerusalem Day, 2009,” http://www.jiis.org/.upload/news/jer_day_2009.pdf (accessed July 20, 2010), and B’Tselem, *By Hook and by Crook*.

¹⁰² Local Outline Plan – Jerusalem 2000, Chapter 7, “Population and Society,” [unofficial English translation], available at http://www.pcc-jer.org/arabic/Publication/jerusalem_master_plan/engchapt/populationandsociety_7.pdf (accessed October 30, 2010).

¹⁰³ Palestinian residents of East Jerusalem who can prove that the city has been their center of life for seven continuous years may apply for Israeli citizenship.

passports or residency, those who reside outside the city for seven years or more, whose primary residence is elsewhere, and others; in 2008 alone, Israel cancelled residency permits of 4,577 East Jerusalem Palestinians.¹⁰⁴ As noted, Israel considers East Jerusalem to be Israeli territory and has not contested the applicability of its human rights obligations there, including non-discrimination.

Israel applies municipal regulations and Israeli laws to East Jerusalem residents, as opposed to the Israeli military orders and Ottoman, British and Jordanian laws that apply to Palestinians in the West Bank. One such law is the Israeli Law of Absentee Property of 1950.¹⁰⁵ The original law states that, if a person was in an “enemy country” at the time of the 1948 Israeli census, his or her property will be confiscated by the Custodian of Absentee Property without compensation and without the need to notify the property owner. In 1967, Israel applied an amended version of this law to the occupied territories it annexed to Jerusalem, with a regulation stating that East Jerusalem property would be confiscated from anyone who was not physically present there at the time of the census in 1967.¹⁰⁶ This included Palestinians who fled to other parts of the West Bank, Jordan, or elsewhere during the fighting.¹⁰⁷ According to the Israeli non-profit organizations, Ir Amim and Bimkom, “Today, if during the process of registering land, any of its original owners are proven not to have been physically in the area annexed in 1967, a pro rata portion of the land [based on the number of owners not present in East Jerusalem in 1967] will be confiscated by the Custodian of Absentee Property.”¹⁰⁸

¹⁰⁴ Hamoked, “Revocation of residency status from permanent residents of Jerusalem” (correspondence between Ministry of Interior and Adv. Yotam Ben-Hillel), November 5, 2009, http://www.hamoked.org/items/110587_eng.pdf (accessed August 23, 2010).

¹⁰⁵ Palestinian residents in the rest of the West Bank are subject to a Military Order Concerning Absentee Property, rather than to the analogous Israeli law applied inside Israel and in East Jerusalem.

¹⁰⁶ For a discussion of the 1950 Absentee Property Law, see Ir Amim, “Absentees Against Their Will: Property Expropriation in East Jerusalem under the Absentee Property Law,” July 2010, http://www.ir-amim.org.il/_Uploads/dbsAttachedFiles/mishpatminhal.pdf (accessed August 30, 2010); for the administrative order applying it to East Jerusalem, see http://www.ir-amim.org.il/_Uploads/dbsAttachedFiles/mishpatminhal.pdf (accessed August 30, 2010).

¹⁰⁷ Then-attorney general Meir Shamgar in 1969 rejected the law’s applicability to Palestinian residents of other parts of the West Bank who owned property in East Jerusalem, since they remained “under the rule of IDF forces” from the moment Israeli forces occupied East Jerusalem. In 1977, Israeli authorities nonetheless began to use the law to confiscate Palestinian property in Jerusalem. (Letter from Shamgar to the Israel Lands Authority, August 1969, quoted in Ir Amim, “Absentees,” p. 2). The law’s application was halted again following a 1992 report, written by the “Klugman committee” on East Jerusalem, that identified conflicts of interest in the law’s application, but Israeli authorities applied it again beginning in 2004, and continued to do so despite attorney general Menachem Mazuz’s instruction to then-finance minister Binyamin Netanyahu to stop. *Id.*, p. 3.

¹⁰⁸ Bimkom and Ir Amim, *Making Bricks Without Straw: The Jerusalem Municipality’s New Planning Policy for East Jerusalem*, January 2010.

In areas not zoned for construction, building permits are impossible to obtain. From 2000 to 2008, Israeli authorities demolished 670 Palestinian homes in East Jerusalem on the basis that they were “illegal,” forcibly displacing thousands.¹⁰⁹ In 2009, Israeli authorities demolished 57 Palestinian homes in East Jerusalem, displacing 300 people, half of them children, as well as other structures such as businesses.¹¹⁰ In addition, at least 60,000 Palestinian East Jerusalemites live in homes that are technically illegal and could be subject to demolition orders.¹¹¹ At the same time, the municipality has collected tens of millions of dollars in fines for illegal construction from Palestinians in East Jerusalem who have no option but to build illegally if they want to build at all.¹¹²

Residents of several Palestinian neighborhoods have hired and paid for planners to create and submit plans to the municipal authorities—a service that Israeli authorities provide free in Israel proper—in the hope that they would be able to request building permits if the plans are approved, or have their current homes legalized. Human Rights Watch is not aware of the municipality ever having accepted such plans. In 2005, for example, the municipality rejected plans submitted by Wadi Yasul, a Palestinian neighborhood where 400 residents are at risk of home demolition, because the area has been designated a “green area” in which construction is prohibited; the plans cost \$50,000 to develop.¹¹³ In 2008, Israeli authorities rejected 172 proposed Local Planning Schemes submitted by Palestinians in East Jerusalem. In 2009, the city planning council rejected two plans submitted by residents of the East Jerusalem neighborhood of Jebel Mukabber on the grounds that they conflict with the “Jerusalem 2000” master plan, which is intended to guide construction there through 2030, although that plan has not yet been approved or made available for public comment.¹¹⁴ The municipality has also rejected one plan and failed to consider a second, revised plan submitted by residents of the al-Bustan neighborhood as discussed below.

¹⁰⁹ Israeli Committee Against House Demolitions, “East Jerusalem Demolitions,” n.d., http://www.icahd.org/?page_id=5374 (accessed August 22, 2010).

¹¹⁰ OCHA figures on file with Human Rights Watch.

¹¹¹ OCHA, *The Planning Crisis in East Jerusalem: Understanding the Phenomenon of ‘Illegal’ Construction*, April 2009, p. 12. Israeli authorities have destroyed at least 730 homes from 2000 to 2009. *Id.*, p. 4, and UN figures for 2009, on file with Human Rights Watch.

¹¹² According to the Israeli rights group, the Israeli Committee Against House Demolitions, the municipality of Jerusalem collected NIS 111,805,931 (US\$29.4 million) in fines for illegal construction between 2004 and 2008: 70 percent of this came from Palestinian residents. ICAHD, “East Jerusalem, 2004-2008,” <http://icahd.org.dolphin.nethost.co.il/wordpress/wp-content/uploads/2010/05/East-Jerusalem-english.pdf> (accessed July 20, 2010).

¹¹³ OCHA, *Planning Crisis in East Jerusalem*, p. 12.

¹¹⁴ The regional planning committee rejected proposed plans 11114 and 13317 on November 17, 2009, for this reason. Ir Amim and Bimkom, *Making Bricks Without Straw*, p. 8.

Even if a master plan is approved that allows legal Palestinian construction in more areas of East Jerusalem, current building codes constitute an additional hurdle that makes it impossible for many East Jerusalem residents to submit plans that could be approved. These building codes require that each building include parking, road access, and a connection to sewage networks. Palestinian neighborhoods often lack such features, primarily because the Jerusalem municipality has not provided adequate planning, construction or infrastructure to their neighborhoods for decades, a legacy of discriminatory neglect that starkly contrasts with the general situation in West Jerusalem and in Jewish settlements in East Jerusalem.¹¹⁵ To obtain building permits under current building codes, Palestinian residents of Jerusalem would thus be obliged to pay for the construction of roads, parking lots, and other services that the municipality has failed to provide, but they are unlikely to be able to do so because of the costs involved—65 percent of East Jerusalem families live under the poverty line (as opposed to 31 percent of the West Jerusalem population).¹¹⁶ The municipality itself is responsible for the poor condition of the road and sewage networks in East Jerusalem, and for the dense and unplanned nature of its residential areas, in sharp distinction to Western Jerusalem.

In one area of the East Jerusalem neighborhood of Silwan, the city of Jerusalem announced a plan in January 2010 that would benefit a Jewish settlement that is funding and operating an archaeological site in the neighborhood as a tourist area; under the original plan, the construction of the plan's parks and public spaces would have required the demolition of 88 Palestinian homes in the al-Bustan part of the neighborhood, though a revised plan reduced the number of homes to be demolished to 22. In February 2009, Israeli planning authorities rejected a plan paid for and submitted by al-Bustan residents, on the grounds that it conflicted with the city's future intention to designate the area as a "green zone."¹¹⁷ Many of the residents' homes were built without permits, since the area is not zoned by Israel for Palestinian construction; Israel has granted no building permits for Palestinian home construction in al-Bustan since 1967.

In Jerusalem, Israel's differential enforcement of housing laws against Palestinian and Jewish residents is equally striking. It is predictable that building violations would be more "serious" in East as opposed to West Jerusalem, given the comparative lack of house-building permits issued to Palestinians. However, enforcement is also more severe in East

¹¹⁵ According to ACRI, as of 2010, East Jerusalem lacked 50 kilometers of sewage lines and 1,000 school classrooms; 160,000 Palestinian residents lacked a connection to the water network; and there were only 8 post offices (as opposed to 42 in West Jerusalem). ACRI, "Human Rights in East Jerusalem – Facts and Figures, May 2010," p.4.

¹¹⁶ ACRI, "Human Rights in East Jerusalem – Facts and Figures, May 2010," p. 39.

¹¹⁷ Ir Amim and Bimkom, *Making Bricks Without Straw*, p. 3.

Jerusalem. According to Peace Now, based on official figures, from 1996 to 2001, 82 percent of building violations in Jerusalem were in Jewish neighborhoods and 18 percent were in Palestinian areas; but only 20 percent of enforcement actions against violations were in Jewish neighborhoods and 80 percent were in Palestinian areas.¹¹⁸ According to the Israeli Committee Against House Demolitions, Israeli authorities are 10 times more likely to demolish homes as a result of building violations in largely Palestinian East Jerusalem, with around 270,000 Palestinian residents (and 190,000 settlers), as opposed to in largely Jewish West Jerusalem, with around 310,000 residents.¹¹⁹

Settler Incentives and Funding Sources

Virtually all Israeli governments have supported settlements for a variety of reasons, which initially included a view that permanent communities in the West Bank would form a first line of defense against invasions or uprisings. Currently, apart from their effect strengthening Israel's position in any final-status negotiations with Palestinian leaders over the West Bank, civilian settlements provide additional residential space for Israelis, including large settlements providing relatively low-cost housing for the rapidly-expanding ultra-orthodox Jewish sector. While some Israeli restrictions on Palestinians – such as the military order requiring Palestinians to obtain special security permits to enter settlements – are related to settlements' security, other restrictions appear merely punitive – such as de facto prohibitions on building or repairing homes, schools and clinics in Area C communities – and thus excessive and discriminatory even under Israeli law, which does not acknowledge the settlements' illegality under the law of occupation.

Settlements receive funding from the Israeli government and private donors (including foreign individuals and charities, many based in the United States). Some private supporters are Jewish, but settlements also receive considerable support from Christian groups. While most settlements are primarily residential, some earn income through agricultural or industrial activities.

The Israeli government funds settlements through the state budget and governmental institutions such as the Institute for Social Security, the World Zionist Organization (WZO) or

¹¹⁸ Dror Etkes, "Settlers vs. Palestinians – Double Standards and Illegal Construction," March 2006, <http://www.peacenow.org.il/site/he/peace.asp?pi=62&doid=1714> (accessed May 5, 2010).

¹¹⁹ In 2004 there were 13 housing demolitions in West Jerusalem, which is predominantly Jewish, and 114 house demolitions in East Jerusalem, which is Palestinian. In 2005, there were 5,653 building violations and 26 demolitions in West Jerusalem, but 1,529 violations and 76 house demolitions in East Jerusalem, <http://www.icahd.org/heb/faq.asp?menu=9&submenu=1> (accessed September 20, 2010). Population estimates are from the Jerusalem Institute of Israel Studies, 2009/10, "Table 3/1, Population of Israel and Jerusalem, By population group, 1922-2008," <http://jiis.org/.upload/web%20C0109.pdf> (accessed October 1, 2010).

the Israeli Lottery Institution. In addition, as discussed below, the government provides a variety of hard-to-track subsidies and grants to settlements.

The Israeli government currently provides incentives to settlers under a “national priority areas” scheme. In 1998, the government approved a map of “national priority areas” that receive a variety of benefits based on factors including their socioeconomic status and security needs.¹²⁰ The Israeli High Court of Justice ruled in 2006 that the national priority plan discriminated against Palestinian citizens of Israel in education and ordered the government to cancel these provisions by the summer of 2009.¹²¹ But on July 14, 2009, the government passed a National Priority Areas law that extended the plan until 2012, violating the court’s deadline.¹²² On December 13, 2009, the Israeli cabinet revised the map, which continues to include settlements.¹²³ The map now designates 91 of 121 settlements—home to more than 140,000 settlers—a “national priority area A”; settlers there will receive the greatest benefits under the plan, including tens of thousands of dollars worth of development and construction grants and subsidized mortgages per housing unit. The plan slated 12 settlements as “national priority area B,” which receive funding for shorter periods and do not receive support for housing infrastructure.¹²⁴

The stated rationale for including settlements is that “communities under threat in Judea and Samaria” (the Biblical name for the West Bank), where security risks are highest, and those located up to seven or nine kilometers from an international border, need extra support to meet “the attendant security expenses.”¹²⁵

¹²⁰ See B’Tselem, *By Hook and by Crook*, June 2010, p. 50.

¹²¹ HCJ 11163/03, Supreme Monitoring Committee v. Prime Minister, http://elyon1.court.gov.il/files_eng/03/630/111/a18/03111630.a18.pdf (accessed July 13, 2010).

¹²² Adalah, “On the Israeli Government’s New Decision Classifying Communities as National Priority Areas,” February 2010, p. 4, <http://www.adalah.org/newsletter/eng/feb10/docs/english%20layout.pdf> (accessed July 12, 2010).

¹²³ Barak Ravid, “PM’s Plan would put some settlements on list of national priority communities,” Haaretz, December 11, 2009, <http://www.haaretz.com/hasen/spages/1134037.html> (accessed April 27, 2010); Barak Ravid and Moti Bassock, “Cabinet okays new national priority map that includes settlements,” Haaretz, December 15, 2009, <http://www.haaretz.com/hasen/spages/1134904.html> (accessed April 27, 2010). As of June 2010, the government had not determined the revised benefits under the revised national priority plan; previously determined benefits and incentives remain in effect. B’Tselem, *By Hook and by Crook*.

¹²⁴ Letter dated January 5, 2010 from Ami Galili, an official in the Housing and Construction ministry, cited by B’Tselem, *By Hook and by Crook*, p. 53.

¹²⁵ Many settlements that are near the Israeli border and lie to the west of Israel’s separation barrier are not included in the national priorities map; the 12 settlements in East Jerusalem are also excluded. Government Decision No. 1060, 12 December 2009, cited by B’Tselem, *By Hook and by Crook*, p. 52; see map of settlements designated as national priority areas, Peace Now, “The Socioeconomic status in the settlements,” December 2009.

Israeli government ministries provide significant benefits under the national priority areas scheme to encourage Jewish Israelis to move to the settlements.

One of these is funding for housing construction provided by the Ministry of Construction and Housing. From 2000 to 2006, for example, the ministry funded 53 percent of housing starts and 42 percent of all residential construction costs in settlements, as opposed to 10 percent of housing starts and 20 percent of all costs inside Israel and no housing for Palestinians in the West Bank.¹²⁶

Settlers building housing receive subsidies equivalent to 69 percent of the value of the land. The land itself is already priced at an artificial discount by the Israel Lands Administration, which typically controls the sale of lands from the state in the West Bank. The housing ministry also subsidizes up to 50 percent of development costs, for a total of between NIS 60,000 and 100,000 (US\$15,800 to US\$26,300) in subsidies per settlement apartment.¹²⁷ The housing ministry also provides grants to offset mortgage costs in national priority areas, starting at NIS 97,000 (US\$25,500) in area A, as well as subsidized four-year mortgages to pay for construction. A state comptroller's report found that there were no criteria for allocating such mortgages and that each settler recipient was given NIS 240,000 (US\$63,200) state-subsidized mortgage regardless of his or her finances.¹²⁸

Settlers also receive numerous educational benefits from the Ministry of Education for children from kindergarten to university, and salaries for teachers that are 12 to 20 percent higher than those inside Israel, including an 80 percent home-rental subsidy. The education ministry also provides national priority area settlers exemption from kindergarten tuition and matriculation exam fees, nearly-free (90 to 100 percent subsidized) transportation to school, extension of the school day in kindergartens and schools, extension of the school year for an additional month, and priority for university scholarships.¹²⁹

The Ministry of Industry and Trade provides grants for investors and infrastructure for industrial zones in settlements; the Ministry of Labor and Social Affairs gives incentives for social workers in settlements; and the Ministry of Finance reduces tax for individuals and

¹²⁶ Swirski, Konor-Attias, and Dahan, *Governmental Priority in Funding Residential Housing: 2000-2006*, (Adva Center, November 2000), p. 6, cited by B'Tselem, *By Hook and by Crook*, p. 53.

¹²⁷ Letter dated January 5, 2010 from Ami Galili, an official in the Housing and Construction ministry, cited by B'Tselem, *By Hook and by Crook*, p. 54.

¹²⁸ State Comptroller Report 54B, cited by B'Tselem, *By Hook and by Crook*, p. 55.

¹²⁹ Suan and Neeman-Haviv, *Judea and Samaria Statistical Yearbook for 2007*, cited by B'Tselem, *By Hook and by Crook*, p. 58.

companies.¹³⁰ In the Jordan Valley, for example, the Israeli government provides grants covering up to 24 percent of costs for developing industrial establishments, hotels or tourist attractions.¹³¹ Israeli and multinational companies that invest in settlements and nearby industrial zones benefit from a variety of subsidies and in turn provide income to settlers.¹³² Settler industrial zones employ approximately 5,000 workers, including Israelis and Palestinians, but often pay Palestinians as little as one-third the Israeli minimum wage to which they are entitled, according to Kav LaOved, an Israeli worker's rights NGO.¹³³ Some Israeli employers deduct taxes and social security from Palestinian workers' paychecks, but these deductions go to the state of Israel, which provides no services or benefits to the workers except in cases of work accidents or the bankruptcy of the employer; from 1970 to 2009, the majority of funds withheld from Palestinian workers' paychecks (roughly 10 percent of the paycheck), supposedly for the payment of unemployment, disability, old-age and child benefits, were transferred from the Ministry of Industry, Trade and Labor to the Ministry of Finance and thus to the state budget, according to a study by an Israeli economist and the head of a workers' rights NGO.¹³⁴

The Israeli Ministry of Agriculture also provides substantial benefits to settlers, following its own classification scheme. For example, the agriculture ministry classifies settlements in the northern Jordan Valley as Administrative Development Area A, subsidizes 25 percent of investments in agriculture, and provides tax benefits on such investments and from 25 to 30 percent of profits. Most of the agricultural settlements in the northern Jordan Valley produce

¹³⁰ Although the finance ministry ended the income tax reduction for settlers in 2003, the government continues to provide 10 year tax exemptions to foreign investment in communities listed as "priority area A"; foreign investors in "B" areas receive 6 years of complete tax exemption, and 4 years of tax benefits (Israeli investors are granted 1 year of such benefits).

¹³¹ Invest In Israel Promotion Center (a government-run website), "Investment incentives," <http://www.investinisrael.gov.il/NR/exeres/08348DA2-83D3-47B1-Bo43-ED418D9AA846.htm> (accessed July 15, 2010).

¹³² For example, the multinational food products company Unilever owns a majority share of Beigel and Beigel, an Israeli food company with a factory in the Barkan industrial zone near the Ariel settlement. Through its ownership interest in Beigel and Beigel, Unilever reportedly "pays taxes to Israeli settlers through its annual contributions to the Shomron Regional Council, pays monthly rent to Israeli companies profiting from illegally confiscated land, and benefits from generous subsidies given by the Israeli government to the settlement's industrial zone and guaranteed to Unilever directly as incentives to remain and expand its operation in Barkan." United Civilians for Peace, *Improper Advantage: A study of Unilever's investment in an illegal Israeli settlement*, November 2008, p. 4.

¹³³ The Israeli High Court of Justice ruled in 2007 that Palestinian workers employed in settlements in the West Bank should receive equal employment benefits as Israeli workers. In reality, Palestinian agricultural workers employed by Israeli settlers receive around US \$15 per eight-hour workday, or one-third of the Israeli minimum wage (21 shekels or US\$5.50 per hour), and Palestinian industrial workers in West Bank receive around two-thirds of the minimum wage. Roughly 20,000 Palestinian West Bank residents hold work permits and are employed in Jewish settlements in the West Bank; another 10,000 are employed without permits, most of them seasonal agricultural workers in the Jordan Valley. Roughly 20,000 more Palestinians from the West Bank work inside Israel. Salwa Alenat, "Palestinian Workers in Israeli West Bank Settlements – 2009," Kav La Oved, http://www.kavlaoved.org.il/media-view_eng.asp?id=2764 (accessed July 12, 2010).

¹³⁴ Hannah Zohar, Shir Hever, "Israel Owes Billions of Shekels to Palestinian Workers," *Socioeconomic bulletin* no. 25, January 2010, p. 7 and Annex 5, http://www.alternativenews.org/images/stories/downloads/Economy_of_the_occupation_25.pdf (accessed October 1, 2010). See also United Civilians for Peace, *Improper Advantage*, p. 23.

for export, mainly to Europe. Since European Community law excludes goods made in settlements from preferential tariff-free import treatment, the Israeli government also indemnifies farmers in settlements from lost income resulting from the customs duties imposed on their produce by EU countries.¹³⁵

In May, the Palestinian Authority promoted a “You and Your Conscience” campaign urging Palestinians not to purchase goods made in Israeli settlements, and instituted a law imposing criminal penalties on Palestinians who commercially buy, sell or transport 500 banned settlement products.¹³⁶ A bill pending in the Israeli parliament would penalize Israelis, Palestinians and others who participate in boycotts of any Israeli goods, including settlement goods.¹³⁷ In many third countries (including members of the European Union), as noted, domestic legislation and regulations on imports requires that producers provide accurate country-of-origin information, and do not extend tariff benefits to settlement products.

In addition to direct governmental funding, settlements receive funding from the World Zionist Organization (WZO). The Israeli economist Shir Hever estimates that between 2000 and 2002, the WZO provided NIS 385 million (US\$101 million) to agricultural projects in the settlements.¹³⁸ In 2009-2010 Israel designated NIS 143 million (US\$37.6 million) for the WZO settlement division to spend on developments in the West Bank, the Golan Heights (annexed from Syria in the 1967 Middle East War), and the Galilee (in northern Israel).¹³⁹

The Israeli government provides proportionally more subsidies and funding per capita to settlers than to other Israelis, even though settlers’ standard of living is, on average, 10

¹³⁵ See B’Tselem, *By Hook and by Crook*, p. 60. On February 25, 2010, the Court of Justice of the European Union held that “Soda Club” products, manufactured in the settlement industrial zone of Mishor Adumim did not qualify for preferential tariff treatment under the EU – Israel Association Agreement. Case C-386/08, Brita CmbH v Hauptzollamt Hamburg-Hafen; see <http://curia.europa.eu/jcms/upload/docs/application/pdf/2010-02/cp100014en.pdf> (accessed July 10, 2010).

¹³⁶ According to Israeli news reports, the PA introduced a law penalizing Palestinians who sell any of 500 banned settlement products; penalties range from two to five years’ imprisonment and fines of up to \$15,000. Palestinians who import settlement products into the occupied territories face three to six years’ imprisonment, up to \$3,000 in fines, and the confiscation of their licenses and vehicles. See Ali Waked, “PA boycott threatens tradesmen with jail time,” May 18, 2010, *Ynet*, <http://www.ynetnews.com/articles/0,7340,L-3891081,00.html> (accessed July 7, 2010).

¹³⁷ The proposed law drafted by Israeli parliamentarians would impose fines, economic sanctions, and entry bans on “initiators or promoters” of boycotts directed against Israel, including boycotts limited to settlement products. “Israel: Withdraw Legislation Punishing Human Rights Activists,” July 23, 2010, <http://www.hrw.org/en/news/2010/07/23/israel-withdraw-legislation-punishing-human-rights-activists>.

¹³⁸ Shir Hever, “Bulletin 2: The Settlements – Economic Cost to Israel,” *Alternative Information Center*, August 17, 2005, p. 4, <http://www.alternativenews.org/english/index.php/topics/economy-of-the-occupation/91-bulletin-2-the-settlements-economic-cost-to-israel> (accessed May 15, 2010).

¹³⁹ B’Tselem, *By Hook and by Crook*, p. 60, citing the Israeli Ministry of Agriculture and Rural Development, “Subjects in which the Ministry Operates a National-priority Policy regarding Communities or Areas.”

times higher than Israelis who do not receive similar governmental benefits.¹⁴⁰ Settlements receive more money than even other “national priority A” areas inside Israel (usually lower-income communities located outside the Jerusalem-Tel Aviv core): Israel provided 5.5 times more funding per housing unit to subsidize building settlement apartments than for apartments in national priority A areas inside Israel from 2000 to 2002, according to a report by Israel’s state comptroller.¹⁴¹ Settlement municipalities also receive proportionally more governmental budget support than do communities inside Israel.¹⁴² This may account for the fact that settlers, who on average earn more than people inside Israel, nonetheless pay lower municipal taxes than residents of Israel.¹⁴³ From 2000 to 2006,

[s]ettlements in the West Bank, the Gaza Strip, and the Golan Heights received surplus funding for governmental services, compared with the government funding provided to communities inside Israel, in the sum of NIS 3.143 billion, which supplemented the relatively low local taxes of NIS 2.028 billion. [...] Per capita, government funding of government services in the settlements was 36 percent higher than in development towns [low-income communities inside Israel...]. Per capita expenditure in the development budget – the “irregular budget” – of the settlements was 1.3 times higher than in local authorities inside [Israel].¹⁴⁴

¹⁴⁰ According to data from the Israeli Central Bureau of Statistics, the average income for a settlement family is 10 percent higher than the national average (NIS 13,566 [US\$3570] versus NIS 12,343 [US\$3248] per month); and unemployment levels in settlements are below the national average (6.5 percent in the settlements compared to 7.3 percent throughout Israel). Seventy-one percent of settlement children pass their matriculation exams, compared to a national average of 65.8 percent. The settlement of Efrat, included as a national priority area, has an unemployment rate of 1.6 percent and an average salary of 7,793 shekels per month; the mixed Arab-Jewish city of Ramle in Israel, not included in the national priority map, has an unemployment rate of 4.1 percent and an average salary of NIS 4,428 (US\$1165) per month. Peace Now, “The Socioeconomic status in the settlements is higher than the Israeli average,” December 2009, <http://www.peacenow.org.il/site/en/peace.asp?pi=61&fld=495&docid=4497> (accessed July 11, 2010).

¹⁴¹ State Comptroller Report 54B, cited by B’Tselem, *By Hook and by Crook*, p. 56.

¹⁴² In 2006, Israeli municipalities as a whole received 34.7 percent of their budget from the government (the remainder came from their own income), but settlement municipalities obtained 57 percent of their budget (which amounted to approximately US\$456 million) from the government. Arieli, Nathanson, Rubin, Tzameret-Kertcher, “Historical political and economic impact of Jewish settlements in the occupied territories,” June 2009, p. 7.

¹⁴³ B’Tselem cites findings that from 2000 to 2006, settlement municipal authorities collected an average of NIS 2,130 (US \$560) per resident in taxes and fees – only 60 percent of the per capita sum (NIS 3,496, US\$920) received by local authorities inside Israel. B’Tselem, *By Hook and by Crook*, pp. 61-62.

¹⁴⁴ In 2004, while municipalities within Israel had to cut their budgets, on average, by 10 percent, governmental funding for the municipalities of the settlements increased by over 14 percent. B’Tselem, *By Hook and by Crook*, citing Shlomo Swirski, Ety Konor-Attias, and Ehud Dagan, *Governmental Priority in Funding Communities: 2000- 2006*, Adva Center, November 2006, p. 20.

The Israeli government has increased funding to settlements even in years when it cut funds to municipalities inside Israel.¹⁴⁵

Israeli governmental agencies also sponsor various incentive programs to bring Jewish immigrants to Area C. For example, Jewish immigrants to Israel who move upon arrival to communities in the Gush Etzion area—a large settlement bloc south of Jerusalem and west of Bethlehem that is home to some 55,000 people—receive additional benefits and support as part of the Ministry of Absorption's "Community Aliyah" (*Aliyah Kehilati*) program.¹⁴⁶ The program offers immigrants benefits such as enhanced Hebrew language courses and extra rent subsidies, entrepreneurship stipends, academic assistance for school children, cultural and special activities, and counseling services, in addition to the benefits offered to all new Jewish immigrants to Israel.¹⁴⁷ The settlement city of Ariel, north of Ramallah, also offers "benefits that are in addition to benefits offered to new olim [immigrants to Israel]" through the "community aliyah" program.¹⁴⁸ With another program, "Go North," the Nefesh B'Nefesh organization—which is partly funded by the Israeli government—advertizes that North American and British Jews who move to the Upper Jordan Valley (in the occupied West Bank) and to other areas will receive one-time "family grants" of up to US\$25,000, "vehicle grants" of up to US\$16,000 over two years, and local assistance from program officers who manage social and educational programs and activities.¹⁴⁹

Settlements also benefit from foreign private funding, although this source is far less significant in dollar terms than Israeli governmental funding.

The WZO's American Section is registered as a US tax-exempt charitable organization. The WZO, created in 1897, is a confederation of pro-Israel groups from dozens of countries, including Hadassah, B'nai B'rith, and other groups. "American Jewish groups control 30 percent of the organization's main governing bodies, including the World Zionist Congress, which is convened in Jerusalem every four years," according to the former editor of the

¹⁴⁵ Shir Hever, "The Settlements – Economic Cost to Israel," August 17, 2005, citing Shlomo Swirski, *The Price of Occupation*, ADVA Center, MAPA Publishers, 2005, p. 149.

¹⁴⁶ Malkah Fleisher, "New Immigrants to Gush Etzion Receive Extra Help," *Israel National News*, May 25, 2010, <http://www.israelnationalnews.com/News/News.aspx/131547> (accessed July 10, 2010).

¹⁴⁷ Israel already extends these extra benefits to North American Jews who move to the settlements of Ariel and Ma'ale Adumim. North American, British and South African Jews who move to certain cities inside Israel also receive these additional benefits. New immigrants (olim) to the settlement of Efrat are not eligible. Id.

¹⁴⁸ Ariel Aliyah, "Preparing your Aliyah," n.d., <http://arielaliyah.wordpress.com/ariel-communities/>, accessed October 31, 2010.

¹⁴⁹ Nefesh B'Nefesh, "Go North – Frequently Asked Questions," <http://www.nbn.org.il/about/special-programs/gonorth-program/go-north-frequently-asked-questions.html> (accessed July 15, 2010). New Jewish immigrants are also eligible for the grants if they move to the Golan Heights, which Israel annexed from Syria, and to certain areas inside Israel.

Jewish Daily Forward newspaper.¹⁵⁰ As noted above, the Israeli government authorizes the settlement division of the WZO to create settlements in the West Bank on lands licensed to it by the Civil Administration, and the Sasson Report strongly criticized the WZO for violations including establishing settlements on Palestinian lands that the Civil Administration had not granted to it.

According to Meron Benvenisti, the former deputy mayor of Jerusalem, the WZO created the settlement division in 1971 to fill a role previously played by the Jewish Agency inside Israel, but which the Agency could not continue to fulfill in the occupied Palestinian territories because it was unable to secure tax-exemptions for donations received for settlements in the United States.¹⁵¹ At the time, the Jewish Agency had recently come under US governmental scrutiny for concealing that it had received funding from the Israeli government.¹⁵² The WZO's membership organizations have disagreed on the body's role in establishing settlements in the occupied Palestinian territories; at the quadrennial meeting in June, these bodies approved an anti-settlement resolution.¹⁵³ Currently, the settlement division of the WZO is fully funded by the Israeli government, but is not subjected to the budgetary laws that constrain government ministries because of its status as an independent, non-governmental organization.¹⁵⁴ It can thus channel governmental monies into settlements that benefit only Jewish Israelis without the reporting restrictions and concomitant transparency imposed by the Israeli budget law on government ministries.

¹⁵⁰ Nathaniel Popper, "Jewish Officials Profess Shock Over Report on Zionist Body," *The Forward*, March 18, 2005, <http://www.forward.com/articles/3098/> (accessed July 18, 2010).

¹⁵¹ Meron Benvenisti, *Lexicon of Judea and Samaria*, p. 50, cited by B'Tselem, *Land Grab*, p. 21. According to the 1971 document announcing the creation of the US section of the WZO, its functions and tasks, and programs it administers or to which it may contribute funds, shall be only such as may be carried on by tax-exempt organizations. "Agreement for the Reconstitution of the Jewish Agency for Israel," February 1970, para. 1(d), reproduced in Appendix F, "Reconstitution of the Jewish Agency for Israel," December 31, 1970, available at http://www.irmep.org/ila/ja/12311970_JAFI_Reconstitution.pdf (accessed August 13, 2010).

¹⁵² The American Section of the Jewish Agency for Israel had registered under the Foreign Agents Registration Act in September 1943; the Internal Revenue Service granted the American Section tax-exempt status in September 1948. In August 1969, under the direction of the US Department of Justice, the Agency filed a previously undisclosed 1953 "Covenant" with the Israeli government indicating that it had received Israeli government funding. The Jewish Agency's American Section ended operations in November 1971. The World Zionist Organization - American Section registered in September 1971 as a "foreign agent" of the World Zionist Organization in Israel, stating that it was not controlled or financed by any foreign government, but occupied the same office space and employed the same management and staff as the Jewish Agency. Institute for Research: Middle Eastern Policy, "American Section - Jewish Agency for Israel, Inc. Deregisters as a Foreign Agent after the DOJ orders it to file secret 1953 Covenant Agreement with the Israeli Government," <http://www.irmep.org/ila/ja/> (accessed August 13, 2010).

¹⁵³ J. J. Goldberg, "This Is What Israeli Democracy Looks Like," *Jewish Daily Forward*, June 27, 2010, available at <http://ejewishphilanthropy.com/the-world-zionist-organization-sinking-fast-and-no-one-cares/> (accessed October 21, 2010).

¹⁵⁴ B'Tselem, "Encouragement of Migration to the Settlements," <http://www.btselem.org/english/settlements/migration.asp> (accessed August 25, 2010).

The *New York Times* identified 40 American groups that had collected more than \$200 million in gifts for Jewish settlements in the West Bank and East Jerusalem since 2000. They gave most of the money to build schools, synagogues, and other public buildings, but some was given for settler housing “as well as guard dogs, bulletproof vests, rifle scopes and vehicles to secure outposts deep in occupied areas.”¹⁵⁵ US taxpayers may deduct their donations to registered US charitable organizations that solicit money for settlements.

Human Rights Watch documented the discriminatory effects of Israeli policies in several settlements that have received funding from American NGOs. For example, according to Palestinian residents of a nearby village, settlers from Itamar and its outposts, south-east of the Palestinian city of Nablus, have confiscated their land, effectively barred them from accessing agricultural lands, repeatedly attacked the village, and continue to build housing that is illegal even under Israeli law, even as Israeli military orders have prohibited the villagers from building or renovating their homes. Itamar has received numerous grants from the US registered “Central Fund of Israel,” according to tax statements.¹⁵⁶ Itamar is also the intended beneficiary of a fundraising campaign by the “Christian Friends of Israeli Communities,” an evangelical Christian group “established in 1995, in response to the Oslo Process, the devastating series of agreements that ceded land to the Arabs in the heart of Biblical Israel,” that is registered as a US non-profit.¹⁵⁷ The “One Israel Fund,” another registered charitable organization, states that it works “in concert with communities, [Israeli] government officials and the IDF” and lists on its website a number of settlements that “receive direct support from One Israel Fund” in areas that Human Rights Watch researched—including the “Maskiyot development fund,” to develop a settlement in the northern Jordan valley.¹⁵⁸ The Israeli government, according to news reports, retroactively authorized illegal civilian construction in Maskiyot and ensured the settlement’s connection to water and electrical networks, even as the Civil Administration has repeatedly destroyed the

¹⁵⁵ Jim Rutenberg, Mike McIntire, and Ethan Bronner, “Tax Exempt Funds Aid Settlements in West Bank,” *New York Times*, July 5, 2010.

¹⁵⁶ Central Fund of Israel, Form 990, <http://www.guidestar.org/FinDocuments/2005/132/992/2005-132992985-01b52485-9.pdf>. (accessed October 12, 2010).

¹⁵⁷ Christian Friends of Israeli Communities (CFOIC), “Background Information,” <http://www.cfoic.com/pages.jsp?pageID=5> (accessed October 30, 2010). CFOIC stated in June 2010 that it seeks to raise US \$63,000 for an “Itamar boy’s intervention center” to help provide vocational training for troubled settler youth, http://www.cfoic.com/db_images/June%202010%20Itamar%20Boy%27s%20Intervention%20Center.pdf (accessed July 7, 2010). See also CFOIC, Form 990 for 2008, stating that “In 2008, CFOIC helped over 50,000 people from Judea and Samaria.” <http://www.guidestar.org/FinDocuments//2008/412/020/2008-412020104-050e7ae5-9.pdf> (accessed October 30, 2010).

¹⁵⁸ One Israel Fund, “About Us,” <http://www.oneisraelfund.org/about/> (accessed October 4, 2010); One Israel Fund, “Make a Donation to One Israel Fund,” <https://www.oneisraelfund.org/donations/default2.asp> (accessed December 12, 2010).

homes of hundreds of Bedouin residents of nearby communities that date back to the 1950s, that lack any connection to utilities, on the grounds that they lacked building permits.¹⁵⁹

To be tax-exempt under the US Internal Revenue Code, “an organization must be organized and operated exclusively for exempt purposes set forth in section 501(c)(3).”¹⁶⁰ The Internal Revenue Service states that such exempt purposes include “charitable” purposes, such as “relief of the poor, the distressed, or the underprivileged,” and “eliminating prejudice and discrimination; defending human and civil rights secured by law,” among other purposes.¹⁶¹ The US Supreme Court, in 1983, upheld an Internal Revenue Service (IRS) decision to reject the tax-exempt status of racially discriminatory private schools in the US. According to the court, only organizations whose activities meet common law definitions of “charity” are entitled to tax exemptions. “Charitable exemptions are justified on the basis that the exempt entity confers a public benefit,” and must moreover “demonstrably serve and be in harmony with the public interest” and “not be so at odds with the common community conscience as to undermine any public benefit that might otherwise be conferred.” Racial discrimination in education undoubtedly fails to meet those criteria, “violates deeply and widely accepted views of elementary justice,” and should not “be encouraged by having all taxpayers share in [the] support [of discriminatory schools] by way of special tax status.”¹⁶² The Court cited a number of other cases in which US tax authorities had validly required organizations seeking tax-exempt status to provide services to a sufficiently large number of people for those services to qualify as a “public” benefit,¹⁶³ and to show that their services were open to all on a racially non-discriminatory basis.¹⁶⁴

US courts and administrative bodies like the IRS have not ruled or decided on the issue of whether donations that support settlements or the discriminatory policies and practices that accompany them violate US law, or whether the US is in violation of its international

¹⁵⁹ The “One Israel Fund” website also allows donors to “allocate your gift directly to any of the 150+ communities” in the settlements by writing in the name of the settlement. “Make a Donation to One Israel Fund,” <https://www.oneisraelfund.org/donations/default.asp> (accessed October 4, 2010). Another specific “project” listed on the website, for example, is the “Arzei HaLevanon Pre-Military Torah Academy of Ma’ale Efraim.”

¹⁶⁰ US Internal Revenue Service (IRS), “Exemption Requirements - Section 501(c)(3) Organizations” <http://www.irs.gov/charities/charitable/article/0,,id=96099,00.html> (accessed September 30, 2010).

¹⁶¹ IRS, “Exempt Purposes – Section 501(c)(3) Organizations,” <http://www.irs.gov/charities/charitable/article/0,,id=175418,00.html> (accessed September 30, 2010). The full text of Section 501(c)(3) is available at <http://www.law.cornell.edu/uscode/26/501%28c%29.html>.

¹⁶² 461 U.S. 574, *Bob Jones University v. United States* (1983), pp. 590-592 (upholding IRS Revenue Ruling 71-447), available at http://www.law.cornell.edu/supct/html/historics/USSC_CR_0461_0574_ZO.html (accessed October 25, 2010).

¹⁶³ *Id.*, citing *Crellin v. Commissioner*, 46 B. T. A. 1152, 1155-1156 (1942); *James Sprunt Benevolent Trust v. Commissioner*, 20 B. T. A. 19, 24-25 (1930).

¹⁶⁴ *Id.*, citing Rev.Rul. 67-325, 1967-2 Cum.Bull. 113.

obligations by granting tax-exemptions to such donations and to organizations that transfer them. Charitable organizations registered with the Internal Revenue Service (IRS) are publicly listed and in some cases file tax forms (“Form 990”) that are also publicly available and that show that the organizations have received donations that are then transferred to settlements.

Corporate Involvement in Settlements

Israeli and international businesses that benefit from settlements, where generous Israeli subsidies encourage investment, play an indirect role in the harmful treatment that Palestinians receive due to discriminatory Israeli policies.¹⁶⁵ Business interests in settlements take a number of forms. Israeli construction companies, including publicly-traded corporations whose shares are owned by foreign investors, build settlements.¹⁶⁶

Corporations also invest in settlement industrial zones and agricultural production. The Agrexco Agricultural Export Company, for instance—the largest such exporter in Israel, in which the Israeli government holds a 50 percent ownership interest¹⁶⁷—is responsible for marketing 60 to 70 percent of the agricultural produce grown in settlements, which accounted for roughly 5 percent of total revenue, according to court testimony by the general director of Agrexco UK in 2006.¹⁶⁸ Photographs taken in 2009 show “Carmel Agrexco” signs on packing houses for agricultural produce in two settlements documented in this report, Ro’i and Mechola, in the northern Jordan Valley.¹⁶⁹ In 2009, at an annual awards ceremony recognizing farmers who had produced agricultural goods for export, Agrexco honored an

¹⁶⁵ Businesses also benefit from large Israeli government subsidies, such as tax incentives, to locate their operations in settlements. See “Settler Incentives and Funding Sources,” above.

¹⁶⁶ In Har Homa, for example, Danya Cebus, a subsidiary of Africa-Israel Investments Ltd., constructed a 20-story tower and five 8-story buildings comprising a total of 118 housing units; see company website, <http://www.danya-cebus.co.il/about/profile/?langId=2> (accessed August 24, 2010). The Norwegian government pension fund divested from Africa-Israel in August due to its role in settlement construction. Reuters and Shuki Sadeh, “Norway government-run pension fund drops Africa Israel group shares,” *Haaretz*, August 24, 2010, <http://www.haaretz.com/print-edition/business/norway-government-run-pension-fund-drops-africa-israel-group-shares-1.309874> (accessed October 14, 2010).

¹⁶⁷ Report of the Registrar of Government Companies, Agrexco Agricultural Export Co., Ltd., December 31, 2007, on file with Human Rights Watch.

¹⁶⁸ Statement cited in Profundo, *UK economic links with Israeli settlements in occupied Palestinian territory*, (research paper prepared for the School of Oriental and African Studies, University of London), 10 February 2009, pp. 15 -17. Agrexco’s total revenue was €650 million in 2007, such that settlement produce would amount to around €30 million. Agrexco’s total revenue appears to have dropped from more than € 600 million in 2007 to € 492 million in 2009. Agrexco – which is co-owned by the Israeli government, Israeli production and marketing boards, and the Tnuva cooperative – exports 85 percent of its products to Western Europe, primarily under the Carmel brand. In 2009, the company marketed a total of 390,000 tons of fresh produce. “Agrexco,” Dun’s 100: Israel’s Largest Enterprises, http://duns100.dundb.co.il/ts.cgi?tsscript=comp_eng&duns=600000764 (accessed August 24, 2010).

¹⁶⁹ Photographs taken in 2009 by members of the Women’s Coalition for Peace, an Israeli NGO, on file with Human Rights Watch. Photographs of “Carmel Agrexco” packing houses for agricultural produce in the Mechola settlement are available at <http://corporateoccupation.wordpress.com/2010/03/23/organic-apartheid-Mechola-settlement/#more-325>, (accessed October 1, 2010)

herb farmer from the settlement of Mechola and the research and development director for agricultural exports from the Jordan valley.¹⁷⁰ Numerous other companies operate in the northern Jordan Valley.¹⁷¹

Commercial agriculture in settlements benefits from discriminatory access to enormous quantities of water: Israeli settlements in the Jordan Valley house around 6,000 to 9,000 settlers, but consume one quarter of the annual water consumption of the entire Palestinian population of the West Bank, some 2.5 million people.¹⁷² As is discussed in a case study in this report, the over-extraction and discriminatory allocation of water resources in the northern West Bank to service agricultural settlements has contributed to drinking water shortages and a sharp decline in lands under cultivation for Palestinians.

Corporations also benefit from the low cost of Palestinian agricultural labor in settlements. Human Rights Watch interviewed an Israeli worker in an agricultural settlement who described a system according to which Israelis were employees of a given company, whereas Palestinians were employees of the “contractor” who mediated with the Israeli company. Israeli employees received at least minimum wage (around 21 shekels per hour) and appropriate employment benefits under Israeli law, the worker told Human Rights Watch, whereas none of the Palestinian workers earned minimum wage or received other benefits; instead, the company paid the contractor around 90 shekels per worker per day, in the knowledge that the contractor would take up to 25 shekels of that amount as his own commission.¹⁷³ According to Corporate Watch, a US-based NGO that interviewed Palestinian agricultural workers in a different settlement in the northern Jordan Valley, the workers do

¹⁷⁰ The awards committee included members of the Israeli Ministry of Agriculture, Agrexco, and the Vegetable Growers’ Organization of Israel and the Flower Growers’ Union of Israel. Carmel Agrexco, “Awards Ceremony for Farmers Excelling in Exports 2009”, <http://www.slideshare.net/eshaki/mitstainim250410> (in Hebrew, accessed October 5, 2010).

¹⁷¹ A number of other companies reportedly operate in Ro’i. See, e.g., Corporate Watch, “Companies trading from Ro’i settlement in the Jordan Valley,” August 19, 2010, <http://www.corporatewatch.org/?lid=3689> (accessed August 24, 2010).

¹⁷² As of 2007, total Palestinian water consumption stood at around 150 million cubic meters (MCM) in the West Bank. The 1995 Oslo accords granted the Palestinian Authority the right to extract 118 million cubic meters of water annually from aquifers in the West Bank (although by 2007, actual extraction had fallen to 113 MCM), and to develop an additional 20.5 MCM for “immediate needs” pending a final status agreement (of which the PA has been able to develop only 12.9 MCM). While the Oslo agreement allowed the PA to purchase up to 3.1 MCM from the Israeli national water carrier, Mekorot, by 2007, the PA depended on Mekorot for an additional 22.3 MCM of water each year. Oslo granted Israel rights to extract 40 million cubic meters (MCM) of water annually from the Eastern Aquifer, which underlies the Jordan Valley. World Bank, World Bank, West Bank and Gaza: Assessment of Restrictions on Palestinian Water Sector Development, Report No. 47657-GZ, April 18, 2009, pp. 7, 12, <http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/WaterRestrictionsReport18Apr2009.pdf>, accessed April 18, 2010 (hereafter “Water Sector Development”) p. 7, citing The Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip, Annex III, Article 40.

¹⁷³ Human Rights Watch interview, N. A., Jordan Valley, November 9, 2010.

not receive health insurance or holiday pay, and are paid, on average, around 75 NIS (US \$19.75) per day, half the minimum wage to which they are legally entitled.¹⁷⁴

Other companies, including multinationals, extract natural resources from the West Bank primarily for the benefit of Israelis. In 2009 the Israeli NGO Yesh Din petitioned the Israeli High Court to halt Israeli companies from continuing operations at 11 quarry sites in the West Bank that supply 10 million tons of the 44 million tons of building materials Israel uses each year.¹⁷⁵ Noting that these companies sent at least 75 percent of the gravel and other construction materials they produced to Israel, Yesh Din cited a High Court ruling that held that Israel's actions in the occupied territories were limited by "its security interest in the area, or on the interests of the local population.... A territory held through belligerent seizure is not a field open for economic or other exploitation."¹⁷⁶

While states are the primary duty-bearers under international humanitarian and human rights law, businesses and other actors have responsibilities. Indeed, as the preamble of the Universal Declaration of Human Rights (UDHR) states, "every organ of society" does.¹⁷⁷ In addition, companies may be bound by international human rights standards, insofar as such standards have been incorporated into domestic legislation in the countries in whose jurisdictions the companies operate.

The Special Representative of the UN Secretary-General on business and human rights in 2008 published a framework—endorsed by the UN Human Rights Council—according to which businesses have the responsibility to "respect" human rights.¹⁷⁸ Corporate responsibility to respect human rights entails due diligence—including creating,

¹⁷⁴ Corporate Watch, "Companies trading from Ro'i Settlement."

¹⁷⁵ Yesh Din v. Commander of the IDF et al., <http://www.yesh-din.org/sys/images/File/QuarriesPetitionEng%5B1%5D.pdf> (accessed August 24, 2010); see Ethan Bronner, "Desert's Sand and Rocks Become Precious Resources in West Bank Dispute," *New York Times*, March 7, 2009, http://www.nytimes.com/2009/03/07/world/middleeast/07westbank.html?_r=2 (accessed August 24, 2010).

¹⁷⁶ Yesh Din, citing Justice A. Barak, *Jamait Askan v Commander of IDF forces in Judea and Samaria* (HCJ 393/92, *Piskei Din* 37(4) 785, pp. 794-795).

¹⁷⁷ In addition to the UDHR, the preambles of both the ICCPR and ICESCR recognize that others beyond states—specifically individuals—have human rights responsibilities, which may cover juridical persons (including businesses) as well as natural persons. Moreover, there is a broad consensus that businesses are subject to direct responsibility for human rights abuses that amount to international crimes, including enslavement, genocide, war crimes, and crimes against humanity. See *Margins of Profit*, note 3, pg. 4.

¹⁷⁸ John Ruggie, "Respect, Protect and Remedy: A Framework for Business and Human Rights," A/HRC/8/5, April 7, 2008, <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf> (accessed August 25, 2010).

implementing and monitoring human rights policies, based on core human rights and International Labour Organization treaties—and avoiding complicity in abuses.¹⁷⁹

Another set of principles relevant to multinational businesses with operations or subsidiaries in Israeli settlements are the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises. The guidelines comprise “recommendations on responsible business conduct addressed by governments to multinational enterprises.”¹⁸⁰ For example, they urge multinational corporations to, “Respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments,” and to “Encourage local capacity building through close co-operation with the local community.”¹⁸¹ The guidelines apply to companies in or from the 33 member countries of the OECD, including Israel, which acceded to the OECD in September 2010.¹⁸² The guidelines are addressed to all parent and local entities within multinational enterprises (MNEs), which are defined broadly as private or state “companies or other entities established in more than one country and so linked that they may coordinate their operations in various ways.”¹⁸³

In addition to human rights law, international humanitarian law, including the law of occupation, has been held to apply to corporate officers. The US Nuremberg Military Tribunals in 1948 held corporate officers personally accountable for confiscating property under laws that contravened rules of international humanitarian law.¹⁸⁴

Compliance with human-rights principles would, at minimum, require companies to determine the extent to which they contribute to, and take measures to mitigate and prevent

¹⁷⁹ *Id.*, paragraphs 51-81.

¹⁸⁰ Organisation for Economic Cooperation and Development, *OECD Guidelines for Multinational Enterprises*, OECD Doc. DAFFE/IME(2000)20 (2000), <http://www.oecd.org/dataoecd/56/36/1922428.pdf> (accessed August 24, 2010).

¹⁸¹ *Id.*, Guidelines 2 and 3.

¹⁸² The guidelines also applied to Israel before it became an OECD member. *OECD Guidelines for Multinational Enterprises*, “National Contact Points,” May 2010, <http://www.oecd.org/dataoecd/17/44/1900962.pdf> (accessed August 24, 2010); “Israel’s accession to the OECD,” September 7, 2010, http://www.oecd.org/document/38/0,3343,en_2649_34487_45697574_1_1_1_1,00.html (accessed October 31, 2010).

¹⁸³ *OECD Guidelines*, at I.3. OECD’s Investment Committee has stated that the Guidelines apply to international investment or other activities that have an “investment nexus,” which it has not defined but that, experience shows, can encompass supply and contractor relationships. For further discussion, see OECD Watch, “The Model National Contact Point (MNCP): Proposals for improving and harmonizing the procedures of the National Contact Points for the OECD Guidelines for Multinational Enterprises,” September 2007, p. 18.

¹⁸⁴ The Tribunal held officers of the Krupp company responsible for confiscating and using property “based upon German-inspired anti-Jewish laws” in violation of Article 48 of the Hague Regulations, “which requires that the laws in force in an occupied country be respected”; and of Article 46 of the Hague Regulations, “which provides that private property must be respected.” *Trials of War Criminals before the Nuremberg Military Tribunals*, Vol. IX, United States Government Printing Office, Washington, 1950, pp. 1351–2.

any involvement in violations of Palestinians' human rights, including, for example, agricultural or industrial operations located on Palestinian land that Israeli authorities confiscated in violation of the laws of armed conflict and based on discriminatory policies.

V. Northern Jordan Valley

Human Rights Watch documented instances of discrimination against a number of Palestinian communities in the northern Jordan Valley, a large area covering 30 percent of the West Bank along its eastern border. The Jordan Valley was one of the first areas that Israel designated for settlement after it captured the West Bank in the 1967 Middle East War.¹⁸⁵ Since then, between 6,000 and 9,400 Jewish settlers have established themselves in area.¹⁸⁶ Approximately 56,000 Palestinians live in the valley.

The Jordan Valley comprises almost half of Area C. Areas under settler control—including the built-up areas of settlements, the municipal boundaries of individual settlements and larger areas under the control of the regional council of settlements— amount to 860,000 dunams (86,000 hectares), almost 50 percent of the Jordan Valley.¹⁸⁷ Thus, roughly 9,000 Jewish settlers control 50 percent of the area, while some 60,000 Palestinians have access to less than 10 percent of the area.¹⁸⁸

The Settlement Division of the Jewish Agency, the IDF, and “various agricultural movements” settled the valley pursuant to a plan devised by Yigal Alon, Minister of Absorption and Deputy Prime Minister from 1967 to 1969. The “Alon Plan” was intended, first, “to set a secure border along the Jordan River and to generate strategic control along the Jordan Valley [and second] ... to deal with the new situation in which there was a large Arab population in Samaria under Israel’s control.”¹⁸⁹ The 1995 Oslo Accords, which were supposed to be replaced by a final status agreement in 1999, designated 90 percent of the Jordan Valley as Area C, under complete Israeli military and civil control; the accords did not give Israel any rights to own land in the area.¹⁹⁰

¹⁸⁵ The Jordan Valley is both a geographical region extending from the Jordan River, in the East, to the first ridge of the central mountains in the West, and the name of a settlement regional council.

¹⁸⁶ Save the Children, “Fact Sheet: Jordan Valley,” October 2009, p. 2. International media reports commonly use the figure of 9,000 settlers in the Jordan Valley.

¹⁸⁷ Areas of the Jordan Valley that are barred to Palestinian development also include closed military “training” or “firing” zones and nature preserves, which cover another 44 percent of the valley beyond that controlled by settlements. See Save the Children, “Fact Sheet: Jordan Valley,” p. 2, and “Jordan Valley: General Description,” Jordan Valley Regional Council.

¹⁸⁸ According to Palestinian estimates, the Palestinian population of the valley has dropped from more than 200,000 (including refugees who had fled from Israeli forces in 1948) on the eve of Israel’s occupation of the area in 1967. Some residents fled in 1967 and were prevented from returning by Israel, while Israel’s restrictive building policies has forcibly displaced other, see: Amira Hass, “Otherwise occupied / How green is my valley,” Haaretz, March 4, 2010 (accessed July 15, 2010).

¹⁸⁹ Jordan Valley Regional Council [the official website for the Israeli settler government of the area], “Jordan Valley: General Description,” <http://www.jordanvalley.org.il/?categoryId=38842> (accessed April 26, 2010).

¹⁹⁰ OCHA, “‘Lack of Permit’ Demolitions and Resultant Displacement in Area C,” May 2008, http://www.ochaopt.org/documents/ocha_opt_special_focus_demolition_area_c.pdf (accessed August 20, 2010).

The majority of early Jordan Valley settlers were secular Jews; many of the settlements were founded in the late 1960s and early 1970s by “Nahal” soldiers as part of a plan to secure what was seen as a vulnerable area, and later converted to civilian settlements focused on agricultural production (see “Background”). An increasing number of national-religious Jews have moved there, along with a small number of settlers displaced from the Gush Katif settlements in Gaza that Israel evacuated in 2005.¹⁹¹

Settlers in the Jordan Valley receive significant state support. For example, on December 14, 2009, the Israeli cabinet approved adding Jordan Valley settlements to a list of “national priority” communities that would receive, on average, NIS 1,000 (US\$260) per person in subsidies for education, employment and culture.¹⁹²

In contrast, Israeli policies, including arbitrary demolition of homes in areas declared to be “closed military zones” and denial of permits for virtually any building of homes or infrastructure like water pipes or electrical lines, have made it difficult for Palestinian residents to remain in the area. Israeli authorities have prohibited Palestinians from having any access to the Jordan River; drilled wells to service settlements that dried up Palestinians’ traditional water sources; and cut Palestinian water lines; confiscated Palestinian water tankers, tractors, sheep, and other property; demolished Palestinian homes and declared lands off limits as “military zones”; and established permit regimes that effectively prohibit Palestinians whose place of residence is registered as outside the Jordan Valley from moving there.¹⁹³

Stated Israeli policy is to extend military control over the area, which lies close to the Jordanian border, in order to prevent arms smuggling and the possibility of military attack.¹⁹⁴ In March 2010, Prime Minister Netanyahu told the Foreign Affairs and Defense Committee of Israel’s Knesset, or parliament, that Israel would not withdraw from the Jordan Valley under any peace

¹⁹¹ International Crisis Group, *Israel’s religious right and the question of settlements*, 2009, pp. 3, 5.

¹⁹² Barak Ravid, “PM’s Plan would put some settlements on list of national priority communities,” *Haaretz*, December 11, 2009, <http://www.haaretz.com/hasen/spages/1134037.html> (accessed April 27, 2010); Barak Ravid and Moti Bassock, “Cabinet okays new national priority map that includes settlements,” *Haaretz*, December 15, 2009, <http://www.haaretz.com/hasen/spages/1134904.html> (accessed April 27, 2010).

¹⁹³ For discussions of the Jordan Valley, see World Bank, *Water Sector Development*, April 2009; World Bank, *Economic Effects of Restricted Access to Land in the West Bank*, October 2008; OCHA, “Special Focus: Jordan Valley,” 2005, http://www.ochaopt.org/documents/ochaHU1005_En.pdf (accessed August 25, 2010).

¹⁹⁴ Israeli governments have consistently voiced plans to retain the Jordan Valley. In October 1995, Prime Minister Yitzhak Rabin stated that Israel should “retain the Jordan Valley in the widest sense of that term.” (Cited by Dore Gold, “Banging Square Pegs into Round Holes,” *Jerusalem Center for Public Affairs*, December 2008). In February 2006 Minister of Defense Shaul Mofaz stated that Israel’s future permanent borders would include “the Jordan Rift Valley.” “Mofaz describes Israel’s ‘future borders,’ including Ariel,” *Haaretz*, February 27 2006.

agreement with Palestinians, according to the Israeli daily newspaper Haaretz.¹⁹⁵ Generally, Israeli military officials also assert that roadblocks and restrictions on Palestinian freedom of movement in the West Bank are required to protect settler security, including preventing attacks by Palestinians or to prevent them from fleeing after such attacks. During the second Palestinian intifada, Palestinians carried out a number of fatal attacks against settlers in the valley; in 2009, Palestinian gunmen killed two Israeli policemen in the Jordan Valley.

These security concerns do not justify Israel's discriminatory policies in the Jordan Valley, which in some cases have made it impossible for Palestinian residents to continue living there while encouraging Jewish Israelis to move to the area. Israeli concerns that Palestinians will attack settlers do not explain or justify restrictions on Palestinians' ability to travel or move to the Jordan Valley, to drill wells or connect to the water network, to construct or repair homes or animal pens, or numerous other activities. Israel's demolition of homes and eviction of persons on the basis that they live in "closed military zones" that were declared in vast areas long after Palestinians had established communities there are unjustifiable because there is no evidence that the declaration of the military zones, their large areas, or their outlines are militarily necessary. A most recent practice appears to be declaring "training" or "firing zones" in areas with Bedouin communities, and the subsequent demolition of structures and eviction of residents, when alternative, uninhabited areas are readily available for military training. A more general Israeli concern, which is that it must maintain a military presence in the Jordan Valley in order to prevent the infiltration of weapons and armed groups intent on attacking Israeli targets, would not justify arbitrary and discriminatory demolitions of homes, water cisterns, animal pens and other structures, or any effort to clear the area of Palestinian civilians, because the laws of war allow such destruction and forcible transfer only for purposes of urgent military necessity.

The effects of Israeli policy in the Jordan Valley—including demolitions of homes, animal pens, and even entire communities, such as al-Farisiye (discussed below)—have been to force some Palestinians to move permanently elsewhere (primarily to cities and towns classified as Areas A and B) without compensation.¹⁹⁶ Overall figures are not available, but in addition to the case studies in this report, numerous Israeli media articles and NGO reports

¹⁹⁵ Jonathan Lis, "Netanyahu: Israel will never cede Jordan Valley," March 2, 2010, Haaretz, <http://www.haaretz.com/news/netanyahu-israel-will-never-cede-jordan-valley-1.266329> (accessed July 20, 2010).

¹⁹⁶ See case studies of Bardala, Al Ras al Ahmar and Al Hadidiye below. See also, Uri Blau and Yotam Feldman, "A Dry and Thirsty Land," Haaretz, August 13, 2009 (quoting Palestinian residents of the Jordan Valley who are being forced out by the lack of water while noting abundant water in settlements), <http://www.haaretz.com/a-dry-and-thirsty-land-1.281960> (accessed July 11, 2010).

suggest that residents of many Palestinian communities have been indirectly forcibly transferred in this way.

A June 2009 survey of 472 Palestinian households in Area C in the Jordan Valley by Save the Children UK found that 31 percent of households had been temporarily or permanently displaced since the outbreak of the second intifada in 2000 due to Israeli home demolitions, military orders, and other restrictions.¹⁹⁷

For example, on January 10, 2010, demolitions of “illegal” buildings in Khirbet Tana, a village east of Nablus, left 100 residents homeless, including 34 children. As of late June, only 27 of the village’s 56 families remained, and only 17 of the 40 children who used to attend the primary school were still enrolled.¹⁹⁸ In another case, *Haaretz* reported that the Civil Administration had demolished numerous “illegal” homes on the outskirts of Palestinian towns and villages—including Tubas, Beit Furik, Beit Dajan and Tamun—over the past 15 years, and that around 180 families, or up to 1,000 people or more, had left the town of Jiftlik, the largest Palestinian community in Area C, in the past several years because of the de facto ban on any new Palestinian construction there. In December 2006, the Israeli High Court of Justice rejected the appeal of several families facing demolition orders in the Bedouin community of Al Hadidiye on the grounds that they posed a security risk to the neighboring settlement of Ro’i; as of July 2009, according to the Israeli NGO Machsom (Checkpoint) Watch, 13 or 14 families had sold their livestock, abandoned their traditional herding livelihoods and moved to the nearby village of Atuf and the town of Tamun.¹⁹⁹

If Israel is imposing harsh living conditions on Palestinians in order to render the valley easier to control in the event of a theoretically possible future invasion or uprising, such a policy would violate Israel’s obligations as the occupying power not to forcibly transfer the local population except in cases of urgent and actual military necessity. The destruction of civilian property to improve the military position of an attacker in potential future conflicts would also violate international humanitarian law. While a civilian object that provides a concrete and perceptible military advantage could be justifiably destroyed, a civilian object does not become a target because its destruction would offer the attacker an advantage in a hypothetical future attack, or because of its potential future use as a military objective by

¹⁹⁷ Save the Children, “Fact Sheet: Jordan Valley,” October 2009, p. 9.

¹⁹⁸ Venetia Rainey, “Schools suffer as Palestinians in Area C forced out,” Jerusalem Media and Communications Center, July 7, 2010, <http://www.jmcc.org/news.aspx?id=1195> (accessed September 22, 2010).

¹⁹⁹ Daphne Banai, “Stop Escalation in the Campaign for the Expulsion of Palestinian Nomads from the Jordan Valley,” July 12, 2009, Machsom Watch, <http://www.canpalnet-ottawa.org/Jordan%20valley2.html> (accessed June 3, 2010).

the enemy which could not meet the “urgent and actual” necessity test.²⁰⁰ According to the website of the settler-run Jordan Valley Regional Council, there are 21 Jewish settlements in the valley “established on an area of 860,000 dunams [86,000 hectares].”²⁰¹

The first community to be established was Mechola (January 1968) as the community connecting the Jordan Valley to the Bet Shean Valley. The pioneers who settled in Mechola worked to develop a viable agricultural economy combined with military activity, patrols, and guard duty.

Agriculture is the leading economic sector for Jewish settlers in the valley, according to the settlement website, with 33,000 dunams (3,300 hectares) of cultivated land producing 500 million shekels (US\$130 million) in annual revenue. Approximately 80 percent of dates, 70 percent of grapes, as well as “most” of the peppers, herbs and spices grown in Jordan Valley settlements are exported and “meet the stringent standards of the export agencies.” Jordan Valley settlements also grow cherry tomatoes, eggplants, flowers, citrus fruits, olives, and pomegranates, and raise chickens, turkeys, dairy cows, goats and sheep.²⁰²

The valley’s hot climate and the salinity of the soil “require sluicing the soil and using large amounts of irrigation,” according to the settlement council. The water comes primarily from “the wells of the Mekorot Company which are inadequate during the demanding [summer] season,” floodwater “that flows from the Nablus region to the Tirza reservoir,” water from the Jordan River, and “recycled sewage water from East Jerusalem from the Kidron stream.”²⁰³ The American branch of Hadassah, a Jewish women’s charity, “has pledged \$3 million toward funding the Tirza reservoir in the Jordan Valley” according to various statements by the group, which is cooperating on the project with the Jewish National Fund (JNF).²⁰⁴

²⁰⁰ Under the rules of international humanitarian law, civilian objects may not be the target of attack. (Additional Protocol I, art. 48.) Civilian objects have been defined as all objects that are not military objectives. (Protocol I, art. 52(1).) Military objectives are those objects which “by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage” (Id., art. 52(2).) As the ICRC’s authoritative Commentary on Protocol I states, “it is not legitimate to launch an attack which only offers potential or indeterminate advantages.” ICRC, *Commentary to the Additional Protocols*, para. 2024.

²⁰¹ Jordan Valley Regional Council, “General Description.”

²⁰² Id.

²⁰³ Id.

²⁰⁴ “Hadassah Southern California: 2009-10 Case Statement,” http://www.cpcr.hadassah.org/atf/cf/%7BCoADB627-BB8B-4C47-9A95-5924C2738BA2%7D/Matching_Gifts_rev607.pdf (accessed April 10, 2010). The Tirza reservoir collects “6 million cubic meters of water in run-off.” Michal Raveh, “Date farmers expect \$14m in sales,” *Globes*, August 10, 2003, [http://archive.globes.co.il/searchgl/Date%20farmers%20expect%20\\$14m%20in%20sales_h_hd_oL3KuDp8uN3SpC34mE2v eT6ri.html](http://archive.globes.co.il/searchgl/Date%20farmers%20expect%20$14m%20in%20sales_h_hd_oL3KuDp8uN3SpC34mE2v eT6ri.html) (accessed April 18, 2010). The reservoir’s southern dam was completed in 2002. “Report on the Activities of Keren Keyemeth Le Israel / Jewish National Fund 2002,” <http://www.kkl.org.il/almanac/ENGLISH/About/report.htm> (accessed October 21, 2010).

Israel has officially recognized several settlements located in the northern Jordan Valley. Mechola, founded by scouts from the Bnei Akiva youth movement in 1967 and formally established as a civilian settlement in 1969, is a religious *moshav* (agricultural) settlement; it had 357 residents as of 2007, according to Peace Now statistics.²⁰⁵ Human Rights Watch visited the settlement and interviewed a member of the settlement’s administration, who said he had been living there for 40 years. He explained most settlement residents worked in cities inside Israel, including Beit She’an (to the north) and Tel Aviv (to the west).²⁰⁶ According to the settler, settlers who want to build homes in Mechola “only pay construction costs. There’s no need to certify the land because all the permits are there [already]. It costs around NIS 300,000 [US\$80,000].” Another settler said, “we have no water problem here” because the settlement had access to water from the mountain aquifer underlying the West Bank. Among the settlement’s amenities is a swimming pool, which Human Rights Watch observed during a visit to the settlement.²⁰⁷

Settlers said that the settlement had minimal security problems. “It’s been quiet for years, except for an incident inside the settlement 32 years ago and another one on the road 15 years ago and 7 years ago,” one settler said. “But the two villages nearby [including Bardala] are quiet,” he added, and although he claimed the Bedouins nearby were criminals (“They steal, like they do all over the country”), they were not a security threat to the settlements.

Human Rights Watch observed a modern medical clinic in the settlement, as well as other public buildings, indicating significant levels of support provided with governmental approval. A placard on Mechola’s “friendship house” identified it as being built with funds donated by an American NGO, the International Fellowship of Christians and Jews.²⁰⁸ Although the UN and various NGOs provide emergency services to local Palestinian residents, including after incidents when their homes have been demolished, this support cannot take the form of permanent staffed structures due to the Civil Administration’s refusal to provide building permits.²⁰⁹

²⁰⁴ File downloaded from Peace Now, settlements information, http://www.peacenow.org.il/data/SIP_STORAGE/files/7/2747.xls (accessed April 11, 2010).

²⁰⁵ File downloaded from Peace Now, settlements information, http://www.peacenow.org.il/data/SIP_STORAGE/files/7/2747.xls (accessed April 11, 2010).

²⁰⁶ Human Rights Watch interview, settler, Mechola, July 6, 2010.

²⁰⁷ Human Rights Watch observation, Mechola, July 6, 2010.

²⁰⁸ The IFCJ was “founded in 1983 by Rabbi Yechiel Eckstein to promote greater understanding between Jews and Christians and to build Christian support for Israel.” International Fellowship of Christians and Jews, http://www.ifcj.org/site/PageNavigator/eng/USENG_homenew?cvridirect=true (accessed July 10, 2010).

²⁰⁹ Human Rights Watch interview, international humanitarian employee dealing with northern Jordan Valley emergency relief, Jerusalem, November 15, 2010.

Shadmot Mechola, a nearby settlement (established 1979), is primarily agricultural, but also runs a guesthouse for tourists. Its website shows a swimming pool, and offers tourists:

...breathtaking tours to Amaryllis bulbs hot houses which are harvested, packed and shipped to Europe and USA and potted in time to bloom during the winter holiday season. Short tours of our “Hi-tec” dairy farm, vineyards and orchards. Tours of farms in the Jordan Valley who specialize in crops of vegetables, fruits, flowers and spices for export in hot dry climate.²¹⁰

Over-extraction of water by Israel has caused a drop in the water-table in the West Bank, which contributed to a decrease in the amount of water Palestinians extracted from 1999 to 2007, with the main shortfall in the North East Aquifer, which partly underlies the northern Jordan Valley.²¹¹ The supply shortfall is made up by Mekorot, “increasing Palestinian dependency on Israeli water supply.”²¹²

To provide water for the agricultural settlements of Mechola and Shadmot Mechola, Israeli authorities from the late-1960s drilled wells and implemented a pumping system that contributed to serious water shortages for Palestinian residents of the nearby villages of Bardala, Ein al Beyda and others. According to a 2009 World Bank report,

Palestinian wells constructed in the area before 1967 for domestic and agricultural purposes ranged from 30 to 65 metres deep. Israel constructed two deep wells (Bardala 1 in 1968 and Bardala 2 in 1979) a few hundred metres from the Palestinian wells. The water level in the Palestinian wells dropped at the rate of 2 metres a year, and salinity increased. Now the Palestinian wells are dry, as are most of the local springs used by Palestinian consumers for domestic and agricultural purposes.²¹³

Palestinian residents of Bardala told Human Rights Watch that Maskiyot settlement, established in 1986, and Givat Sal'it, an outpost established in early 2002 approximately 300 meters from Mechola, also receive water from wells drilled around Bardala. The government of Israel sought approval for 22 new housing units in Maskiyot in August

²¹⁰ “Shadmot Mechola,” <http://www.m-s-m.org/index.htm> (accessed April 13, 2010).

²¹¹ See World Bank, *Water Sector Development*, p.10, for a map of the aquifers.

²¹² *Id.*, pp. vii-viii. In addition to extraction of water within the West Bank to supply to settlements, Israel also pumps about 10 MCM of water from wells in the West Bank that it then sells to the Palestinian providers and consumers through Mekorot. *Id.*, p. 5.

²¹³ World Bank, *Water Sector Development*, p. 12.

2008.²¹⁴ According to Peace Now, Givat Sal'it covers four hectares, of which 0.6 hectares or 15 percent is private Palestinian land.²¹⁵

According to the World Bank, “Israeli authorities [have] control over the allocation and management of West Bank water resources. Israeli territorial jurisdiction in Area C (60% of the West Bank) consolidates this control, which makes integrated planning and management of water resources virtually impossible for the PA.”²¹⁶ Through a series of military orders, Israel took complete control over the West Bank’s water resources after occupying the territory in 1967; these orders transferred authority over West Bank water resources to the IDF military commander of the area (Military Order No. 92 of August 15, 1967), prohibited unlicensed construction of water infrastructure (Order No. 158 of November 19, 1967), invalidated prior water settlements, and transferred regulatory jurisdiction over water to the military commander (Order No. 291 of December 19, 1968). Israel also prohibited Palestinian access to the Jordan River in 1967, abrogating these water rights; no Jordan River water is currently extracted for Palestinian benefit, the Bank reported.²¹⁷ In 1982, Mekorot, Israel’s national water company, took control of water resources development and management throughout the West Bank.²¹⁸

Water projects in the West Bank must be approved by a joint Israeli-PA water commission, set up under the Oslo agreements, which has approved all but one Israeli-proposed project, but only half those (by dollar value) proposed to help Palestinians.²¹⁹ The World Bank reported in 2009 that “106 water projects and 12 large scale wastewater projects are awaiting JWC approval, some of them since 1999,” which would have benefited nearly 1.9 million Palestinians in total.²²⁰ Human Rights Watch is not aware that Israeli authorities have explained this overall discrepancy; the water commission typically gives technical reasons for rejecting individual projects.²²¹

²¹⁴ Human Rights Watch, “Israel: Stop Plans for New West Bank Settlement,” August 5, 2008, <http://www.hrw.org/he/news/2008/08/05/israel-stop-plans-new-west-bank-settlement>.

²¹⁵ File downloaded from Peace Now, outposts information, http://www.peacenow.org.il/data/SIP_STORAGE/files/3/3733.xls (accessed April 11, 2010). Peace Now provides figures in square meters rather than hectares.

²¹⁶ World Bank, Water Sector Development, p. vii.

²¹⁷ Id., p. 5.

²¹⁸ Mekorot publishes a monthly water supply assessment that has different categories; one of them is “the PA and Bardala.” <http://www.mekorot.co.il/Heb/WaterResourcesManagement/consumeData/Pages/Fabruary2010.aspx> (accessed April 25, 2010).

²¹⁹ World Bank, Water Sector Development, p. ix. Israel does not need to seek approval from the joint water commission to use water resources originating in West Bank aquifers that flow into Israel proper. Id. Human Rights Watch is not aware of the proportion of projects intended to benefit the Israeli water network as opposed to Israeli settlements in the West Bank.

²²⁰ World Bank, Water Sector Development., p. ix.

²²¹ Human Rights Watch interview with Michael Talhami, PA water consultant, Ramallah, October 26, 2010.

In addition to approval by the joint water commission, Palestinian water projects in Area C—including most of the Jordan Valley—must be approved by the Israeli Civil Administration. According to the bank report, the formal rules applied by the Civil Administration are in some ways similar to those it applies to projects inside Israel, but in the West Bank are applied based on outdated regional plans and without Palestinian participation.²²² Finally, all water projects in Area C must also be permitted by the Israeli military, but the World Bank reported that the IDF sees such water infrastructure for Palestinians “as a security risk” to settlements.²²³ Delays of two to three years are normal before the Civil Administration approves Palestinian projects, if at all; in one case the Civil Administration suggested that a wastewater treatment plant intended for Palestinians should also service a nearby settlement.²²⁴

In general, Palestinians in the West Bank receive on average an estimated 50 liters of water per capita daily, an amount that is only one quarter of Israeli water use (a figure that includes settlers). Palestinian extraction of water has actually fallen to levels below those agreed between Israel and the Palestinian side in 1995, due to declining water-tables, and Israeli restrictions on constructing and repairing water infrastructure, among other factors, even as the Palestinian population has rapidly increased by as much as 50 percent.²²⁵

Jewish settlements in the northern Jordan Valley and elsewhere in the West Bank face no such additional hurdles, and water projects intended to benefit settlements are much more likely to be approved by the water commission. Jewish settlements are serviced by wells in the West Bank, which are largely in the Jordan Valley, and by the Israeli national water network, according to the World Bank. In total, all Israeli settlements consume about 75 million cubic meters (MCM) of water, of which 44 MCM are produced from about 40 wells controlled by Israel or settlers within the West Bank.²²⁶ Israeli wells in the Jordan Valley produce around 40 MCM annually. These wells form a closed system that does not feed back into the national water network servicing Israel, but is used almost exclusively by the roughly 9,000 settlers operating agricultural settlements in the valley, according to a Canadian

²²² *Id.*, p. 54.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*, pp. v, vii.

²²⁶ *Id.*, p. 7.

hydrologist working as a consultant with the PA.²²⁷ Jordan Valley settlers thus use roughly one quarter of the water supply of the entire Palestinian population of the West Bank.²²⁸

In contrast, Palestinian residents of the Jordan Valley spend up to 17 percent of their income to receive water from tankers, and have access to 20 liters per day or less, while the World Health Organization recognizes 100 liters per person per day as the recommended minimum.²²⁹ According to the Bank, “With water usage as low 10 lpcd [liters per capita per day] in some areas, some communities of the West Bank, notably in Area C, face water access comparable to that of refugee camps in Congo or Sudan.”²³⁰

The World Bank estimated that the lack of adequate water for irrigation had cost the Palestinian agricultural sector 60,000 dunams (6000 hectares) of uncultivated farmland and 12,500 jobs in the Jordan Valley.²³¹

Bardala is a small farming village of approximately 2,000 residents in the northern Jordan Valley. One resident, Fathi el-Khodeirat, 43, told Human Rights Watch that he was born in Bardala, where his family had built a permanent home in the 1920s. According to Khodeirat, Bardala and other villages nearby including Ein al Beyda, Kardala, al Farsiya, and others traditionally depended on water from local springs. “We had a spring on our farm here, and water from Ein al Iraq, the main spring for the village, also ran across our land,” Khodeirat said. “We used to grow seven kinds of apples and varieties of lemon, orange, and figs. Then the Israelis dug a new well, and it dried up.”²³²

Mustafa Samour has worked distributing water to Bardala village residents for agricultural use since 1986, he told Human Rights Watch. According to Samour, the Bardala village council dug a well that started pumping water at a rate of 240 cubic meters per hour shortly before Israel occupied the West Bank in 1967. In 1975, he said, “the Israelis dug a well 200 meters away from ours. Their well was deeper and pumped out 1000 cubic meters per hour, and our well quickly dried up.”²³³ Samour said that Bardala came to an agreement with

²²⁷ Human Rights Watch interview with Michael Talhami, PA water consultant, Ramallah, October 26, 2010.

²²⁸ See discussion of Agrexco and other corporate involvement in agriculture in the Jordan Valley and accompanying notes in “Corporate Involvement in Settlements,” above.

²²⁹ World Bank, Water Sector Development, p. 99.

²³⁰ *Id.*, p. 17.

²³¹ *Id.*, pp. 26-27.

²³² Human Rights Watch interview with Fathi el Khodeirat, Bardala, April 7, 2010.

²³³ Human Rights Watch interview with Mustafa Samour, Bardala, April 7, 2010.

Mekorot, the Israeli water company in charge of the new well, to purchase the same amount of water they had previously pumped for themselves. Israeli authorities subsequently dug two other wells. According to B'Tselem, Israeli and Palestinian researchers concur that the Israeli drilling was responsible for the desiccation of the Palestinian wells around Bardala.²³⁴

In addition to Mechola and Shadmot Mechola, the settlements of Salit, Maskiyot, and Rotem, as well as several military camps near El Maleh, take water from the wells Israel dug outside Bardala.²³⁵

Israel's assumption of control of Bardala's water resources is the root of the villagers' water problems, Bardala residents told Human Rights Watch. Villagers said that since the Mekorot wells and pumps began operation, they suffered serious shortages of water for drinking and domestic use in summer months because they had no control over the operation of the Israeli water wells—their only source of water. Human Rights Watch observed two large, cylindrical concrete water tanks on hills overlooking Mechola. Samour and Khodeirat said that these tanks were filled by the Israeli water wells that also provide water to Bardala, but that the wells automatically stopped pumping water when the settlements tanks were full. “When the settlements have enough water, then the main pump engine at the well cuts off,” Samour said. “That means no water flows through our pipes, either. It’s an automatic shutoff system. Our water supply all depends on the amount of water the settlements use. We don’t get any water for 5, 10, or 24 hours, sometimes even days.”²³⁶

The problem of irregular and uncontrolled access to water is compounded by the inadequate volume of water that Bardala receives during the hours the well pump is operating, Samour said. “Unlike in the settlements, our water tank is never full, because even when the water is flowing into it, we are taking water out of it at a faster rate than the water is pumped in,” he said. “We never have any reserve water, so we need to have a constant flow. But the flow is cut off every time the settlers’ wells are full.”²³⁷

²³⁴ B'Tselem, *Thirsty for a Solution: The Water Crisis in the Occupied Territories and its Resolution in the Final-Status Agreement*, 2000, p. 31, footnote 90, http://www.btselem.org/Download/200007_Thirsty_for_a_Solution_Eng.doc (accessed April 23, 2010). B'Tselem notes: “This case was covered by the international media. After great pressure was placed on Israel, Mekorot agreed to compensate the residents for their farming loss. The compensation was in the form of allocating water from these two wells to farmers in the two Palestinian villages.”

²³⁵ Human Rights Watch interview with Fathi el Khodeirat, Bardala, April 7, 2010; Human Rights Watch interview with Michael Talhami, PA water consultant, Ramallah, October 26, 2010.

²³⁶ Human Rights Watch interview with Mustafa Samour, Bardala, April 7, 2010.

²³⁷ Id.

The water tended to shut down for longer periods in summer when villagers were most in need of a constant water source, Samour said. Fathi el Khodeirat had observed that the settlements' agricultural areas appeared less busy at this time, prompting him to speculate that, since a large percentage of the settlers' water use was agricultural, they tended to use less water in summer months because their primary agricultural season was in the winter months, since their production was geared for export to foreign markets in colder climates.

In summer the settlements do less planting and use less water than in winter, because they grow their crops for export. That means the pumps are not working, so we don't get water. Some days for two or three days at a time, there is no water.²³⁸

According to Samour, the volume of water per hour that flowed to Bardala was agreed upon by the PA and Mekorot, the Israeli water company that controlled the wells. Bardala could increase the flow of water beyond that amount by paying Mekorot at a rate many times the cost of its agreed-upon usage, which was inadequate to meet the village's needs. The village could not afford to pay the cost of the more expensive rate, he said.

Human Rights Watch viewed a Mekorot water bill provided by the Israeli Civil Administration to the Palestinian Water Authority, which corroborates aspects of Samour's description of the situation. In February 2010, Mekorot provided water to Bardala at a subsidized rate of NIS 0.457 per cubic meter (US \$0.12), while the rate it charged to other Palestinian communities and to settlements was NIS 2.468 (US \$0.65). According to Michael Talhami, a hydrologist working as a consultant with the PA, the amount of water Mekorot provides to the PA is determined by the Israeli Civil Administration, including the amounts supplied to specific communities such as Bardala; Palestinian communities cannot simply purchase as much water as they want, regardless of the price they offered.²³⁹ In total, Israel provides the PA with 48 MCM per year, which makes up for part of the shortfall in Palestinian production.

No other sources of water, such as reservoirs to store rainwater, are available. In at least one case, Israeli-imposed building restrictions prevented villagers from building a proposed water tank. El Khodeirat told Human Rights Watch,

I was the head of the regional council here for 11 years. Despite my requests, for all those years I got no permission to build a water reservoir. The proper

²³⁸ Human Rights Watch interview with Fathi el Khodeirat, Bardala, April 7, 2010.

²³⁹ Human Rights Watch interview with Michael Talhami, PA consultant, Ramallah, October 26, 2010.

place to situate it is 100 meters from the last house in Bardala, but to the Israelis, it's in Area C.

The Israeli authorities would demolish any structures built in Area C without prior permits, but typically refused or delayed giving such permits, Khodeirat said. In general, the World Bank reported that the PA has been unable to implement a large number of the projects approved by the joint Israeli-PA water committee due to delays by the Civil Administration in approving them. For example, a proposed 15 centimeter-diameter pipeline for agricultural irrigation in Bardala and Ein al Beida had a planned start date of April 2008 but was pending Civil Administration approval for Area C as of April 2009, and to the knowledge of Human Rights Watch has not yet been implemented. Such delays and denials of projects approved by the joint Israeli-PA water committee further reduce the availability of water resources to Palestinians, in addition to the fact that, as noted, the water committee has approved only half the projects submitted to it that are intended for Palestinian beneficiaries; for example, the water committee approved the rehabilitation of only 7 of 25 proposed agricultural wells for Palestinian villages in the Jordan Valley in March 2007.²⁴⁰

Villagers in Bardala hold both Israel and the PA responsible for the fact that in 2007, Mekorot reduced the overall amount of water available to villagers by roughly 50 percent.²⁴¹ In 1995, with the formation of the PA, villagers stopped paying Mekorot themselves, because Israel began to deduct the cost of Palestinians' use of water provided by Mekorot from the tax revenues that Israel collected on behalf of the PA. Samour and Khodeirat, interviewed separately, said that the PA now insists that villagers pay for their water usage, presumably to offset these tax-revenue deductions, but that the villagers were not able to do so. "The Authority says Bardala owes it between 16 and 17 million shekels for using the water over the years," Samour said. "There is no possibility that we can pay that."²⁴² In 2007, Samour said, the volume of water available to the village was reduced dramatically, to roughly 130 cubic meters per hour. Samour and Khodeirat speculate that the water was reduced because the PA was unable to pay the villagers' water costs at the former rate of usage.

²⁴⁰ World Bank, Water Sector Development, Annex 12b, "Palestinian WATER Projects on the WEST BANK pending JWC approval," Project No. 96, p. 130.

²⁴¹ In the 1980s, prior to the first Palestinian intifada in 1987, Samour said, Israeli authorities dug a second, larger well in the area that pumped 1200 cubic meters per hour. The output of the first Israeli well was not affected, he said, but gradually, after 1989, villagers began to receive 200 cubic meters of water per hour rather than 240.

²⁴² According to Samour, the last bill the villagers paid directly to Mekorot cost 3.5 agorot per cubic meter of water. The PA sends the villagers bills at a rate of 40.0 agorot per cubic meter of water. Human Rights Watch interview with Mustafa Samour, Bardala, April 7, 2010.

The reduced volume of water has forced villagers to reduce the amount of land under cultivation.²⁴³ “Back when we got 240 cubic meters of water an hour, it was enough to irrigate each plot of land, which for the village in total amounted to around 6000 dunams [600 hectares],” Samour said. “But now, we are getting only half that amount, and we can only irrigate half the amount of land.” Samour said that from April to December, when farmers depend exclusively on irrigation water, he can cultivate ten dunams or one hectare of land. “Two years ago, when we still got enough water, I could grow vegetables on 30 dunams [3 hectares] during the hot months.”

Hassan Mhammed Ahmed, 51, a vegetable farmer in Bardala, said his family used to irrigate 30 dunams of land, but now could only irrigate around eight. “Last year I tried to farm 10 dunams of another man’s land that I rented, but I wound up 14,000 shekels [US \$3700] in debt because I couldn’t get enough water to make it work. I’m being taken to court over the debt,” he said.²⁴⁴

Ahmed told Human Rights Watch the IDF periodically blocked—especially at night—the villagers’ only access to the main north-south highway (No. 90) in the Jordan Valley, which leads south past Mechola and Shadmot Mechola settlements towards Jericho. Israeli soldiers at checkpoints typically require Palestinian farmers to unload and re-load produce onto trucks en route to markets in Tubas, Jenin and Nablus. Human Rights Watch did not attempt to document any Palestinian agricultural products from the northern Jordan Valley being exported abroad.²⁴⁵ Agricultural and other products produced in settlements are shipped directly from the settlement to locations inside Israel and do not need to be unloaded at checkpoints or trans-shipped from one truck to another when leaving the West Bank.²⁴⁶

Another checkpoint—which Palestinians call Taysir—sits on the road (No. 5799) leading west to the larger village of Tubas. “We can go past it to Tubas, but if you want to come from Tubas to here, and you’re not registered as having your address in Bardala, you may have problems.” From May 2005 until April 28, 2007, Israel barred all Palestinians without ID cards identifying

²⁴³ Samour explained that the flow of water is distributed serially to different “water clocks,” each of which directs water to a certain agricultural area for irrigation. Each water clock receives water for one hour at a time, after which time the flow of water is directed to the next water clock. In total, there are 144 water clocks, such that each one is able to provide irrigation water to its parcel of farmland for one hour, once every 144 hours (or 6 days).

²⁴⁴ Human Rights Watch interview with Hassan Ahmed, Bardala, April 7, 2010.

²⁴⁵ Recently, some Palestinian agricultural products from the northern Jordan Valley have been exported, mainly to Arab countries via Jordan. Applied Research Institute of Jerusalem (ARIJ), *Integrated report for the Palestinian Agro-Production and Marketing System (case study of the northern Jordan Valley Area)*, 2010, p. 32, <http://www.arij.org/publications/2010/integratedreport.pdf> (accessed October 21, 2010).

²⁴⁶ Human Rights Watch interview with Israeli truck inspector, Sha’ar Efraim import/export crossing, Tulkarem District, West Bank, October 20, 2009.

them as Jordan Valley residents from crossing checkpoints into the valley, including Tayasir.²⁴⁷ Palestinians who owned land in the Jordan Valley, were married to residents, or had other ties but did not reside there were not permitted access. Currently, Khodeirat said, it remains very difficult for Palestinians to change their registered addresses to the Jordan Valley, and that Israeli authorities will not allow people to move to the area without an address there, although he acknowledged that the situation had improved in recent years, with IDF checkpoints imposing fewer restrictions on Palestinian movement into the valley.

In contrast, Jewish citizens of Israel may take up residence in the Jordan Valley regardless of their prior address.

Israel controls the population registration of the West Bank and Gaza, and is responsible for difficulties Palestinians encounter when trying to change their address. According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), Israel continues to restrict access to the Jordan Valley for non-residents, including land and property owners and laborers, who must obtain a permit from Israeli authorities to enter the area in private vehicles.²⁴⁸

International human rights law permits restrictions on freedom of movement for security reasons, but the restrictions must have a clear legal basis, be limited to what is necessary, not be discriminatory and be proportionate to the threat. While Israeli policies restricting Palestinian freedom of movement into the Jordan Valley may make it easier to police and secure the area for settlers, such a blanket imposition of travel restrictions on all Palestinians would be discriminatory, not tailored to any specific threat, and would therefore disproportionately harm Palestinians.

Villagers told Human Rights Watch that settlements had taken over lands they owned or used. Khodeirat said that Israeli authorities requisitioned the soccer field of the village school in Ein al Beyda for agricultural use by the settlement of Mechola; he helped residents remove the goals.²⁴⁹

Several kilometers to the south of Bardala along Road 90, the main north-south highway in the Jordan Valley, Human Rights Watch visited Fa'iq Sbeih, 50, a farmer who said that Israeli

²⁴⁷ OCHA, "Closure Update – occupied Palestinian territory," April 2007, p. 2, http://www.ochaopt.org/documents/Closure%20Apr07_2.pdf (accessed April 14, 2010).

²⁴⁸ OCHA, "Special Focus: West Bank Movement and Access," June 2010, p. 22 (noting that due to the permit requirements imposed by some IDF checkpoints, non-Jordan Valley-permitted drivers from the city of Tubas must travel 176 kilometers to get to the village of Bardala, some 24 kilometers away).

²⁴⁹ Human Rights Watch interview with Fathi Khodeirat, Bardala, April 7, 2010.

authorities had cut water pipes leading to his farmland from its only water source, a spring, two years previously without prior notice. Human Rights Watch observed a fenced-in water pipe valve outside one of the former greenhouses on Sbeih's property leading to the Rotem settlement 700 meters to the south.

My farm here was working for two years without anyone saying anything. Then I got a call one day and someone said, "the Israelis are cutting your water pipes," near the source. I went up and saw a man from the Ministry of Environment and a guy from Mekorot [the Israeli water company], along with the IDF. They'd never warned me previously. They told me that I was stealing water. But I was renting the land from people who had *tabu* [private property ownership dating from the Ottoman period] on it, including for the spring. They said it was stealing. But there's a water pipe here, right on my land, that goes to the settlement [of Rotem]. If I wanted to steal I'd take from that.²⁵⁰

Sbeih said that he moved to the 43 dunam (4 hectare) site in 1987, after harassment by Israeli authorities led his family to abandon a 250-dunam (25 hectare) farm in the nearby Burj al Maleh area.

We used to have sheep at the farm, but the Ministry of Environment came and took them two or three times, and we had to pay to get them back, because the ministry said they were grazing in "natural areas." They would come in with the military and take the sheep away in big trucks. When we tried to hide our sheep they would come with a helicopter to find them. Then they declared it all a military zone, and one of my brothers died by stepping on a mine. My mother and father then got depressed and gave up. So we moved.²⁵¹

Sbeih said he began to earn a living by buying and selling sheep. Then he took a loan from a microfinance group for the equivalent of US\$45,000, found a business partner, borrowed water pipes and connected them to Ein al Shaq, and tried to set up a vegetable farm on his 43 dunams and another 40 dunams that he rented.

Sbeih's partner in the farm project left at that point, he said. Sbeih is in debt, after he had invested more than 400,000 (US \$105,000) shekels in the farm, and cannot grow vegetables

²⁵⁰ Human Rights Watch interview with Faiq Sbeih, al Fasayil, April 7, 2010.

²⁵¹ Human Rights Watch interview with Fa'iq Sbeih, al Fasayil, April 7, 2010.

that require irrigation. “Now I have only rainwater, and I have to buy water, which costs 100 shekels for a tanker of three cubic meters, because you have to pay the tractor driver a bit extra for the risk that his tractor will be confiscated for driving a water tanker on the highway,” since many tractor drivers lack the required permits.²⁵²

The World Bank reported in 2009 that Palestinian farmers who are not on the water network rely on uncertain supplies of dubious quality from tankers, at four to five times the price of piped water purchased from Mekorot. In Area C, on average, “the poor who are dependent on tankers may pay out almost half their income on water.”²⁵³

Sbeih can only grow chickpeas and natural herbs for most of the year. Human Rights Watch did not visit the site of the spring, but according to Amnesty International, which visited Sbeih on March 11, 2008, “settlements have free access to the water from the spring which Fa’iq Sbeih and his family are not permitted to use, and which forms a small stream that flows down towards the Israeli settlements.”²⁵⁴ When Human Rights Watch visited Sbeih, he was living in a room next to one of his former greenhouses and depended on a solar panel and a battery for electricity.

In a few cases (more are discussed below), the Israeli army has acquiesced to settler harassment of Palestinian residents in the northern Jordan Valley. According to OCHA, on April 24, 2010, settlers from Maskiyot set up a large tent a few meters from a small Palestinian community, composed of 10 families, in Ein Al Hilwa. The group of settlers in the tent varied from 10 to 50 people, moved freely around the Palestinian community and seized property including shelter materials such as tent poles and zinc boards. “Rather than removing the settlers,” OCHA reported, “the IDF District Coordination Liaison officer has suggested that the Palestinian community will have to move their tents to a different area before the settlers move their tent.”²⁵⁵ The Israeli government is seeking retroactively to authorize civilian settler construction in Maskiyot, which was originally established as a military “Nahal” settlement into which civilian settlers moved after 2000, and where 20 houses began construction in 2009 with unofficial government approval.²⁵⁶

²⁵² For information on current Israeli permit requirements for Jordan Valley residents, see also OCHA, “Special Focus: West Bank Movement and Access,” June 2010, p. 22.

²⁵³ World Bank, *Water Sector Development*, pp. 18, 22.

²⁵⁴ Amnesty International, *Troubled Waters*, 2009, p. 6.

²⁵⁵ OCHA figures as of April 27, 2010, on file with Human Rights Watch.

²⁵⁶ Efrat Weiss, “New settlement being built in Jordan Valley,” *Ynet*, August 6, 2009, <http://www.ynetnews.com/articles/1,7340,L-3772706,00.html> (accessed October 5, 2010); “Ground broken for first 20 homes in new Jordan Valley settlement,” *Jerusalem Post*, August 7, 2009.

A few kilometers further south, off Road No. 578 (an east-west road that leads into the Jordan Valley from the west and connects to Road 90), the Israeli agricultural settlements of Ro'i and Beqa'ot lie between the Bedouin villages of Al Hadidiye and Al Ras al Ahmar.²⁵⁷ According to Peace Now statistics, Beqa'ot, established in 1972, is a secular, moshav-style (agricultural) settlement, with 175 residents as of 2007.²⁵⁸ Ro'i, a secular moshav established in 1976, had 126 residents as of 2007 (the last year for which statistics were available).²⁵⁹ Residents say that Al Ras al Ahmar and Al Hadidiye date from at least the 1950s, having been built, with the agreement of the owners, on lands that are privately owned and registered by Palestinian landowners living in the nearby towns of Tubas, Tamoun and El Jiftlik.²⁶⁰ Israeli authorities have repeatedly demolished homes in both communities. According to OCHA, in December 2006, the Israeli High Court of Justice rejected a petition against demolition orders for Al Hadidiye, because the affected buildings were in an area defined as "agricultural" rather than residential in master plans from the British Mandatory period, and posed a security threat to the nearby Ro'i settlement. All settlements in the area are built on land zoned as agricultural under the British Mandatory plans, but the Civil Administration has granted settling agencies the authority to create residential settlements in the area and has approved plans to do so, under a separate planning procedure than that available for Palestinians.²⁶¹

Israeli authorities demolished homes in Al Hadidiye in February and March 2008, displacing about 60 people. Some of the displaced families returned to the area later, but due to repeated evictions over the years, more than a dozen households from Al Hadidiye have been permanently displaced.

Human Rights Watch documented the Civil Administration's destruction of 13 houses in which 18 families, or approximately 130 people, were living, as well as 19 animal pens in Al Ras al Ahmar on June 4, 2009.²⁶² Years earlier, the Civil Administration had declared the area a closed military training zone, on the basis of which it later distributed eviction notices to the residents of Al Ras al Ahmar and of the nearby Bedouin community of Al Hadidiye five

²⁵⁷ The Jordan valley has a mixed population of Palestinian villagers and town residents and Palestinian Bedouin, who continue to herd sheep but who are not nomadic, but tend to live within small fixed areas.

²⁵⁸ File downloaded from http://www.peacenow.org.il/data/SIP_STORAGE/files/7/2747.xls (accessed April 11, 2010).

²⁵⁹ File downloaded from http://www.peacenow.org.il/data/SIP_STORAGE/files/7/2747.xls (accessed April 11, 2010).

²⁶⁰ Machom Watch, "Urgent Call – escalation in Jordan Valley home demolition campaign," July 6, 2010.

²⁶¹ See "Discriminatory Restrictions and Planning and Forced Displacement in Area C," above.

²⁶² Human Rights Watch, "Stop Demolishing Palestinian Homes," June 12, 2009, <http://www.hrw.org/en/news/2009/06/12/israel-stop-demolishing-palestinian-homes>.

days before carrying out the demolitions.²⁶³ Residents had no opportunity to appeal the eviction orders, which are final when issued, to the military court system. According to the District Coordination Liaison Office (DCL) of the Israeli Civil Administration, the eviction orders were issued to protect the residents from ammunition or military exercises.ⁱ Israeli authorities had declared the area a closed military zone years ago, they said, and could have issued eviction orders at any time. The liaison office did not explain why they issued the eviction orders so long after the area was declared closed, but this practice is not uncommon, according to Israeli and Palestinian NGOs. As discussed below, the Civil Administration does not view the Palestinian residents of these military zones as legitimate “permanent residents,” and as such does not restrict the areas which it has declared to be firing or training zones so as to avoid those residents. Under the laws of occupation, Israel may forcibly displace protected persons only for reasons of imperative military necessity (see “Discrimination and Forcible Transfer in International Law”).

Israeli border police and soldiers again demolished the property of Al Ras al Ahmar residents on July 1, 2010, destroying the animal pens and other structures of 12 families (72 people), according to OCHA.²⁶⁴ Israeli soldiers had distributed written and verbal “evacuation orders” to five of the families on June 6 on the basis that they were living in a closed military zone, giving them 52 hours to remove their homes and other property or have them demolished, while the other seven families had received similar evacuation orders in June 2009. Many of the families affected had their property demolished “for the third time in as many years,” according to the Israeli volunteer organization Machsom [Checkpoint] Watch.²⁶⁵

Residents of Al Hadidiye said they frequently received stop-work orders, which are preliminary to home demolitions by Israeli authorities. Taleb Abdel Kareem Awawdeh, for example, said he received a stop work order on March 21 against his home, which housed 25 people. “This is not the first time. I used to live near Hamra checkpoint, but in 2000 they demolished my house there,” he said.²⁶⁶ Residents said that demolitions carried out by Israeli authorities had displaced one man, Abdallah Bisharat, four times since 2006.

²⁶³ According to OCHA, “Israel has designated close to 18 percent of the West Bank as a closed military zone for the purposes of military training (as distinct from the closed military areas around Israeli settlements, between the Barrier and the Green Line, etc.). The majority of these training areas are located in the Jordan Valley and along the eastern slopes of the Bethlehem and Hebron governorates.” OCHA, *Restricting Space*, p. 5. For examples of Israeli eviction orders delivered to Palestinians residents of Al Hadidiye and Al Ras al Ahmar, see ARIJ, “Israeli Military Orders” website (enter “Tubas” as the Military Order District, then select the specific locality to view scanned copies of the eviction orders; <http://orders.arij.org/searchMOLocality.php?MilitaryOrderDistrict=16> (accessed October 21, 2010).

²⁶⁴ Information on file with Human Rights Watch.

²⁶⁵ Machsom Watch, “Urgent Call – escalation in Jordan Valley home demolition campaign,” July 6, 2010.

²⁶⁶ Human Rights Watch interview with Taleb Abdel Kareem Awawdeh, Al Hadidiye, April 7, 2010.

They knocked his house down in Al Hadidiye on July 25 or 26, 2007, after he fought the order and lost in court. Then at the beginning of August, he built it again. It was demolished again. He came back in October and remained for a year. In August 2008 they demolished four structures there that weren't his, but he got a new order too. So he went to Al Ras al Ahmar. But his home was demolished there in July 2009. So now he's moved up on top of a hill where he has to carry up water.

On July 19, 2010, *Haaretz* reported that the Israeli government had instructed the military to increase demolitions of “illegal” Palestinian construction in Area C, according to a court deposition by Zvika Cohen, the head of the IDF Civil Administration responsible for the West Bank.²⁶⁷ That same day, Israeli authorities razed 74 structures in the Jordan Valley community of Al Farisiye, not far from Ar Ras al Ahmar and Al Hadidiye, on the basis that they were located in a closed military area, after distributing eviction orders three weeks previously. Residents lost 26 homes, 22 animal shelters, as well as traditional ovens, bathrooms and other structures, and destroyed quantities of food and animal fodder; the demolition forcibly displaced at least 107 people who lost their homes and personal belongings.²⁶⁸ On August 5, Israeli bulldozers returned and demolished another 10 structures, as well as two dozen tents donated by the ICRC and PA that residents left homeless by the first demolition had erected.

Some residents of Al Farisiye were born there more than 50 years ago, and said the community was continuously inhabited, except for occasions when Israeli actions had forced them to leave; several months ago, for example, villagers had been forced to leave temporarily when the Civil Administration had cut their access to water. The Israeli military authorities, upon occupying the area in 1967, had failed to include Al Farisiye in a census that year, and in 1968 or 1969 declared the area a “closed military zone.” A Civil Administration spokesman told Human Rights Watch that the community was evicted from a firing zone, that only 10 structures were demolished, and that there were no permanent residents of Al Farisiye, since persons with property there had homes in Palestinian towns. Residents rejected these assertions, and Human Rights Watch observed many destroyed buildings during a visit to the site.²⁶⁹

²⁶⁷ Chaim Levinson, “Civil Administration told to crack down on illegal Arab structures,” July 19, 2010, <http://www.haaretz.com/print-edition/news/civil-administration-told-to-crack-down-on-illegal-arab-structures-1.302692> (accessed July 22, 2010).

²⁶⁸ Information according to OCHA, on file with Human Rights Watch.

²⁶⁹ Human Rights Watch, “Israel: New Peak in Arbitrary Razing of Palestinian Homes,” August 19, 2010, <http://www.hrw.org/en/news/2010/08/19/israel-new-peak-arbitrary-razing-palestinian-homes>.

Closed military areas cover 18 to 20 percent of the West Bank, including much of the Jordan Valley. As noted, the municipal areas of settlements are themselves closed military zones to Palestinians, but not to settlers. Israel dismantled four West Bank settlements in 2005 for political in the context of the “disengagement” from Gaza; however, settlements have not been destroyed or settlers evicted due to other forms of military closures, such as the firing zones. Israeli authorities have not explained why only Palestinian communities have been evicted as a result of military zones.

Under Israeli military order 378 from 1970, the government may evict persons living in a "closed military zone" without any judicial or administrative procedures.²⁷⁰ Section 90(d) of the order states that "permanent residents" can remain in an area later designated as closed, and that eviction orders cannot change their status as permanent residents. The Israeli High Court of Justice has ruled that because shepherds are pastoralists, the term "permanent residents" does not apply to them.²⁷¹ The Civil Administration has repeatedly used this reasoning to justify the eviction of pastoralists and other residents in numerous cases – including Al Farsiya, Al Ras al Ahmar, Khirbet Tana, and areas in a “firing zone” in the southern Hebron hills area of the West Bank—regardless of whether they actually inhabit the area all year round or are sedentary.²⁷² Civil Administration spokespersons have stated that it was necessary to evict Palestinian residents from firing zones to protect them from the “danger” posed by live ammunition, but have not explained why the firing zones were established in populated areas.²⁷³

According to the representative of Al Hadidiye, Abu Sakkar, Israeli authorities demolished homes in Al Ras al Ahmar twice, in 2005 and in 2009, while the IDF had demolished buildings in Al Hadidiye seven or eight times. Abu Sakkar said:

We’re not allowed to build anything that’s not temporary, and anything that has metal poles is considered permanent. We can’t construct a school or a health clinic. We need cement floors so the kids can sleep without having

²⁷⁰ Military Order No. 378, Concerning Security Regulations, April 20, 1970.

²⁷¹ Human Rights Watch interview with attorney Tawfiq Jabarin, June 5, 2009.

²⁷² B’Tselem, Means of Expulsion; ACRI, “High Court Approves Demolition of West Bank Village.” In HCJ 11258/05, January 2009, the high court rejected an appeal filed by ACRI against eviction orders for Khirbet Tana on the basis that the residents were only seasonal, not permanent.

²⁷³ Amira Hass, “IDF destroys West Bank village after declaring it military zone,” Haaretz, July 21, 2010, <http://www.haaretz.com/print-edition/news/idf-destroys-west-bank-village-after-declaring-it-military-zone-1.303098> (accessed October 31, 2010).

scorpions climb on them. You can see the settlements' electricity poles from here, but our nights are dark.²⁷⁴

Israeli water pumping stations surrounded by fences are visible from Al Hadidiye, and service the settlement of Ro'i. Al Hadidiye itself is not connected to the water network. According to Abu Sakkar, "For the last three years we've been submitting requests for a water line to the Israeli pump. A representative of Mekorot and of the PA water authority came here and marked it off. Mekorot gave us permission in July 2009. The goal was to provide us with 200 cubic meters of water a day. Then, one month later, the IDF said no. They said they wouldn't open it because the same water pipe goes to Ro'i."

Israeli-imposed restrictions on residents' movement compound the difficulty of accessing water. An Israeli military roadblock has cut the road to the nearest available water-filling point, Ein al-Hilwe, some five kilometers away, forcing residents to travel past the "Hamra" military checkpoint to a second spring, Ein Shibli, that is 11 kilometers distant. As a result, water costs are high. One resident, a shepherd, spent NIS 6,600 (US\$1730) per month on water in summer, of which over 70 percent was for transportation costs; he fell into debt as a result and was forced to sell 150 sheep.²⁷⁵

Other residents of Al Hadidiye told Human Rights Watch they had to bring water to their families and livestock using tractor-pulled water tankers, which took up to five hours to drive from the fill site to the village. The IDF has repeatedly seized the water tankers, they said. Rayath Salamin, 27, said he sometimes brought water to Al Hadidiye in a tanker, but took a risk doing so. Although he had an ID card that listed him as a resident of the area, he drove a tractor registered in his father's name, "so they turn me back at the checkpoint. Then I have to try to sneak around the mountain, and they catch me. It costs 4000 shekels (US \$1050) in fines and costs to get back a confiscated tractor and water tanker."²⁷⁶ Abu Sakker said that his own tractor had been confiscated for several months.

A paved road, No. 578, connects Ro'i and Beqa'ot to road networks in the Jordan Valley and the rest of the West Bank. Al Hadidiye lies to the south-east of the road; Al Ras al Ahmar lies to the north-west. Both communities are connected to road No. 578 and to one another by dirt roads. During visits to the area in July 2009 and in April 2010, Human Rights Watch observed that Al Hadidiye's access to the main road had been partly blocked by a gate, and that Al Ras al

²⁷⁴ Human Rights Watch interview with Abu Sakkar, Al Hadidiye, April 7, 2010.

²⁷⁵ The case is reported in OCHA, "The Humanitarian Monitor," July 16, 2010, p. 6.

²⁷⁶ Human Rights Watch interview with Rayath Salamin, Al Hadidiye, April 7, 2010.

Ahmar's access had been completely blocked by concrete blocks and a large trench along the side of road No. 578 that prevents vehicles from accessing the road at any other point.

According to Abu Sakkar, the IDF opens the gate on the road from Al Hadidiye only three days per week, for half an hour in the morning and again in the evening. Abu Sakkar recalled several instances where settlers from Ro'i intervened with IDF soldiers and created problems for Bedouin residents trying to pass through the gate. "An old lady, Khadiji Khader Hamed Ben Yaoudi, was trying to pass through the gate one day with her son, on a tractor. The head of security at Ro'i came and waited for the military to come open the gate. I saw him talking to the soldiers, and then they took Khadiji and her son's ID cards and took them away to the Hamra checkpoint."

Israeli military restrictions on construction have also prevented the communities from improving a traditional route, known as al Biqea road, which leads to the town of Tubas in order to make it passable in winter. "In summer we can travel by car," Abu Sakkar said, "but in winter the road is often impassable, and since 1987, Israel has cut it off and doesn't even let us break rocks to put on the road to make it passable." As noted, while Israeli authorities may restrict Palestinians' freedom of movement for genuine security reasons, it must ensure that these restrictions are limited and proportionate to the threat. Human Rights Watch is not aware that Israeli authorities have claimed that blocking the road access of entire villages and preventing repairs that render roads impassable for months out of the year is a necessary or proportionate response to a security threat or otherwise justifiable. Israel has also failed to explain why it does not restrict the freedom of movement of settlers to address these purported security threats.

In addition to restricting freedom of movement, Israeli authorities have cut off Bedouins' ability to graze their sheep on traditional lands. "We used to graze sheep wherever we wanted," Abu Sakkar told Human Rights Watch. "Now there are closed military zones, firing and training areas, and off-limits natural areas. It used to be that if we took our sheep into one of these areas, they would confiscate them, and you had to pay 50 shekels per head per night in order to have them released. But now the environment ministry person will issue you a 1200 shekel (US \$315) fine and say that you must pay immediately or the police will come."

Abu Sakkar said that Israeli restrictions made life so difficult for Bedouin in the area that many had been forced to leave.

I'm the representative of three communities, Al Hadidiya, Matchoul and Humsa. Before the settlements started just after the occupation, there were

300 families in these communities, somewhere between 2000 and 2500 people. By 1997 the communities were cut in half, there were only 150 families left. In October 1997 the Israeli aggression intensified. Humsa was completely emptied and the people went to live near Hamra checkpoint. In the other two communities, today there are only 45 families left, perhaps 450 people. Everybody had to sell their sheep because there was nowhere you could graze them. And if you try to bring *alaf*—food—for the sheep, the IDF turned you back unless the driver of the vehicle bringing the food had a Jordan Valley identity card. This started in 2001 or 2002. They don't need to destroy our houses to force us out. There are other ways.

Another resident of the area, Abu Riyad, had recently renovated his home on a hill above the Hamra checkpoint—to the south-west of al Hadidiye—with the help of a Palestinian aid organization, the Maan Development Center.²⁷⁷ He told Human Rights Watch that he had moved to the area after the IDF displaced him and 40 other families from Humsa, 30 years ago. He later built eight houses in 2006 to accommodate his six married children on the hilltop:

The IDF knocked them all down one month later. I rebuilt, and two months after that, the IDF destroyed them again. My family is scattered all over now, because I can't build here.²⁷⁸

According to Abu Riyad, in mid-2009, with the help of the Ma'an Development center, he renovated a building that had been on the site before 1967, fixing the walls and installing an electricity connection. "I got a demolition order just a few days ago," Abu Riyad said in April 2010.

²⁷⁷ Abu Riyad's case is also discussed by Ma'an Development Center, *Draining Away: The Water Crisis in the Jordan Valley*, p. 16, <http://www.maan-ctr.org/pdfs/WateReport.pdf> (accessed October 25, 2010).

²⁷⁸ Human Rights Watch interview with Abu Riyad, April 7, 2010.

VI. Bethlehem District

Jubbet al-Dhib

Jubbet al-Dhib is located in a semi-arid area 17 kilometers southeast of the Palestinian city of Bethlehem, and falls within Area C.²⁷⁹ The village, which has 160 inhabitants, comprises roughly 40 dunams (or 4 hectares), residents told Human Rights Watch.²⁸⁰ Jubbet al-Dhib is located near the settlements of Teqoa (1635 residents as of 2008) and Nokdim (886 residents as of 2008), the latter being home to Israel's minister of foreign affairs, Avigdor Lieberman—head of the far right Yisrael Beiteinu (Israel is Our Home) party.²⁸¹ The village is 350 meters from the settlement of Sde Bar, also known as Yossi Farms, which like Jubbet al-Dhib lies at the base of an imposing, conical archeological site known as Herodion.²⁸² According to its website, Sde Bar was founded in 1998 as a youth village for boys-at-risk. It houses between 40 and 70 boys, from 13 to 18 years-of-age, who study, work in agriculture, and receive professional counseling; some choose to live at Sde Bar after completing their courses.²⁸³

The Israel Civil Administration refuses to allow the village to connect to the electricity grid (to which all recognized settlements, as well as many unrecognized outposts, are connected). Villagers told Human Rights Watch that they filed their first application with Israeli authorities for an electricity connection in 1988, but have been repeatedly denied for the past 20 years.²⁸⁴ According to Hamza al-Wahsh, then-head of Jubbet al-Dhib village council, the community has requested to be connected to the electricity network six times since 2000, “and each time it took six months for them to give us a negative reply.”²⁸⁵ (According to OCHA, the only available electricity network for the village to connect to is operated by the Jerusalem Water and Electricity Undertaking. There are no Palestinian networks in the area that could connect to the village.²⁸⁶ Even if there were, the village would still require Israeli

²⁷⁹ The name of the village is often transliterated as “Jubbet adh-Dhib.”

²⁸⁰ Human Rights Watch interview with Khamis al Wahsh, Jubbet al-Dhib, November 22, 2009.

²⁸¹ All demographic data on Israeli settlement population derives from the Israeli Central Bureau of Statistics, <http://cbs.gov.il> (accessed April 12, 2010)

²⁸² King Herod reputedly built a fortress on top of the site in 24 C.E.

²⁸³ See: Sde Bar Website, <http://www.sde-bar.org.il/?lat=en> (accessed April 21, 2010). Other outposts in the area include Kfar Eldad (1994), Ma'ale Rehavam (2001), Teqoa B&C (2001), and Teqoa D (2002).

²⁸⁴ Human Rights Watch is not aware of the Israeli authorities' initial grounds for refusal.

²⁸⁵ Human Rights Watch interview with Hamza al-Wahsh, Jubbet al-Dhib, November 22, 2009.

²⁸⁶ Human Rights Watch telephone interview with OCHA office, Hebron, April 28, 2010.

approval to connect to it, because the village lies in Area C, over which Israel exercises full control of planning and building).

The Israeli Civil Administration refused to grant the required permits to connect the village to the electricity grid on the grounds the village lacked an approved master plan. The authorities also rejected the master plans the village submitted for approval. Most recently, in August 2009, the Civil Administration rejected a master plan for the village created by the Applied Research Institution of Jerusalem (ARI), an NGO based in Bethlehem.

The lack of electricity significantly restricts villagers' lives. When Human Rights Watch visited Jubbet al-Dhib in November 2009, the sun began to set at around 4:30 p.m. The children in the village did their homework by candlelight, and residents gathered in the one house that had a working generator. The village owns three small generators, but its residents cannot easily afford the price of gasoline required to operate them, and they work only sporadically, for about two hours per day.

The lights from the fully electrified nearby settlements of Nokdim, Teqoa, and their various outposts, including the adjacent Sde Bar farms, were visible from Jubbet al-Dhib and encircled it to the south and west.

The lack of electricity also makes it difficult to keep food fresh. The owner of a small store that sells canned foods—a small grants project funded by the International Committee of the Red Cross (ICRC)—told Human Rights Watch that any meat or milk in the village must be eaten the same day, and that the residents often resort to eating preserved foods.²⁸⁷

In mid-2009, the United Nations Development Programme (UNDP) Small Grants Project funded a project of solar panels for the village. The project would have built eight solar-powered streetlights and installed a solar panel on the roof of the village's small mosque, so that these public areas would be lit. Engineers from the Applied Research Institute of Jerusalem (ARI) implemented the project. Ahmad Ali Ghayyadah, an electrical engineer who oversaw the project for ARI, told Human Rights Watch that his team had begun laying the foundations for the solar lamp-poles on May 6, 2009.²⁸⁸ Within days, he said, villagers received an oral warning from the Israeli Civil Administration to stop work and remove any work that had been completed because it lacked a construction permit. On June 24, UNDP sent a letter notifying the village council that it could not fund projects in Area C that were

²⁸⁷ Human Rights Watch interview with Salama al-Wahsh, Jubbet al-Dhib, November 22, 2009.

²⁸⁸ Human Rights Watch interview with Ahmad Ali Ghayyadah, Bethlehem, November 11, 2009.

constructed without prior Israeli approval, and requested that the villagers remove and store any electricity poles that had already been erected, in order to help facilitate UNDP's efforts to obtain the required permits at a subsequent meeting with the Israeli authorities.²⁸⁹ Given the lack of external support for the project and the likelihood that Israeli authorities would demolish any further construction as well as impose a fine, the village has not pursued the project.²⁹⁰ Human Rights Watch observed several street light pole bases in Jubbet al-Dhib.

When Human Rights Watch visited Jubbet al-Dhib on November 18, 2010, residents said that one week previously the PA had donated three generators, which were placed inside an existing home to avoid the need to obtain construction permits from the Israeli Civil Administration. The generator system was not yet operating but the PA planned to connect most homes in the village to it in order to provide electricity for seven hours daily (three hours in the morning and four at night), and had promised to provide fuel in alternate months to operate the generators. According to several villagers the amount of electricity would not be adequate to operate refrigerators.²⁹¹ Amr al-Wahsh said villagers were anxious that they would be unable to afford the cost of fuel to keep the generator running during the months when the PA did not provide fuel.

Hamza al-Wahsh told Human Rights Watch that the Civil Administration had approved the village's request to be connected to the water network. "Beit Il [a military base near Ramallah that is the seat of the Civil Administration in the West Bank] lets us have water from Mekorot," he said, referring to the Israeli water company.²⁹² According to the Palestinian Hydrology Group, the community was connected to the water network at the beginning of 2004.²⁹³ In February 2010, according to OCHA and other reports, archaeological excavations at Herodion completely cut off the village's water supply for three weeks. It was eventually restored after Israeli authorities granted a request by the ICRC to repair the village's water line.²⁹⁴

²⁸⁹ Human Rights Watch telephone interview with OCHA office, Hebron, April 28, 2010. OCHA had a copy of the letter from UNDP.

²⁹⁰ Applied Research Institute of Jerusalem, "Israeli Authorities Refuse Laying the Authorization for a Solar Energy Project to Light the Streets of Palestinian Village Jubbet adh-Dhib," November 1, 2009, http://www.poica.org/editor/case_studies/view.php?recordID=2175, (accessed April 21, 2010).

²⁹¹ Human Rights Watch interviews with Hamza al-Wahsh and Amar al-Wahsh, Jubbet al-Dhib, November 18, 2010.

²⁹² Human Rights Watch interview with Hamza al-Wahsh, Jubbet al-Dhib, November 22, 2009.

²⁹³ Palestinian Hydrology Group, "Water and Sanitation, Hygiene (WaSH) Monitoring Project: Impact of the Current Crisis in the West Bank and Gaza Strip," 16 Jan-15 Feb 2005, p. 13, [http://ocha-gwapps1.unog.ch/rw/RWFiles2005.nsf/FilesByRWDocUnidFilename/HMYT-6A4MYX-wash-opt-15feb.pdf/\\$File/wash-opt-15feb.pdf](http://ocha-gwapps1.unog.ch/rw/RWFiles2005.nsf/FilesByRWDocUnidFilename/HMYT-6A4MYX-wash-opt-15feb.pdf/$File/wash-opt-15feb.pdf) (accessed April 21, 2010).

²⁹⁴ Human Rights Watch telephone interview with OCHA office, Hebron, April 28, 2010.

The Israeli Civil Administration has the authority to grant or refuse necessary permits for any construction projects that could improve life in the village. It has not approved the paving of the road that leads to the village from the main road. Residents cannot afford to purchase a vehicle capable of traveling the rough road, and have to walk 1.5 kilometers to reach the main road. There is no health clinic in the village, and residents requiring emergency medical care must take the dirt path to the main road. A media report described the difficult journey faced by one village resident, Yasser Khamis, 37, who suffered a heart attack in 2009 and had to be carried on the dirt road to a nearby village to see a doctor.²⁹⁵ Residents said they had not asked the Civil Administration for approval to build a health clinic in the village, since such a request would be denied without an approved village plan, and since the need for a clinic in the village was primarily the result of the lack of a paved access road to reach other medical services.²⁹⁶

There is also no school in the village apart from a kindergarten that one resident operates out of her home. The village's children—approximately 75 residents of Jubbet al-Dhib are under 18—must attend three different schools in the area, the closest being a mixed primary school for 30 boys and girls around a kilometer away. Children in grade 8 and above attended two different schools between 2 and 3 kilometers away; they went on foot. According to al-Wahsh, “It takes around 45 minutes for the kids to walk there, but in the winter, they often have to miss school,” because walking through the muddy roads becomes too difficult.²⁹⁷ The village master-plan prepared by ARIJ and rejected by the Civil Administration included a pre-school and a request for paved access roads.²⁹⁸

Villagers told Human Rights Watch that Israeli authorities had carried out demolitions and issued orders threatening other demolitions. Khamis al-Wahsh said, “There’s an ICRC project to supply irrigation tubes on land where they demolished my house in 2007. There were six people living here; it was a five-year-old house. Next door the house has a stop construction order against it.” Hamza al-Wahsh told Human Rights Watch that the lack of building permits for new homes had forced five families to leave Jubbet al-Dhib in the last five years.²⁹⁹

²⁹⁵ Arabic Media Internet Network, March 9, 2010, “جبة الذيب”: قرية نسيها الزمان والسلطان, <http://www.amin.org/articles.php?t=report&id=2511> (accessed May 3, 2010).

²⁹⁶ Human Rights Watch telephone interview with Amr al-Wahsh, Jubbet al-Dhib, October 28, 2010.

²⁹⁷ Human Rights Watch interview with Khamis al-Wahsh, Jubbet al-Dhib, November 22, 2009.

²⁹⁸ Human Rights Watch telephone interview with Amr al-Wahsh, Jubbet al-Dhib, October 28, 2010.

²⁹⁹ Human Rights Watch interview with Hamza al-Wahsh, Jubbet al-Dhib, November 22, 2009.

The conditions in nearby settlements, and the infrastructure and services they receive from the Israeli government, stand in stark contrast to conditions in Jubbet al-Dhib. Sde Bar works under the supervision of the “youth protection agency” in the Israeli Welfare Ministry and operates a high school supervised by the Ministry of Education.³⁰⁰ Sde Bar also receives funding from US tax-exempt charitable organizations, including Christian Friends of Israeli Communities (CFOIC), which supports Jewish settlers’ “conviction that [the Land of Israel] is their land” despite “the protests of their Arab neighbors.”³⁰¹ However, residents of Jubbet al-Dhib are ineligible to attend the educational programs that the Israeli government and foreign donors sponsor, due in part to military orders requiring Palestinians to obtain special security permits to enter settlements for work and not educational purposes.

As noted, under Israeli civil planning laws applied in the West Bank, construction without a permit is illegal and subject to demolition. Israel’s enforcement of these regulations appears to be more lenient in the case of Sde Bar. Based on Geographical Information System (GIS) mapping information – aerial photography overlaid with official zoning plans, which was obtained by the Israeli human rights group, Yesh Din through Freedom of Information Act requests to the Civil Administration – construction began on the Sde Bar outpost in 1996-97, but the outpost was not granted an approved master plan until 2003-4.³⁰² This means that the Israeli authorities recognized and legalized the outpost’s construction retroactively, a gesture that is never extended to Palestinian communities.

Other nearby settlements have benefited from millions of dollars in assistance from the Israeli government. Most notably, the construction of a large bypass road, called Road 356 or the Za’atra bypass, which opened in August 2007 -- after Palestinian attacks had killed several settlers from Nokdim during the second intifada – provides settlers from Tequoa and Nokdim with a direct, 15-minute commute to Jerusalem. The highway is known as the “Lieberman road” for the Israeli foreign minister, who was formerly the transportation minister responsible for road building and maintenance in Israel and the West Bank; he has

³⁰⁰ Youth Protection Authority (branch of Department of Welfare), “Sde Bar Farm,” http://www.shaar.org.il/index.php?goto=bep&page_from=138 (accessed April 21, 2010).

³⁰¹ CFOIC, “The Settlement Movement,” <http://www.cfoic.com/pages.jsp?pageID=30> (accessed November 30, 2010). According to CFOIC, which is registered in Colorado, “The residents [of Sde Bar] spend hours hiking in the surrounding hills, building a strong emotional link with the land of their forefathers ... Sde Bar’s success rate has resulted in more and more referrals by government and social service agencies.” “A Day’s Work in Sde Bar,” CFOIC, fundraising pamphlet, no date, http://www.cfoic.com/db_images/Sde%20Bar1.pdf (accessed April 21, 2010). CFOIC reported to the IRS that in 2008 it had “benefited 50,000 people from Judea and Samaria and the refugees of Gush Katif,” referring to settlers in the West Bank and former settlers from Gaza. Form 990, 2008, <http://www.guidestar.org/FinDocuments//2008/412/020/2008-412020104-050e7ae5-9.pdf> (accessed July 13, 2010).

³⁰² Human Rights Watch interview with Dror Etkes, Yesh Din’s Lands Project Coordinator, Jerusalem, December 21, 2009. GIS data obtained by Yesh Din from Israel is on file with Human Rights Watch.

lived in Nokdim for years. It is open to Palestinian vehicles for only some portions of its length.³⁰³ According to *Haaretz*, the 15 kilometer-long bypass road was the longest of four bypass roads whose combined cost was NIS 250 million (US\$66 million) in 2002-2003 alone.³⁰⁴ Palestinians can travel on part of the bypass road, but because the road bypasses most Palestinian communities in order to connect directly to Jerusalem, which West Bank Palestinians can only access if they hold special permits, the road is of limited benefit. USAID has sponsored a number of other road projects intended to benefit Palestinians, including the provision of alternative roads in areas where Israel's imposition of travel restrictions like checkpoints for the protection of settlers have prevented Palestinians from accessing road networks they had used previously.³⁰⁵

The rationale behind such differential policies—vast resource expenditures for settlers and prohibitions on construction by Palestinians—has never been explained by the Israeli authorities. It is difficult to see how such policies could be necessary, proportionate or otherwise justifiable under international law. Tuli Sheinfeld, the secretary of the settlement of Nokdim, told Israel's Army Radio on December 10, 2009, that, "The importance of Nokdim and Tekoa is that they buttress Jerusalem. Just like [the settlements of] Pisgat Zeev and Givat Zeev do from the north and the east, the western and eastern Etzion [settlement] Blocs complete this circle and provide a populated rear to Jerusalem."³⁰⁶ Notwithstanding the settlements' illegality, this rationale does not explain or justify Israel's refusal to provide similar services to Palestinians as it does to settlers and its denial of Palestinians' requests for permits and basic services.

Nahalin

The village of Nahalin, to the west of Bethlehem, has been encircled by a group of 12 settlements known as Gush Etzion (the Etzion Bloc). Approximately 7,000 Palestinians live in the village, which has been populated for thousands of years and contains an ancient olive-press.³⁰⁷ The PA has jurisdiction over planning and construction in Nahalin's built-up

³⁰³ Nate Wright, "Bypassing Bethlehem's Eastern Reaches," October 7, 2008, *MERIP*, <http://www.merip.org/mero/mero100708.html> (accessed July 21, 2010).

³⁰⁴ Moti Bassok and Anat Georgi, "Roads / Paved with gold," September 25, 2003, *Haaretz*, <http://www.haaretz.com/print-edition/business/roads-paved-with-gold-1.101238> (accessed July 23, 2010).

³⁰⁵ See, e.g., Akiva Eldar, "US taxpayers are paying for Israel's West Bank occupation," *Haaretz*, November 16, 2010 (noting that USAID had paved 63 kilometers of roads in the West Bank in 2009), <http://www.haaretz.com/print-edition/features/u-s-taxpayers-are-paying-for-israel-s-west-bank-occupation-1.324941> (accessed November 17, 2010).

³⁰⁶ Cited by Peace Now, "Articles on settlements included as 'high priority areas,'" December 13, 2009, http://peacenow.org/entries/settlements_high_priority_areas (accessed July 25, 2010).

³⁰⁷ According to the Palestinian Central Bureau of Statistics Nahalin had 6,827 residents as of 2007.

residential area of roughly 100 hectares, which was designated as Area B by the Oslo agreements. But Nahalin's 600 hectares of agricultural lands are in Area C, under full Israeli control. Village residents say it is impossible to get Israeli permits to build homes outside the built-up area, and that they are running out of land on which to build. Villagers report receiving "stop-work" orders from Israeli authorities that have prevented them from working on agricultural projects such as planting olive trees or building stone walls, and say sewage from a settlement neighborhood has contaminated agricultural land and a spring.

The ultra-orthodox settlement of Beitar Ilit, established in 1985, overlooks Nahalin from a hilltop to the west.³⁰⁸ As of 2009, it had approximately 37,000 residents—up from fewer than 1,000 in 1990, according to the *New York Times*, making it both one of the largest and fastest growing settlements.³⁰⁹ Its rapid growth is due in part to the high birthrate of Israel's ultra-orthodox Jewish community, but it is especially due to migration from Israel, including West Jerusalem, and other countries.³¹⁰ Beitar Ilit was officially established as a settlement in 1985. Like all other settlements (with the exception of some settlements in East Jerusalem, where some Palestinians with Jerusalem residency permits have rented apartments from Jewish owners), it has no Palestinian residents.³¹¹

Nahalin is surrounded by numerous other settlements and outposts, including Rosh Tzurim, established in 1969, with 470 residents as of 2007, and Naveh Daniel, established in 1982, with 1760 residents as of 2007.

An outpost associated with Naveh Daniel, 1.2 kilometers to the north, is called Naveh Daniel North (or Sde Boaz, or Mitzpe Hananel), and was established illegally in June 2002, with 18 persons living in 13 trailers and two permanent structures on the site.³¹² According to Israeli government reports, the government did not approve construction at the outpost, which lies beyond the official jurisdictional area of the Gush Etzion Regional Council. Nonetheless, as of 2005, the Ministry of Housing and Construction financed the establishment of infrastructure in the amount of NIS 200,000 (US\$53,000); the outpost is accessible by road and connected to the water network, and the IDF approved the construction of street lamps on the site.

³⁰⁸ Information about Gush Etzion settlements and outposts is drawn from two official Israeli sources: the Sasson report (2005) and the Spiegel database (2004).

³⁰⁹ Ethan Bronner and Isabel Kershner, "In West Bank Settlements, Signs of Hope for a Deal," *New York Times*, July 26, 2009, <http://www.nytimes.com/2009/07/27/world/middleeast/27settlers.html?pagewanted=all> (accessed July 25, 2010).

³¹⁰ *Id.*

³¹¹ See Ir Amim and Bimkom, "Jerusalem: An Open City?," June 2010, p. 6.

³¹² Israel considers the outpost of Nave Daniel North to be built on "survey lands" over which it has yet to determine ownership (by Israel or by Palestinians), but did not approve any construction there.

Another nearby settlement, Alon Shvut, was established in 1984 as a “Nahal” settlement—the name given to military service allowing Israelis to combine regular military duties with establishing or strengthening settlements. In 1997, settlers established Gva’ot, which is officially a “neighborhood” of Alon Shvut, and opened a “Hesder Yeshiva” which combines religious education for boys with military training. As of 2007, 11 families lived in Gv’aot.

Ali Hammad Fanoun, head of Nahalin’s land defense association, a community-based organization that documents and challenges Israeli land expropriations, told Human Rights Watch that Beitar Ilit and other nearby settlements were built on land belonging to Nahalin villagers.

My own family began to lose land to the settlements of Beitar Ilit and Geva’ot in the 1980s. Most recently in 2003 they began confiscations of land on the west side of the village, near Ain Fares. The total amount of Nahalin land the settlements took over near Geva’ot this time was around 150 dunams, including 7 dunams of my family’s land. They cut the trees, destroyed the stone walls, and called it state land, even though I showed records of my family paying taxes to the Ottomans, the British and the Jordanians.

According to Israeli court rulings, Palestinians may not present as evidence of land ownership the fact that they paid taxes on land, in cases where the Israeli state claims ownership of the property as state land (see “Background”).

Fanoun showed Human Rights Watch a map from the British Mandate period which included Nahalin as a subdistrict of Jerusalem and indicated that the village’s lands included eight “blocks,” which Fanoun said covered 17,000 dunams of land. “Today there’s only one block left [of the original eight] and a few little pieces of some of the adjoining blocks,” said Fanoun. Some of the villagers sold their lands to Jewish owners before the establishment of the state of Israel in 1948. According to Fanoun, this occurred in 1942-45, when “Hanna Milada, the former mayor of Bethlehem, bought 1000 dunams of Nahalin land and sold it to Jewish immigrants.” However, he added, “more was taken when the Israelis started to confiscate land from the village in 1974.”³¹³

The 1995 Oslo agreement designated only the area of Nahalin that was already built up as Area B, where the PA has the authority to grant building permits. Lands outside these limits, including immediately adjacent to them, were designated as Area C, where Israeli building

³¹³ Human Rights Watch interview with Ali Hammad Fanoun, Nahalin, November 22, 2009.

restrictions apply, and it is virtually impossible for Nahalin residents to obtain building permits. These restrictions have effectively prevented Nahalin from expanding for 15 years, providing no space to accommodate the natural growth of the population and their need for new housing; since 1995, the Palestinian West Bank population increased by about 50 percent, according to the World Bank.³¹⁴ By contrast, Israel has sought to justify expanding the built-up areas of settlements by claiming that the “natural growth” of existing settler populations required more housing; in fact, as Peace Now and other rights groups have noted, based on Israeli government statistics, a significant proportion of settlement population growth (37 percent in 2007) results from Jewish immigration to settlements.³¹⁵ Having lost land to surrounding settlements, Nahalin is running out of room to build housing, according to Mohammad Jayadda, who until mid-2009 was head of Nahalin village council:

Nahalin has 7,000 inhabitants and 7,000 dunams, but we are allowed to build in only 1000 dunams [of the built-up area, considered Area B]. It’s turning into a refugee camp, not a village. Since there’s no permission to build in Area C we have to build up [multistory buildings] in Area B. But our water and sewage infrastructure isn’t adequate to serve buildings higher than four stories.³¹⁶

Jayadda said that he knew of five houses that Israeli authorities had destroyed for being built outside the permitted built-up zone. “The last one was [demolished] in 1998; it was on a road a block out of town. Now, 15 houses have demolition orders,” Jayadda said; Human Rights Watch viewed a number of Israeli military orders that Jayadda had filed.³¹⁷

In addition to Israeli prohibitions on building homes without hard-to-obtain permits on Nahalin lands designated as Area C, villagers said that Israeli restrictions had badly harmed their ability to improve and, in some cases, even maintain their agricultural lands. Jayadda recalled that villagers once tried to open a road from the village to an agricultural area, but because the road fell inside Area C, “they confiscated the road-making machine.” Jayadda provided Human Rights Watch with several examples of orders for land owned by a villager that lies in Area C outside the village itself. One such order read,

³¹⁴ World Bank, *Water Sector Development*, p. 13.

³¹⁵ Akiva Eldar, “Peace Now: ‘Natural growth’ – Israel’s trick for West Bank expansion,” *Haaretz*, May 17, 2009, <http://www.haaretz.com/print-edition/news/peace-now-natural-growth-israel-s-trick-for-west-bank-expansion-1.276153> (accessed July 22, 2010).

³¹⁶ Human Rights Watch interview with Mohammed Jayadda, Nahalin, November 22, 2009.

³¹⁷ Photos of some eviction orders on file with Human Rights Watch. See also ARIJ, “Israeli Military Orders” (select “Bethlehem” district and “Nahhalin” locality), <http://orders.arj.org/searchLocality.php> (accessed October 2, 2010).

Order No. 0487, January 28, 2009: You must restore the land to the state it was in before you added 200 trees and a fence. You may appeal this order to the Military Appeals Committee in Ofra.

Ahmad Ali Ghayyadah, an electrical engineer who lives in Nahalin, showed Human Rights Watch plans obtained from the Israeli Civil Administration indicating that high-voltage electricity pillars would be erected outside the village, to provide additional electricity to the settlements and re-route an existing electricity line that passes directly over Nahalin. In several cases, Israeli authorities issued military orders against villagers who had been working to improve their agricultural lands, in areas that Ghayyadah later identified as being along the route of the planned electricity pillars. He feared that in addition to confiscating land for building the pylons themselves, it would become increasingly difficult or impossible for them to access farmland near the electricity lines. “If they cut us off from our lands near the electric lines and don’t give us access to the lands on the far side of them, we’ll only have 3,000 dunams of farmland left,” Ghayyadah said.³¹⁸

Human Rights Watch observed a high voltage power line running directly over the Dukur Nahalin secondary school and the Umm al-Shuhada primary school, inside the built-up area of Nahalin. The power line provided power to the settlements but the village was not able to access it, Ghayyadah said. Human Rights Watch also observed the power line serving Nahalin, which ran along pylons inside the village limits but was buried along the side of the village’s access road “at the point where it crosses from [Area] B into C,” Ghayyadah said.³¹⁹

Fanoun complained that settlers have also destroyed agricultural lands without adequate penalties being imposed. “I’ve gone to the police many times” on behalf of himself and other villagers, he said. In 1995 and repeatedly afterwards, settlers “demolished 200 dunams [20 hectares] of trees that were then replanted around four kilometers south of Nahalin towards Giva’ot. We call it the Marah Bint Eissa area. Since 2003 I’ve had to go every year to complain” about settlers’ destruction of olive trees in the area, but the destruction continued, he said. He knew of one or two cases where police did intercede to prevent settlers from destroying olive trees after being alerted, although this normally took several hours, but was not aware of cases where settlers were prosecuted. Impunity appears to be common. Since 2005, for example, Yesh Din, an Israeli NGO, has monitored 97 cases of

³¹⁸ Human Rights Watch interview with Ahmed Ghayyadah, Nahalin, November 22, 2009.

³¹⁹ Human Rights Watch interview with Ahmed Ghayyadah, Nahalin, November 22, 2009.

complaints filed to police by Palestinians who said settlers had destroyed their olive trees; police had not filed a single indictment in over five years.³²⁰

Settlers have destroyed an unknown number of Palestinian-owned olive trees in attacks that became common during the second intifada, by setting fire to olive groves or cutting or tearing down trees. In one such attack in 2002, settlers burned and destroyed some 2000 olive trees in groves belonging to villagers from Silwad and al-Misra' al-Sharqiya, east of Ramallah.³²¹ According to the Israeli human rights group Yesh Din, which monitored a selection of cases from 2005 to 2009, Israeli police did not file a single indictment in 69 cases where Palestinian complained settlers had destroyed thousands of olive trees.³²² In some cases, settlers destroy olive trees in retaliation for Israeli law-enforcement measures against other settlers, an informal policy known as the “price tag.”³²³ In contrast, human rights organizations, the UN, and media have frequently reported on excessively harsh measures taken by the Israeli military and the paramilitary Border Police against Palestinians in response to attacks against settlements or settlers.³²⁴

Nahalin residents told Human Rights Watch that since 2000, sewage from Beitar Illit had contaminated an agricultural area at the bottom of a valley south of the village. The sewage runoff from a recently developed area of the settlement had killed olive trees and contaminated a spring, known as Ein Fares, which used to be a source of water for Nahalin residents' sheep. Jayyada said the sewage runoff was a “weekly, or sometimes daily” event, and had harmed the village’s reputation as an agricultural producer.

We used to sell grapes, eggplants, cabbages, onions, and other vegetables to Bethlehem and Jerusalem, and many people worked in agriculture. But then word got around that the area had been polluted and they wouldn't buy our food anymore.

³²⁰ See Yesh Din, “Police Investigation of vandalization of Palestinian trees in the West Bank,” October 2010.

³²¹ OCHA, “Humanitarian Update: Occupied Palestinian Territory, 1 – 31 October, 2002,” p.3, http://www.ochaopt.org/documents/OCHA_Oct_update.pdf (accessed August 11, 2010).

³²² Yesh Din, “Police investigation of vandalization of Palestinian trees in the West Bank,” November 5, 2009, http://hosting-source.brnto.com/11522/public/documents/LESV-DS5_Trees_English.pdf (accessed July 20, 2010).

³²³ See, e.g., James Hider, “West Bank settlers use ‘price tag’ tactic to punish Palestinians,” *The London Times*, October 15, 2009, http://www.timesonline.co.uk/tol/news/world/middle_east/article6875304.ece (accessed July 20, 2010).

³²⁴ See, e.g., reports that Israeli security forces have used excessive force in response to protests against the separation barrier, and have detained Palestinian children during night raids for allegedly throwing stones at settlers and threatened or abused the children in detention. B'Tselem, “Military police to investigate killing of Bi'lin demonstrator from firing of tear-gas canister 15 months ago,” July 12, 2010, http://www.btselem.org/english/press_releases/20100712.asp (accessed November 30, 2010); B'Tselem, “Children as young as 12 arrested in night raids in Silwan, East Jerusalem,” February 16, 2010, http://www.btselem.org/English/Press_Releases/20100216.asp (accessed November 30, 2010).

Jayyada said that his own family, like many other families in the village, owned small plots of land around the spring. “We had three small plots that we can’t use now, one beside the spring that’s polluted, one 500 meters away that’s full of wastewater where all the grapes died, and one near Beitar Ilit that was confiscated for the settlement’s electrical lines.”³²⁵

Human Rights Watch observed the land around Ein Fares in late 2009. A water tank at the site of the spring was full of algae and lay directly beneath the route of the runoff from the settlement, which was clearly visible, although no waste water flowed at the time. A farmer cultivating land around the spring, Mahmoud Ghayda, 24, said that “when they open the sewage down the hill it smells so bad you can’t stand it. It happens once a week.”³²⁶ Ghayda said he had replanted trees three times on one plot of land before giving up because the sewage kept killing them. He said that he had replanted vines on another plot a year earlier, but that they had all died again:

There are six dead olive trees, and dead grape vines. We used to plant more grapes around here but the trees are stronger, to survive against the sewage.

³²⁵ Human Rights Watch interview with Ahmed Ghayyada, Nahalin, November 22, 2009.

³²⁶ Human Rights Watch interview with Mohamed Ghayda, Nahalin, November 22, 2009.

VII. Nablus District

Yanun and Itamar

The Jewish settlement of Itamar and its six associated outposts sit along the top of a ridge five kilometers southeast of the Palestinian city of Nablus in the northern West Bank. Established in 1984 by the World Zionist Organization, Itamar's presence grew significantly between 1996 and 1999 with the establishment of the outposts, the furthest of which ("Hill 777") is located more than 5.5 kilometers from Itamar.³²⁷ In 2007, these outposts covered 297 hectares, of which 136 hectares (46 percent) is privately owned Palestinian land, according to Peace Now.³²⁸ An estimated 516 national-religious settlers lived in the outposts, and another 600 people live in Itamar proper.³²⁹ On December 14, 2009, the Israeli cabinet approved adding Itamar to a list of "national priority" communities that would receive, on average, 1,000 shekels (US\$260) per person per year in subsidies for education, employment and culture.³³⁰ Other settlement subsidies, which amount to tens of thousands of dollars in grants, subsidies and tax abatements, are described above ("Settler Incentives and Funding Sources").

Itamar and the outposts overlook and partly encircle the small, isolated Palestinian villages of Upper and Lower Yanun to the south, which are home to approximately 90 to 100 Palestinians from 16 families, according to residents. Upper Yanun is roughly two kilometers north of Lower Yanun, which it is connected to by a road. The lower village is several hundred years old.³³¹ The Yanun village council states that late 19th century Ottoman authorities granted lands in what is now the upper village to a number of Muslims from

³²⁷ File downloaded from Peace Now, settlements information, http://www.peacenow.org.il/data/SIP_STORAGE/files/7/2747.xls, (accessed April 11, 2010); These outposts are Hanekuda (established 1996); Hill 851, Hill 836, and Gv'aot Olam / Avri Ran Ranch (established in December 1998); Hill 777 (January 1999); and Hill 782 (May 1999).

³²⁸ Outposts information file downloaded from Peace Now, http://www.peacenow.org.il/data/SIP_STORAGE/files/3/3733.xls (accessed April 11, 2010). Peace Now provides figures in square meters rather than hectares.

³²⁹ In addition to settlements, the village continues to be affected by Israeli military orders. The Al Quds newspaper reported on March 30, 2010 that Israeli military authorities had issued a new military order, number 01/10/T, which seized 900 square meters of land from Yanun for the purpose of establishing a military base. See Applied Research Institute of Jerusalem, Monthly Report March 2010, p. 10, <http://www.arij.org/images/Monthly-Reports/march2010/marcharij.pdf> (accessed April 19, 2010).

³³⁰ Barak Ravid, "PM's Plan would put some settlements on list of national priority communities," Haaretz, December 11, 2009, <http://www.haaretz.com/hasen/spages/1134037.html> (accessed April 27, 2010); Barak Ravid and Moti Bassock, "Cabinet okays new national priority map that includes settlements," Haaretz, December 15, 2009, <http://www.haaretz.com/hasen/spages/1134904.html> (accessed April 27, 2010); The Israeli government has never published or formally approved a "detailed plan" for Itamar, as required by Israeli law for the establishment of a recognized settlement. Spiegel Database (prepared at the request of the Israeli government by Gen. Baruch Spiegel), "Itamar," available at <http://www.haaretz.com/hasen/spages/1060043.html> (in Hebrew, accessed June 14, 2010).

³³¹ See Bimkom, *The Prohibited Zone*, p. 96. The site of Yanun has been inhabited since the 16th century.

Bosnia and Herzegovina; by 1931, 20 people lived there.³³² An Upper Yanun resident told Human Rights Watch the Sadiq Agha family built the first house in Yanun in the 1920s, when they left Nablus after an earthquake.³³³

The residents of the village are primarily farmers. Upper Yanun has a small school, and Lower Yanun has a mosque and a “makeshift [health] clinic that opens once every two weeks in a residential building,” but there are no stores, and the village depends for supplies on the town of Aqraba, three kilometers to the south.³³⁴

Settlers from nearby outposts have violently attacked Yanun residents over the past 14 years, according to UN and NGO reports, Israeli and Palestinian media, and local residents.

“The trouble started here in 1996,” Upper Yanun resident Fawzi Yusef told Human Rights Watch, as settlers began to harass the villagers by physically attacking them, confiscating livestock, and destroying olive trees.³³⁵ In 1998, Yusef said, settlers cut down thousands of the village’s olive trees; another attack that year killed 128 goats.³³⁶ A document prepared by the Yanun village council lists 21 serious settler attacks from 1997 to 2004, including one fatal attack, several shootings, beatings, attacks on livestock, and the destruction by arson of the village’s only source of electricity, a UN-donated generator.³³⁷ Settlers from the nearby outpost called G’vat Olam allegedly caused the most damage.³³⁸ After the beginning of the second Palestinian intifada in 2000, Israeli settlers were also subjected to violent attacks, including shootings in particular. A settler website states that Palestinians killed 15 settlers from 2000 to 2007 “either in or on the road to Itamar” (including some who were not residents of itamar).³³⁹

³³² “The Village of Yanun,” compiled by the village’s council; copy on file with Human Rights Watch.

³³³ Human Rights Watch interview with Fawzi Yusef, Yanun, November 8, 2009.

³³⁴ Human Rights Watch observations, Yanun, November 8, 2009; see also Bimkom, *The Prohibited Zone*, p. 96.

³³⁵ Human Rights Watch interview with Fawzi Yusef, Yanun, November 8, 2009.

³³⁶ The UN reported in 2002 that the village had suffered four years of “constant harassment” by settlers, sometimes on a weekly basis, including shootings, attacks, vandalism of property, poisoning sheep, and destruction of olive trees. OCHA, “Humanitarian Update: Occupied Palestinian Territory, 1 – 31 October 2002,” p. 2.

³³⁷ “The Village of Yanun,” Yanun Village Council, copy on file with Human Rights Watch.

³³⁸ Aviv Lavi, אימת הגבעות, April 8, 2003, *Haaretz*, <http://www.haaretz.co.il/hasite/pages/ShArt.jhtml?itemNo=281971> (accessed September 15, 2010).

³³⁹ Shomron Liaison Office, “Itamar,” <http://www.yeshuv.org/about-our-towns/itamar> (accessed April 20, 2010). See also “The Friends of Itamar” website memorial page: <http://www.friendsofitamar.org/memorial.html> (accessed April 20, 2010).

On October 18, 2002, severe settler violence and harassment led the entire population of Upper Yanun to flee, with the exception of two brothers and their families.³⁴⁰ The *New York Times* reported that a settler spokesperson justified shooting Palestinians to force them to keep their distance from the settlements around Itamar because 11 settlers had been killed, but that settlers also repeatedly raided the town itself, entering homes, threatening residents, and destroying property. “One of my sons would cry and hold me in fear, and I had to get up with him at night and take his hand just to go to the bathroom,” resident Kamal Sbeih, a father of six, told the *Times*. “No one can accept living like this.”³⁴¹ Village council chairman Abdel Latif Sobeih told *The Guardian*:

They would shoot at us, at our sheep, our cattle. Then they started coming to the outskirts of the village and throwing rocks at the doors. After the beginning of the Intifada in 2000, it got much worse. I have been beaten up in my house in front of my family, in the courtyard and out in the fields.³⁴²

Israeli activists began accompanying villagers on return trips to their homes on October 20, until international monitors established a permanent presence in Upper Yanun; since June 2003, a home in Upper Yanun has been staffed by the Ecumenical Accompaniment Program in Palestine and Israel (EAPPI), a Christian NGO that places international volunteers in Palestinian areas at risk of settler attack. Over the following months and years, the families who had evacuated gradually returned to Upper Yanun. In 2007, settlers allegedly killed Mhamad Hamdan Beni Jabir as he tried to recover sheep that settlers had confiscated earlier in the day.³⁴³ In 2006, Israeli authorities prosecuted five settlers for attacks on Palestinians the previous year; four were acquitted, including one who was placed under house arrest during trial (which he violated without suffering any punishment, while the fifth had previously pled guilty in exchange for an early release from detention.³⁴⁴ The Israeli human

³⁴⁰ Human Rights Watch interviews with Fawzi Yusef and Rashed Murar confirmed the date of the evacuation was in October 2002; the more specific date comes from Thomas Mandal, *Living With Settlers: Interviews with Yanoun Villagers*, [funded by Norwegian Church Aid, no published listed] 2008, p. 12. The brothers were Khaleb Bani Jaber and Fyak Mahmoud Bani Jaber.

³⁴¹ Joel Greenberg, “Israeli settlers’ zeal forces Palestinians to flee their town,” *New York Times*, October 21, 2002, <http://www.nytimes.com/2002/10/21/world/israeli-settlers-zeal-forces-palestinians-to-flee-their-town.html?pagewanted=1> (accessed April 20, 2010).

³⁴² Conal Urquhart, “Armed settlers force out villagers,” *The Guardian*, October 27, 2002, <http://www.guardian.co.uk/world/2002/oct/27/israel> (accessed April 20, 2010).

³⁴³ Human Rights Watch interview with Rashed Murar, Yanun, November 8, 2009. According to EAPPI, a volunteer group with a permanent presence in Yanun, he was killed on March 25, 2007. EAPPI, “March and April 2007 Newsletter,” p. 1, http://www.eappi.org/fileadmin/eappi/files/resources/eappi_newsletter/EAPPI_March_and_April_2007_Newsletter.doc (accessed October 20, 2010).

³⁴⁴ Thomas Mandal, *Living With Settlers*, p. 43; “Avri Ran sentenced to house arrest after being charged with attacking Arabs who infiltrated his farm,” *Arutz 7*, April 5, 2005, http://www.shechem.org/interact/publish/article_109.shtml (accessed September 16, 2010); Ezra Halevi, “Avri

rights organization Yesh Din, which tracks a number of criminal inquiries (not an exhaustive list of all cases) arising from alleged violence by settlers from Itamar and its outposts, has identified numerous failures to ensure accountability for settlers who attacked Palestinians or their property in or around Yanun.³⁴⁵

The UN and Israeli human rights organizations such as B'Tselem and Yesh Din have documented scores of settler attacks against Palestinians and their property, notably since 2003 as part of a so-called “price tag” strategy whereby settlers attack Palestinians and Israeli security forces as a diversionary and deterrent response to Israeli attempts to evacuate settlement outposts; a UN report from 2009 called settler violence “a key factor undermining the security and livelihoods of Palestinians throughout the West Bank.”³⁴⁶ According to Yesh Din, the Israeli police force responsible for investigating criminal acts by settlers in the West Bank (the Samaria and Judea District Police) closes more than 90 percent of Palestinian complaints against settlers without filing charges, usually due to “lack of evidence” or “unknown perpetrator.”³⁴⁷

Israeli military orders prohibit villagers in Upper Yanun from constructing or renovating buildings, on the grounds that the village lacks an approved residential plan, a freeze that has forced some families to leave the area. An outstanding demolition order is also pending against a paved road leading to the village. No such military orders affect Itamar and the outposts, where construction continues, notwithstanding Israel’s partial, 10-month building freeze (which it declared in December 2009). Physical assault or the threat of assault by

Ran Acquitted and Freed After Months in Jail,” Arutz 7, January 17, 2006,
http://www.shechem.org/interact/publish/article_205.shtml (accessed September 16, 2010).

³⁴⁵ In one case, settlers beat Thalji Awad, 88, on his land near the settlement of Itamar during the olive harvest. The file was closed on the grounds of “Perpetrator Unknown,” after the victim declared in his testimony that he could not identify his assailants. The police did not summon witnesses to the incident, including Awad’s daughters-in-law, or soldiers whom Awad said were present but did not intervene to prevent the attack. See: Yesh Din, *A Semblance of Law: Law Enforcement upon Israeli Civilians in the West Bank*, 2006, p. 98. In another case, Yesh Din argues that dialogue between Israeli police and the settlers replaced meaningful enforcement of the law, and cites a notice that appeared in 2003 in the Itamar newsletter on behalf of the settlement committee: “On the Eve of Yom Kippur, there was an incident with Palestinians including provocations, in which children and youths from Itamar were involved. Criminal files were opened against these youths. The committee of the village has reached an understanding with the district commander that if the youths do not repeat these actions, the files will be closed. You have been warned!” Itamar Newsletter, 28 Tishrei 5764 issue (October 19, 2003), cited in *A Semblance of Law*, op. cit., pp. 41-2. In a third case, Yesh Din describes an incident where settlers from Itamar confiscated the identity cards of two Yanun residents and damaged their tractor; although the residents said they could identify the perpetrators, the police closed the case on the grounds of “Perpetrator Unknown” and did not search the outpost for the Yanun residents’ ID cards. Id., p. 110.

³⁴⁶ See, e.g., OCHA, “Israeli Settler Violence and the Evacuation of Outposts,” November 2009,
http://www.ochaopt.org/documents/ocha_opt_settler_violence_fact_sheet_2009_11_15_english.pdf (accessed December 10, 2010); B’Tselem, “Archive: Settler violence,”
<http://www.btselem.org/english/OTA/?WebbTopicNumber=01&image.x=14&image.y=7> (accessed December 10, 2010).

³⁴⁷ Yesh Din, “Frequently asked questions about law enforcement upon Israeli civilians in the Occupied Territories,”
<http://media.yesh-din.org/geninfo.asp?gencatid=20> (accessed December 10, 2010).

settlers, as well as Israeli military orders restricting Palestinian access to land and land use in nearby areas, prevent Palestinian villagers from grazing their sheep and accessing hundreds of dunams of their agricultural lands (these restrictions are in addition to the lands that the settlements confiscated, which are completely barred to Yanun residents). The areas confiscated for settlements include several large farm buildings for commercial animal production as well as areas for grazing sheep. Israeli settlers continue to graze their sheep on land belonging to Yanun residents without their permission, but without any action by Israeli authorities to prevent them and allow access for the landowners.

Life is very different in Itamar. The website of the Amana Settlement Movement, an Israeli pro-settler organization established in 1978, states that the “100 families” living in the settlement enjoy a number of services and amenities, including four synagogues, a grocery store, a health clinic, a daycare, two kindergartens, two elementary schools (for around 80 boys and 70 girls, respectively), a high school, and a yeshiva for student boarders “from all over Israel.”³⁴⁸ According to the website,

Extracurricular and cultural activities in Itamar include carpentry, art, ceramics, music and animal husbandry for children and choir, drama and art for adults. There is also a basketball court and soccer field, a library, Beit Midrash for women and kollel for men [places of religious study]. A swimming pool with separate hours for men and women is located in nearby Elon Moreh.

Settlers told Human Rights Watch that most of the men work in the settlement in agriculture, education, or as yeshiva (seminary) students.³⁴⁹ The settlement is a 50-minute drive from Jerusalem and is serviced by public buses every 90 minutes.³⁵⁰ According to a settler who was a security officer for Itamar, the security situation in Itamar was currently “quiet,” thanks to an electric fence, a camera, 24/7 army patrol and private security patrol. “No Arab comes in,” he said.

Construction of new buildings continues in Itamar and its outposts, with homes being built on speculation and then sold. According an update from March 26, 2010, on the “Friends of Itamar” website, “This coming Wednesday ... Itamar is dedicating its new neighborhood of 14 houses. With the blessing of Hashem [God] upon us all the houses have been sold

³⁴⁸ Amana Settlement Movement, “איִתָמָר”, <http://www.amana.co.il/Index.asp?ArticleID=52&CategoryID=22&Page=1> (accessed April 18, 2010).

³⁴⁹ Human Rights Watch interview, A., Itamar, July 6, 2010.

³⁵⁰ Human Rights Watch interviews, A. and M., Itamar, July 6, 2010.

already!”³⁵¹ Human Rights Watch observed a new neighborhood in Itamar of 10 new homes and 9 others that were almost completed; the attractive limestone-clad homes were roughly 100 meters square and had two bedrooms. According to one settler, new houses cost around NIS 538,000 (US\$141,580) to buy or between NIS 1200 and 1600 a month (US\$316 to US\$421) to rent, excluding settlement taxes of NIS 200 to 300 (US\$53 to US\$79) and other costs. Human Rights Watch observed 12 poured-concrete bases for new home construction. “We rushed to get all the bases in before the [settlement construction] freeze hit, so that we could build,” the security officer said, referring to the 10-month partial moratorium the Israeli government on new home construction in settlements (excluding East Jerusalem) in November 2009 as an incentive to Palestinian peace negotiators.³⁵²

In contrast, Israeli restrictions prevent the residents of Upper Yanun from building any new homes, schools or animal pens or from improving existing structures, on the grounds that the entire village falls within “Area C,” which is under complete Israeli civil and military control and lacks an approved plan.³⁵³ International humanitarian organizations have resorted to sponsoring projects in the village that do not require Israeli building permits—such as erecting temporary tents or renovating the insides of existing structures—which have proved impossible to obtain.³⁵⁴ One Upper Yanun resident, Abu Hanni, has seven sons, but none have been able to build homes in Upper Yanun. “The married sons had to move to [the village of] Aqraba,” according to Rashed Murar.³⁵⁵ “One of Abu Hanni’s sons tried to build a house here but it was demolished during the second intifada, just when it was ready to be inhabited.”

Fawzi Yusef, the principal of the only school in Upper Yanun, told Human Rights Watch that he was unable to renovate the school because he was afraid Israeli authorities would issue a demolition order against it. The village was losing residents, he said, because Israeli restrictions prevented young families from building homes there.

There are only nine students in school this year, when there used to be 21 or 22 kids here who were six or seven-years-old and 30 students above the sixth grade. They all go to Aqraba now; they take a bus twice a day.

³⁵¹ “Itamar News Updates, March 26, 2010,” Friends of Itamar website, <http://www.friendsofitamar.org/news.html> (accessed April 20, 2010).

³⁵² Human Rights Watch interview, M., Itamar, July 6, 2010

³⁵³ Building is permitted in Lower Yanun, roughly 900 meters downhill, on the grounds that some of the village falls within “Area B,” where Israel retains control of security and the Palestinian Authority has civil control.

³⁵⁴ Human Rights Watch observations and conversations with residents, Yanun, November 8, 2009; Human Rights Watch interview with Yanun-based EAPPI volunteer O. W., Jerusalem, October 15, 2010.

³⁵⁵ Human Rights Watch interview with Rashed Murar, Yanun, November 8, 2009.

Internationals donated the bus in 2005. Before that, we had problems with settlers attacking the kids on the way to school.³⁵⁶

Fawzi's brother, Mousa, interviewed separately, told Human Rights Watch that Israeli restrictions had prevented him from improving his home and building adequate pens for his sheep and chickens. He wanted to build a stairway to the upper floor of his home, which was built in 1985, "but the Israelis said they'd tear down the entire building if we did it."³⁵⁷ Israeli building restrictions had also thwarted efforts by the ICRC to help him improve his animal pens, Mousa said.

The ICRC is trying to coordinate [with the IDF] to put a roof over my sheep pen, but I've been waiting more than a year for the coordination. There's a problem when it rains. I lost 25 head of sheep this year; they got sick from the cold and the mud, especially some of the young ones, who died just after they were born.

Mousa pointed out a large tarpaulin tent to Human Rights Watch that he had built out of materials donated by the ICRC and used as a shelter for his chickens. He explained that the IDF allowed the tent to stand because they did not consider it a permanent building. "There's no cement in the ground for the base of the tent posts, so they don't consider it a structure. But it is "useless" in winter to protect the chickens against the cold and rain, he said. Mousa told Human Rights Watch that raising sheep and chickens was his only source of income. "I have a daughter in university in Nablus, but I can barely afford her tuition," he said.³⁵⁸

After the villagers fled in 2002, a donation from the Belgian Rural Electrification Project provided enough funding to replace the electricity generator that settlers had destroyed with electricity pylons and wires connecting the village to the electrical grid. While installing the pylons, the village also paved the only access road to upper Yanun. In 2006, Israeli authorities issued final demolition orders against the pylons and the asphalt road surface, on grounds that they lacked building permits, ordering Yanun residents to remove them within 14 days, notwithstanding the fact that the road conformed to applicable planning laws and that regional plans applicable to Yanun are of a type "permitting the most extensive building possibilities and where the least restrictions apply."³⁵⁹ Under Belgian

³⁵⁶ Human Rights Watch interview with Fawzi Yusef, Yanun, November 8, 2009.

³⁵⁷ Human Rights Watch interview with Mousa Yusef, Yanun, November 8, 2009.

³⁵⁸ Yusef's daughter's university fees were 460 Jordanian dinars per year, or roughly 2600 shekels, he said.

³⁵⁹ Bimkom, *The Prohibited Zone*, pp. 97-98. According to Article 34(4) of the Jordanian Planning Law applying in the Area C, road paving does not require a permit.

government pressure, Israel did not carry out the demolitions, but the orders remain in force and can be executed at any time.³⁶⁰

Itamar is connected to the Israeli water network and receives water-infrastructure support from a non-profit organization registered in the US.³⁶¹ Yanun is not connected to the water network; a pump provides drinking water from a small spring, but this is inadequate for residents' needs in summer, when they must transport water in trucks.³⁶² Residents and EAPPI volunteers told Human Rights Watch that settlers had repeatedly come to bathe in the spring that is Upper Yanun's sole water source. On April 17, 2010, according to EAPPI volunteers, 19 settlers (all men), two of whom were armed, refused villagers' requests and swam in the well, while verbally insulting residents and the volunteers. Some settlers returned an hour later, but three Israeli army vehicles arrived at the same time, apparently as a result of the phone calls made by the head of the village council to the Palestinian District Coordination Officer (responsible for coordination with the Israeli military), the UN and the Israeli Rabbis for Human Rights group.

They didn't seem too interested in our version of events and when we showed them where six of the young men had climbed down to swim in the well, the comment of the officer in charge was "Brave Kids." However their presence deterred the young settlers from returning.³⁶³

Large animal barns belonging to the settlements are visible from Yanun. According to a settler website, "The early settlers [in Itamar] focused on organic farming. That has mushroomed into the famous organic farms of Itamar and much success in the organic produce industry..."³⁶⁴ The outpost known as "Gvaot Olam" raises hundreds of goats, according to another website, and settlers raise herds of sheep.³⁶⁵

³⁶⁰ Id .

³⁶¹ For example, "The Itamar Project" seeks "to raise \$250,000.00" to "provide the necessary work in replacing the water lines of Itamar," which it said were cracking due to exposure to the elements. According to the "Itamar Project's" host website, "Donations can be made online at www.friendsofitamar.org all donations are 100% tax deductible." "Itamar Project," <http://tanizarelli.com/itamar-project/> (accessed April 20, 2010). In an update from February 12, 2010, the "Friends of Itamar" website stated that the Zarellis had recently visited the settlement. Itamar News Updates, February 12, 2010, "Friends of Itamar website, <http://www.friendsofitamar.org/news.html> (accessed April 20, 2010).

³⁶² Bimkom, *The Prohibited Zone*, pp. 97-98.

³⁶³ EAPPI, "Yanoun weekly focus, wk 16," email from EAPPI volunteer to Human Rights Watch, April 25, 2010, copy on file with Human Rights Watch.

³⁶⁴ Shomron Liaison Office, "Itamar," <http://www.yeshuv.org/about-our-towns/itamar> (accessed April 20, 2010).

³⁶⁵ "Itamar News Updates, April 9, 2010," Friends of Itamar website, <http://www.friendsofitamar.org/news.html> (accessed April 20, 2010).

Yanun residents told Human Rights Watch that IDF-imposed movement restrictions and the settlers' confiscation of their lands had sharply cut down the number of livestock they were previously able to raise. According to Fawzi Yusuf,

Before 1997, my family used to have 400 sheep and 60 cows. Now we have 30 sheep and no cows. We used to rent grazing and pasture land from Palestinian owners, but the settlers have taken over that land. Now to supplement the grazing, we have to buy food for the livestock, but to maintain even the number of sheep we have now is expensive. Meanwhile the settlers graze their sheep on our lands. It means that even the land we have left to us is sometimes too barren to support our animals. It happens all the time. Just an hour ago there was a large herd of settler sheep eating the grass under Yanun's trees.

Although the IDF has failed to prevent settlers from repeatedly grazing their sheep on Yanun village land, it has prevented villagers from accessing roughly 300 dunams (30 hectares) of their olive trees and sheep pastures near the Itamar settlement and its outposts, and argued that the "military closure" of this area was required to protect settlers from Palestinian attacks as well as to protect Palestinians from settler attacks—even as, villagers said, the IDF's response to their complaints was inadequate and failed to protect them from repeated incursions by settlers, who grazed their livestock on Yanun villagers' land. In 2006, the Israeli High Court of Justice held that except for concrete cases whereby real time intelligence is obtained of threats on the ground, the IDF military commander should refrain from closing areas in a way that prevents Palestinians from reaching their lands, although it found that such closures could be "proportional" and justified under Israeli law if they were necessary for the protection of Israeli settlers.³⁶⁶ (The court did not distinguish between Itamar, a settlement authorized under Israeli law, and its outposts, which are illegal under Israeli law). On the basis of that ruling, the IDF began to "coordinate" with the villagers to allow them access to their lands near the settlements. Villagers told Human Rights Watch in November 2009 that the IDF "coordinates" with them to enable them to access to their lands only a few days every year, and that it was impossible to cultivate their olive trees during this short period of time.

Israel's prevention of Palestinian residents from accessing their lands, whose ownership it does not dispute, on the basis that every Palestinian is a security risk, such that any Palestinian presence in the vicinity of a settlement is a threat that they may act to prevent, is an unjustifiably disproportionate and overbroad interference in their freedom of movement

³⁶⁶ "Rashed Murar v. Military Commander of Judea and Samaria," HCJ 9593/04, judgment September 26, 2006.

and right to use their own property. It also discriminatory, as the exclusion from land applies to Palestinians only, and prohibits them freedom of movement specifically due to their ethnicity, without justification for such an approach.

Fawzi Yusef described the drawbacks of the coordination policy to Human Rights Watch:

We are required to coordinate with the IDF before we can go to the part of our lands that the settlers have taken control of, around 500 dunams (50 hectares). We coordinate through the Israeli DCO [district coordination officer] to go there. This year the IDF gave us one day for the olive harvest and two days to prune the trees and to do everything else needed to tend them during the whole year. But you need two months to dig around, fertilize, prune, and take away the cut branches, plus enough time for the harvest. In Lower Yanun, where the settlers aren't as close and you don't need accompaniment, they started harvesting on October 1 and they're still harvesting today [November 8]. Coordination gives you enough time to say hello to the tree, that's it, then you have to leave.³⁶⁷

According to Rashed Murar, a normal harvest from the 300 dunams of olive trees used to yield 1600 kilograms of oil. "This year we got 10 kilograms of olives and 2 kilograms of oil, because for years now we haven't been able to tend the trees properly or to harvest the olives when they are ready. We must just harvest quickly from trees we can't cultivate."³⁶⁸ Yusef said that because of villagers' inadequate access to the lands for which IDF coordination was needed, the settlers' destruction of thousands of trees, and the confiscation of lands for the settlement and its outposts, "now we're surrounded by thousands of trees but we have to buy olive oil for our own use here, where we used to sell it. All the other trees we used to cultivate are gone. We used to have almonds and figs here, even grapes."³⁶⁹

Murar told Human Rights Watch that IDF soldiers cooperated with settlers to prevent Yanun residents from gaining access to their lands:

Earlier this year [2009] we were told we had IDF coordination, so my brother and I went up to the olive trees. Then an army Hummer came, and the army told us not to go beyond a certain limit, even though part of our lands lay

³⁶⁷ Human Rights Watch interview with Fawzi Yusef, Yanun, November 8, 2009.

³⁶⁸ Human Rights Watch interview with Rashed Murar, Yanun, November 8, 2009.

³⁶⁹ Human Rights Watch interview with Fawzi Yusef, Yanun, November 8, 2009.

beyond it. The soldiers agreed with the settlers. Finally the Israeli DCO [district coordination officer] came from Huwwara [a nearby military base] and told us to ignore the settlers, but then when some international monitors were trying to accompany us to make sure things went right, the army declared the area a closed military zone, and prevented any internationals from coming.

VIII. Ramallah District

Al-Janiya and Talmon

The Talmonim settlement bloc, nine kilometers northwest of Ramallah, consists of several adjacent settlements and outposts. The first, or “mother” settlement, Talmon, was established in 1989 and had 2,700 residents as of 2009.³⁷⁰ The other settlements in the bloc that the government of Israel formally recognizes are Dolev (which had 1,230 residents as of 2008), and Nahliel (374 residents as of 2008).

Six outposts are connected to Talmon; these are not officially recognized and their construction is unlawful, but Israel has expended significant resources to establish them.³⁷¹ Talmon “B,” for example, was established in 1999 and had 40 caravans and 2 permanent structures housing 20 families as of 2005. According to a report commissioned by the Israeli government, based on official data, as of 2005 the Ministry of Housing and Construction provided Talmon “B” with NIS 1,290,000 (US\$345,000) for infrastructure (including a paved access road) and NIS 180,000 (US \$47,000) for public buildings.³⁷² Similarly, the outpost of Haresha, established in 1997, housed 30 families in 45 caravans and 8 permanent structures in 2005; the Ministry of Housing and Construction had paid NIS 1,560,000 (US\$411,000) to construct infrastructure and NIS 100,000 (US\$26,000) for the construction of public buildings. Horesh Yaron, established in 1996, housed 10 families in 20 structures; government-financed infrastructure ran to NIS 50,000 (US\$13,200). The government approved all these outposts’ connection to the electricity grid.

Settlers from Talmon, which boasts large, limestone-clad homes and landscaping, told Human Rights Watch that the area was an attractive place to live. According to an employee of the settlement administration (*mazkirut*), Talmon comprises 244 religious-nationalist families, “many of them are young couples, and we have 600 children.”³⁷³ Because Talmon has become a desirable settlement, homes are available for purchase but not for rent—the average cost of a home is around NIS 700,000 (US\$184,000)—although two-bedroom caravans (trailer homes) are available for rent for NIS 900 per month (US\$240). Healthcare includes an HMO clinic (*kupat holim*) and an ambulance, which in case of emergency goes to

³⁷⁰ All demographic data on Israeli settlement population derives from the Israeli Central Bureau of Statistics, <http://cbs.gov.il> (accessed April 12, 2010).

³⁷¹ The outposts are Talmon A, Talmon B, Zaiyt Ra’anan, Haresha, Horesh Yaron, and Givat Habrecha.

³⁷² Talia Sasson, *Report: Opinion Concerning Unauthorized Outposts*, March 2005.

³⁷³ Human Rights Watch interview with R., Talmon, June 18, 2010.

Tel Hashomer hospital in Tel Aviv, a 35-minute drive away. Talmon enjoys various other services and facilities, including a day-care center, a synagogue, a seminary, a *mikva* (ritual bath), a playground, a library, basketball and soccer fields, and a minimarket.³⁷⁴

A municipal employee told Human Rights Watch that Talmon also offers settlers a preschool, five kindergartens, a center for special-needs children, and a boys' elementary school. A girls' elementary school is in the adjacent settlement, Dolev, with transportation funded by the local municipality. Nearby outposts and settlements have religious boarding schools for boys, and Nerya, a nearby outpost, has a religious high school for girls. "We also have lots of after-school activities for the children—soccer, basketball, art," the employee said.³⁷⁵ "There's also Bnei Akiva [a religious youth movement]."

The settlement block lies adjacent to several Palestinian villages: Al Janiya (1,163 inhabitants as of 2007), El Mazra'a El Qibliya (4,495 inhabitants as of 2007), and Ein Qiniya (812 inhabitants).³⁷⁶ These communities depend mainly on agriculture and livestock for living. They used to cultivate land in the area, including for olive, almond and citrus trees, wheat, grazing sheep and other uses.

Since 1967, Israeli authorities have confiscated thousands of dunams of land from these villages.³⁷⁷ Residents of Al Janiya told Human Rights Watch that they have effectively lost 10,000 dunams (1000 hectares) of land through land confiscation based on the Israeli Civil Administration's determination that the land was not privately owned and restrictions on movement that prevent them from accessing their lands.³⁷⁸ Settlement in the area has had other consequences. Before 1967, villagers could travel on a direct road to get to Ramallah, the nearest large commercial center, but the route is no longer available due to settlement land expropriation.

In addition to confiscating Palestinian lands and giving them to settlements, Israeli authorities have also severely hindered the ability of Palestinians to access agricultural lands, particularly where they must pass close to settlements to access them. The IDF has prevented villagers

³⁷⁴ Amana Settlement Movement Website, "Talmon," <http://www.amana.co.il/Index.asp?CategoryID=22&ArticleID=63> (accessed April 26, 2010).

³⁷⁵ Human Rights Watch interview with R., Talmon, June 18, 2010.

³⁷⁶ All demographic data on Palestinian village population derives from the Palestinian Central Bureau of Statistics, <http://pcbs.gov.ps>, (accessed April 12, 2010).

³⁷⁷ Applied Research Institute of Jerusalem (ARIJ) "Strangulation of El Janiya Village," May 7, 1999, http://www.poica.org/editor/case_studies/view.php?recordID=607 (accessed October 19, 2010).

³⁷⁸ Human Rights Watch interviews with Al Janiya residents, March 4, 2010.

from accessing roughly 733 dunams (73 hectares) of land near or within Talmon and its outposts, and argued that the “military closure” of this area was required to protect settlers from Palestinian attacks, as well as to protect Palestinians from settler attacks.

(Human Rights Watch is not aware of any cases where Israeli authorities have restricted settlers’ ability to access lands they claim as theirs for security reasons, although the Israeli army has issued warnings to settlers against movement on roads for relatively short, limited periods of time due to threats of attack from Palestinian armed groups).

The Israeli authorities appear to be treating the security of settlers very differently from that of Palestinians, whose lands have been confiscated and whose ability to access their remaining lands is limited to brief intervals each year, as discussed below.

In 2006, the Israeli High Court of Justice held that except for concrete cases of real time intelligence of threats on the ground, the IDF military commander should refrain from closing zones in a way that prevents Palestinians from reaching their lands, although it found that such closures could be “proportional” if necessary for the protection of Israeli residents.³⁷⁹ The court found that the Israeli military’s purported policy of barring Palestinians from their lands for their own protection was disproportionate, and that the proper way to protect them was to restrict those attempting to harm them.³⁸⁰ (The court did not distinguish between Talmon, a settlement authorized under Israeli law, and its outposts, which are illegal under Israeli law, or take into consideration the illegality of all settlements under international law).

On the basis of that ruling, the IDF began to “coordinate” with the villagers of Al Janiya to allow them access to their lands near the settlements. However, under the “coordination” regime, villagers remain barred from access to their lands for almost the entire year. Villagers told Human Rights Watch in March 2010 that the IDF “coordinates” with them to enable them to access to their lands—a practice the IDF instituted as a result of the court ruling discussed above—only a few weeks in spring and fall, and that it was impossible to cultivate their olive trees during this short period of time. To get the permits, the residents of Al Janiya must contact the Palestinian District Coordinating Office (DCO), which then contacts the Israeli DCO in the settlement of Beit El.³⁸¹ According to Mhammed Bedwan,

³⁷⁹ “Rashed Murar v. Military Commander of Judea and Samaria,” HCJ 9593/04, judgment September 26, 2006.

³⁸⁰ *Id.*

³⁸¹ Human Rights Watch interviews, al-Janiya, March 4, 2010; see also B’Tselem, *Access Denied: Israeli Measures to Deny Palestinians Access to Lands Around Settlements*, April 2008, p. 50 (Civil Administration officials informed al-Janiya residents in April 2006 that coordination would be required to reach their lands).

We have to be accompanied by soldiers, and they don't give us the permits more than three times a year. Often, this means we can't reach the land when it most needs to be ploughed. For example, it is best to plough olive trees after the rain in order to produce better olives, but we usually get the permits for June when the land is dry, and then it produces smaller olives.³⁸²

Bedwan discovered in mid-February 2010 that he was prevented from accessing six dunams (0.6 hectares) of his land, located near the settlement of Talmon (the closest distance between houses in al Janiya and the settlement is 150 meters).³⁸³ He now depends on permits from the military and an IDF escort to access the land, which is available only for a few weeks each year.

Abu Muhammad, another resident of Al Janiya, told Human Rights Watch that Israeli authorities had expropriated 12 dunams (1.2 hectares) of his land, and that settlers had prevented him from making improvements to the rest.

I brought in a bulldozer to dig a well on my land. In 2004 settlers came down, saw it and forced me to take the bulldozer away. We planted olive trees. After all this, the settlers came with a new bulldozer and destroyed all the trees and fired tear gas... I used to make 60-70 "tanake" of olive oil (1080-1260 liters). Now I make 2 liters of olive oil. My nine family members consume 12 tanake per year. Now I'm buying vegetable or soy oil for us.³⁸⁴

According to Abu Muhammad, in a village of 1200 people that previously had 2,000 hectares of land, there is now less than one square kilometer that is zoned for building (which is not in Area C), and another 500 hectares that villagers can reach without permits. About 1000 hectares can be reached only via coordination with the military.³⁸⁵ According to B'Tselem, during the seven days in spring and ten days in fall that coordination is available, the Civil Administration grants permits to Al Janiya residents that are valid only from 8:00 a.m. to 3:30 or 4:00 p.m.³⁸⁶

³⁸² Human Rights Watch interview with Abdelaziz Mhammed Bedwan, al-Janiya, March 4, 2010.

³⁸³ *Id.*

³⁸⁴ Human Rights Watch interview with Abu Muhammad, al-Janiya, March 4, 2010.

³⁸⁵ *Id.*

³⁸⁶ B'Tselem, *Access Denied: Israeli measures to deny Palestinians access to lands around settlements*, September 2008, p. 51.

The Israeli restrictions are both unnecessarily harsh and discriminatory. For most of the year, the Israeli military in fact prohibits (by refusing to “coordinate” access) Palestinian villagers from accessing their lands in the name of the security of Jewish settlers in Talmon, but has not attempted to alleviate this near-permanent exclusion of Palestinians from their lands by imposing restrictions on the Jewish settlers. Settlers from Talmon told Human Rights Watch that they were not concerned by the security situation. During the second intifada, one man said, the security situation “was bad here, but it’s been quiet now for years.” He added: “It’s safer here than in Jerusalem. The army controls the area completely. Plus, we use the bypass road so we don’t go through any Arab villages.”³⁸⁷ According to a municipal employee, security had not been a major concern for the past five years. “Every man here who has been through military service also volunteers three hours a month and guards,” she said, “but of course we have the military right outside in case there are any problems. And the road bypasses the villages; there are only maybe one or two [Palestinian] houses overlooking the road.”³⁸⁸

The Israeli High Court denied in 2009 a petition by settlers in the Talmon bloc to order the military either to create a bypass road or to allow them to use “fabric of life” roads created to connect separated Palestinian enclaves in order to shorten their travel time to Jerusalem, on the grounds that the proposed alternatives would disproportionately harm Palestinian landowners’ rights, disturb archaeological relics, and impose too heavy a security burden for the military. The court did not rule on the settlers’ claim that the military was discriminating against them by denying them access to the Palestinian “fabric of life” roads.³⁸⁹ Settlers from Talmon said that around 80 percent of the settlers commuted to their jobs, mainly in Jerusalem (50 minutes away) and Tel Aviv (35 minutes), on bypass roads.³⁹⁰ According to Talmon’s website,

Talmon is a communal religious settlement, offering a unique combination between comfort and quality of life, between ideology and contribution to settling the land. Over 200 families live in Talmon and contribute daily to the settlement project and to Zionism, and to strengthening our grip on the land of Israel... The settlement was founded as part of the “showing the PLO who’s

³⁸⁷ Human Rights Watch interview with S., Talmon, June 18, 2010.

³⁸⁸ Human Rights Watch interview with R., Talmon, June 18, 2010.

³⁸⁹ HCJ 6379/07, Dolev Settlement Committee v. Military Commander in Judea and Samaria (August 20, 2009), <http://elyon2.court.gov.il/files/07/790/063/S22/07063790.S22.htm> (accessed December 12, 2010).

³⁹⁰ Human Rights Watch interview with D., Talmon, June 18, 2010.

boss” operation, which involved the founding of eight new settlements in the midst of the second intifada...³⁹¹

The reason that Palestinians have been unable to access their lands in one area without special “coordination” is that Talmon settlers incorporated the road leading to those lands into the settlement itself, making it a “closed military area” off limits to Palestinians. In 2000, Talmon expanded to reach Tarikh Ein Misraj, a dirt road the residents of Al Janiya had used to access their agricultural lands lying to the east of the village. Once the built-up area of the settlement began to approach the road, the settlers paved and gated it, thus preventing access to the road for the Palestinian residents of the village.³⁹² Similarly, none of the schools, clinics or roads that Israel has constructed for Talmon settlers is accessible to Palestinians in neighboring communities. Palestinians told Human Rights Watch that settlers had told them that they were prohibited from coming closer than 70 meters from the settler roads. In recent years, villagers told Human Rights Watch, the Israeli military has allowed them to pass through the Talmon gate en route to their lands, but—as with other cases of “coordinated” access to their lands—only twice a year, for about two weeks during the olive harvest and about one week during the planting season, in coordination with the Civil Administration and with Israel Defense Forces escorts.³⁹³

To the knowledge of Human Rights Watch the Civil Administration has not sought to explain or justify why it is imposing restrictions on the freedom of movement and access to land of members of one ethnic group but not another. (trying to get a response)

Meanwhile, settlement construction continues in Talmon and other areas near Al Janiya, and the Israeli government appears ready to approve new construction retroactively. A few kilometers away from Al Janiya lies a new outpost of the Talmon settlement, called Givat Habrecha (Water Reservoir Hill). In violation of Israeli (and international) law, settlers have erected sixty houses there, which in June 2009 the Israeli Ministry of Defense proposed to legalize while also building another 240 homes at the site.³⁹⁴ The proposed plan covers 860 dunams (86 hectares) and stretches across agricultural land belonging to Al Janiya, and will, by incorporating road access points, prevent Palestinian residents from reaching about

³⁹¹ The Hebrew idiom, which roughly means “to show the PLO who’s boss,” translates literally as “to insert an eight-fold into the PLO” – an expression that, in this usage, also implicitly refers to the eight settlements in the *Talmonim* settlement block. Binyamin Local Municipality Website, “Talmon: ID,” <http://www.binyamin.org.il/?CategoryID=146&ArticleID=226> (accessed April 26, 2010). English translation by HRW.

³⁹² Human Rights Watch interview with Dror Etkes, Yesh Din’s Lands Project Coordinator, Jerusalem, December 21, 2009.

³⁹³ Human Rights Watch interviews, al-Janiya, March 4, 2010.

³⁹⁴ Rory McCarthy, “Israel Defies US with Plan for 240 New Homes on Palestinian Land,” *The Guardian*, June 23, 2009, <http://www.guardian.co.uk/world/2009/jun/23/israel-palestine-construction-farmers-obama> (accessed April 7, 2010).

1,000 dunams of their olive groves.³⁹⁵ Defense Minister Ehud Barak gave his approval for consideration of the plan in April 2009. It was then published for objections on April 20, after the formation of the current Israeli government led by Prime Minister Netanyahu.³⁹⁶ In April, the Civil Administration announced that it had submitted a detailed plan to change the land-use designation for Givat Habreikha in Talmon from an agricultural zone to a residential neighborhood of 300 housing units.³⁹⁷

The Israeli NGO Bimkom, comprised of planning professionals, filed an objection to the plan on behalf of the head of the village council and three inhabitants who own land adjacent to the area of the plan. Submissions by the Israeli government during court hearings regarding the petition revealed that planning authorities in the Civil Administration had already approved a smaller plan for the area on 33 dunams (in an area included in the larger plan proposed for the 300 homes). The smaller plan includes a segment of a road in the area (Route 4556) as well as a plot intended for a school, bordering the road. In the absence of objections, the government had already authorized the plan for the settlement school. While the Jordanian planning law, which Israel continues to apply as the occupying power in the West Bank, requires publication of building plans in two local newspapers, the Israeli authorities had published information about the school plan in two Hebrew-language newspapers and in the Nazareth-based Arabic-language Israeli weekly *Kul al-Arab*, which has limited distribution in the West Bank. In violation of applicable military orders, the announcement was not displayed in the home of the head of the affected village.³⁹⁸

In mid-October of 2009, the Supreme Court temporarily enjoined any construction work in the area of the school plan.³⁹⁹ At the end of December, Al Janiya villagers filed a petition against approving the larger plan to build 300 units in Givat Habrecha, which would retroactively authorize the construction of an illegal outpost and allow its expansion. The state did not object to the villagers' request for an interim order prohibiting construction, since a temporary building "freeze" (which Israel had instituted in response to US pressure) already applied to the area. But the Supreme Court refused to issue an interim order

³⁹⁵ Bimkom and Yesh Din, "Supreme Court – forbid construction of school in Talmon," March 11, 2010, <http://www.bimkom.org/publicationView.asp?publicationId=169> (accessed April 13, 2010).

³⁹⁶ *Id.*

³⁹⁷ Akiva Eldar, "Supreme Court Abetting, Not Curbing, Illegal Settlements," Haaretz, March 2, 2010, <http://www.haaretz.com/hasen/spages/1153301.html> (accessed March 16, 2010).

³⁹⁸ *Id.*

³⁹⁹ Bimkom and Yesh Din, "Supreme Court – forbid construction of school in Talmon."

prohibiting construction, and delayed further consideration of the case.⁴⁰⁰ On January 28, 2010, Bimkom documented construction work for the building of 13 new housing units at Givat Habrecha.⁴⁰¹

Givat Habrecha was mentioned in a 2005 report for the Israeli government by former Ministry of Justice attorney Talia Sasson, who found that it was neither authorized nor approved by the Israeli government and was built without an approved, detailed plan. Some of it is built on privately owned Palestinian land, and the site is far from the main settlement blocs and several miles inside the West Bank.⁴⁰²

While Israeli authorities are poised to recognize Talmon's expansion via the retroactive authorization of Givat Habrecha's illegal construction, they also impose strict limitations on the ability of Palestinians in Al Janiya and other nearby villages to develop beyond their current borders. The built-up areas of the villages were designated Area B by the Oslo agreements. However, areas immediately outside these villages were classified as Area C.

Limiting Palestinian development to areas that were already built-up in 1995 has consequences in the daily lives of residents of the neighboring villages. Residents of Al Janiya told Human Rights Watch they cannot build houses for their children, some of whom had emigrated as a result. Muhammad Hassan Yusuf owns a house built on half a dunam of land in Al Janiya. Yusuf told Human Rights Watch:

I have five children. Thirty people used to live in my house, but my land borders on land considered Area C. So I could not expand and build houses for my children when they got married. Four of my children, together with their families, have now left the village.⁴⁰³

Other resident told Human Rights Watch that while the village of Al Janiya houses about 1200 residents today, there are 3000 other former residents living outside the West Bank who faced difficulties in returning, including lack of room to expand.⁴⁰⁴

⁴⁰⁰ Dan Izenberg, "High Court Refuses to Halt Illegal Settlement Construction," March 14, 2010, <http://www.jpost.com/Home/Article.aspx?id=170985> (accessed April 13, 2010). Since then a date has been set for November 2010.

⁴⁰¹ Bimkom and Yesh Din, "Supreme Court – forbid construction of school in Talmon," March 11, 2010, <http://www.bimkom.org/publicationView.asp?publicationId=169> (accessed April 13, 2010).

⁴⁰² Sasson, *Report: Opinion Concerning Unauthorized Outposts*.

⁴⁰³ Human Rights Watch interview with Muhammad Hassan Yusuf, al-Janiya, March 4, 2010.

⁴⁰⁴ Human Rights Watch interview with residents of al-Janiya, March 4, 2010

IX. Jahalin Bedouin and Ma'ale Adumim

The Jahalin Bedouin are originally from Beer Sheba in the Negev Desert, deriving their name from their tribal or extended family affiliation. They left or were forcibly displaced from the area in the early 1950s, following Israel's declaration of independence in 1948. During the 1950s, the Jahalin Bedouin found shelter in the Hebron Governorate of the West Bank, then under Jordanian occupation; some years later they moved to the hilly Judean desert between Jerusalem and Jericho, to the east, in areas near Road No. 1, the Jerusalem-Jericho road.⁴⁰⁵

Large amounts of land in the area belonged to Palestinian owners, including farmland belonging to residents of the villages of Abu Dis, 'Anata, al-'Izariyyeh, a-Tur, and al-'Issawiyyeh; the Jordanian government had previously recognized their ownership claims during its occupation of the area, including, for example, in a case where Palestinians successfully sued the Jordanian government to recognize their ownership rights when Jordan built a firing range on 145 hectares in the area.⁴⁰⁶ Bedouin residents rented property from Palestinian property owners in the area.⁴⁰⁷

The Israeli settlement of Ma'ale Adumim was later established in the same area to the northeast of Jerusalem. Israel approved its establishment in 1976, and construction began in 1982. By the early 1990s, the settlement's growth began to threaten the Jahalin communities in the area, beginning with those closest to the settlement or in areas designated for its expansion. (Currently, Ma'ale Adumim is one of the largest Israeli settlements, with 34,100 residents as of 2009).⁴⁰⁸ In 1993 the Israeli government began issuing eviction orders against some of the Bedouin communities established in the area, but the High Court temporarily suspended their eviction until the end of court proceedings. On May 28, 1996

⁴⁰⁵ This is according to the claims of the Jahalin tribe. The State of Israel claims that tribe members did not settle in the area before 1988 (see HCJ 2966/95, Muhammad Ahmad Sallem Haresh and 19 others v. Minister of Defense et al., ruling from May 28, 1996).

⁴⁰⁶ In this case, which covers only a fraction of the area on which an industrial zone near Ma'ale Adumim would later be built, Jordan recognized that 78 percent of the land was privately-owned by Palestinians. B'Tselem, *The establishment and expansion plans of the Ma'ale Adumim settlement: Spatial and human rights implications*, December 2009, p. 19, citing Meir Shamgar, "Industrial Zone in Jerusalem," September 12, 1974, 'Anatot-Ma'ale Adumim File, vol. 3, ISA/77/A/7341/10.

⁴⁰⁷ B'Tselem, *On the Way to Annexation: Human Rights Violations Resulting from the Establishment and Expansion of the Ma'ale Adumim Settlement*, 1999, Chapter 4, http://www.btselem.org/Download/199907_On_The_Way_To_Annexation_Eng.doc (accessed October 20, 2010).

⁴⁰⁸ Ma'ale Adumim was granted the municipal status of a city in 1991; it was the first settlement to attain this status. All demographic data on Israeli settlement population derives from the Israeli Central Bureau of Statistics, <http://cbs.gov.il> (accessed April 12, 2010).

the Supreme Court denied the Bedouins' final appeal on the basis that they lacked property rights in the area and gave them three months to evacuate voluntarily.

The affected families refused, negotiations between them and the Israeli Civil Administration failed, and according to one local resident, Abu Yusef, the IDF and Civil Administration forcibly expelled some Bedouin living near Ma'ale Adumim in 1996: "they forced them onto buses and destroyed their homes," Abu Yusef said.⁴⁰⁹ On February 19, 1997 members of the Jahalin Bedouin were forcefully evicted—including members of the community who had been evicted from Beer Sheva in 1948.⁴¹⁰

Several more expulsions followed. Members of several communities told Human Rights Watch that the IDF repeatedly bulldozed their villages—comprised of homes and animal pens constructed of wood, cloth and corrugated metal that they rebuilt. Throughout 1997 (in January, February, and August) about one hundred Jahalin families were evicted, and in February 1998 thirty-five other families were forcibly evicted and were not provided any place to go.⁴¹¹

In 1998 several Jahalin families (around 35 families comprising 200 individuals) struck a deal with the Israeli Civil Administration. Israeli authorities claimed the area from which the Bedouin had been evicted for the creation of a new Ma'ale Adumim neighborhood, known as "o6," but permitted the Bedouins to lease "state lands" approximately one kilometer to the south. This was the only time since the occupation of the West Bank in 1967 that Israeli authorities granted rights over "state lands" to non-Jews.⁴¹² Other Palestinians in the area claimed Israel had confiscated these lands from them.⁴¹³ The site was located less than 500 meters from the Jerusalem municipal dump.⁴¹⁴

In July 1999, Israeli authorities positioned metal containers as living quarters for Jahalin Bedouin on the new site. The new village contained 120 plots for 120 families of 2-dunam (half-acre), one-dunam and half-dunam sizes with 49-year leases and an additional 49-year

⁴⁰⁹ Human Rights Watch interview with Abu Yusef, Wadi Abu Hindi, December 21, 2009.

⁴¹⁰ Sasi Contractors v. the State of Israel, Jerusalem District Court 1260/99.

⁴¹¹ Badil: <http://www.badil.org/en/al-majdal/item/1219-israel-continues-to-evict-jahalin-bedouin-from-west-bank-%5C> (accessed September 12, 2010); Passia: <http://www.passia.org/jerusalem/chronology/chron12.htm> (accessed September 12, 2010).

⁴¹² "State lands" are areas of the West Bank over which Israel claimed custody on the basis that they are not owned or cultivated by Palestinians. According to Israel's Basic Law, state lands may not be sold, and are often leased for periods of 49 or 99 years, including to Jewish settlers.

⁴¹³ Palestinian residents of Abu Dis claim that the state lands the Jahalin were offered to lease originally belonged to them before Israel confiscated them.

⁴¹⁴ Arnon Regular, "Bedouin Expelled by Ma'ale Adumim wall," Haaretz, September 23, 2005.

rental-extension option, signed by the Israel Lands Administration.⁴¹⁵ The families received monetary compensation, and several years later began building houses on the site.⁴¹⁶ Since the land was in Area C, any public building required permits from the Civil Administration. Today the village includes a mosque, a seven-class school, and a 12-class school. The site is linked to the East Jerusalem electricity system and has running water.

In informal conversations with Human Rights Watch, several residents of the village said that they had found it impossible to maintain their traditional way of life, and had given up herding sheep due to lack of grazing ground and difficulty in accessing it. Some men in Arab al-Jahalin now work in construction in Ma'ale Adumim.⁴¹⁷

The Arab al-Jahalin village is adjacent to the Abu Dis waste disposal facility, which began operating in the early 1980s. According to a 2001 Israeli State Comptroller's report, all of Jerusalem's household refuse, including the garbage of Ma'ale Adumim, is taken to the Abu Dis waste disposal site. Four million tons of garbage had been buried in the site by 2001, and the Comptroller identified serious defects in operation of the site that had produced environmental hazards.⁴¹⁸ In 2009 the state, in its response to a High Court of Justice petition, said that 90 percent of all the waste buried in the waste disposal site was from Jerusalem, four percent from settlements, and the remainder from Palestinian communities.⁴¹⁹

The Bedouin families who were not part of the deal – roughly 1,000 to 1,500 people – stayed in the area around Ma'ale Adumim.⁴²⁰ They continue to face the threat of forcible displacement because of continuing settlement expansion and the planned construction of the Israeli separation barrier in the area; in one recent case, six Bedouin families were

⁴¹⁵ As discussed above, state lands cannot be sold.

⁴¹⁶ Families with more than four children received 38,000 shekels (US\$10,000), smaller families received 28,000 shekels (US\$7,370). A total of 4 million shekels (around US\$1,050,000) was allocated to the families, in addition to about 3,000 dunams (750 acres) of pasture land.

⁴¹⁷ Human Rights Watch conversations with residents, Arab al-Jahalin, December 21, 2009.

⁴¹⁸ State Comptroller, Reports on Auditing of Local Government, Associations, and Institutions of Higher Education (2003).

⁴¹⁹ HCJ 10611/08, Ma'ale Adumim Municipality v. Commander of IDF Forces in Judea and Samaria et al., Response of the State, February 22, 2009, section 32.

⁴²⁰ These rough estimates are based on Israeli Civil Administration calculations. These include the Salamat clan (about 60 families); the Hamadin (about 25 families), who live to the south and southwest of Ma'ale Adumim; the Abu Dahuk and 'Arara clans (about 50 families), who live along the Ma'ale Adumim-Jericho road and near the Mishor Adumim industrial area; and the Sayara clan, about 60 families that live in Wadi Al-Hindi, near the Kedar settlement on the south side of the fenced-in enclave of Ma'ale Adumim. (Arnon Regular, "Bedouin Expelled by Ma'ale Adumim wall," Haaretz, September 23, 2005.) Studies prepared by Badil and the Internal Displacement Monitoring Center (IDMC) puts the total number of Jahalin spread around Ma'ale Adumim at around 30,000. A report prepared by LAW - The Palestinian Society for the Protection of Human Rights and the Environment estimates the population of one area, called 'Arab Jahalin, at 7,500.

reportedly evicted when the Israeli Civil Administration bulldozed their homes in late October.⁴²¹ Other than the 35 families who now comprise the Arab al-Jahalin village, as agreed with the Civil Administration in 1999, the rest of the Jahalin families live in unrecognized communities.

Living conditions for the remaining Jahalin Bedouin in areas around Ma'ale Adumim are harsh: they lack electricity and, in most cases, running water, and have limited access to essential services. The closest hospitals are located on the other side of the separation barrier, inside East Jerusalem, which the Bedouin, like other Palestinian residents of the West Bank, may not access without special permits. A recent survey by UN agencies of living conditions for herder communities in Area C of the West Bank, like the Jahalin Bedouin, found that many people lack essential food and potable water, basic shelter and housing, appropriate clothing, and essential medical services and sanitation. Rates of stunting among these communities was an astonishing 28.5 percent; 15.3 percent were under weight; and 79 percent of those surveyed were food insecure, with 77 percent reduced to buying food on credit.⁴²²

A member of one of the Bedouin communities that has not been recognized told Human Rights Watch that Israeli civil authorities prohibited virtually any attempt to improve their situation, by restricting their ability to build public buildings or infrastructure or connect to road, electricity or water networks:

The situation here is bitter. We just want to get medical centers, schools, electricity and water. Allow us to be humans. What's painful is not that we are living in poverty, but that the Israelis are building new houses and schools for their children and they're doing it all right here, on our land. But when we ask to be allowed to do this, we're told no.

Human Rights Watch researchers visited several different Jahalin communities around Ma'ale Adumim. The Jahalin community in the valley known as Wadi Abu Hindi is not accessible from the main road, but only via a very rough dirt road that is often not passable except via a 4x4 vehicle. The community's only vehicle is a van, which it uses to bring teachers from the main road to the small local school.

The elementary school, which teaches children in grades one through nine, serves families from the communities of Wadi Abu Hindi, Muntar, and Abu Nuwwar. Daoud al-Asmar, the

⁴²¹ Maan News, "Israel razes Bedouin camp," October 27, 2010, <http://www.maannews.net/eng/ViewDetails.aspx?ID=328051> (accessed November 1, 2010).

⁴²² UNRWA, UNICEF and WHO, *Food Security and Nutrition Survey For Herding Communities In Area C*, February 2010.

school headmaster, told Human Rights Watch 71 boys and 60 girls attend the school.⁴²³ The school has around fifteen teachers, who come mainly from the villages of Zaharya or Sawahri, about an hour away. Al-Masri said that the Israeli military demolished the school, built in 1997, on September 28 of that year because it lacked proper permits, but that villagers rebuilt it and had reached an agreement with the Civil Administration that it would not be demolished again if no further permanent structures were erected; he said that the corrugated-metal roofing was leaky during winter, and that the classrooms were extraordinarily hot in the summer.⁴²⁴ The school at Abu Hindi is one of two PA schools serving the Jahalin Bedouins. It has no computers, lab, or library. There is no heating or insulation; electricity is provided by generators. There is no running water; the school administration brings in water tankers for the children.

Since there are no paved roads, students from nearby communities have to walk or take donkeys to get to school. Lhloud, a nine-year-old student in the third grade, described her daily walk from the Bedouin community of Muntar to attend classes at the Abu Hindi school:

I get up at 6 and get to school at 7:30. I finish school at 1 p.m. and then go home. My older brother and two sisters come to school with me. There are two girls, Anoud and Nada, who come from farther away than I do. I walk to school and carry my books. It's harder in the summer because it's hot, and there are snakes on the way. I get tired and slip on the road sometimes. I come here to learn; I want to be a doctor and study medicine.⁴²⁵

The teachers share two cars that the village rents especially for them, but they cannot pay licensing fees so the cars cannot go on the roads.

In contrast, the settlement of Ma'ale Adumim has fourteen schools licensed and funded by the Israeli Ministry of Education, which offer laboratories for science classes, libraries, after-school activities, and other modern services. The Ministry of Education awarded Ma'ale Adumim a prize for quality of educational services. According to the municipal budget of Ma'ale Adumim, the proposed education budget for 2010 is NIS 40,694,000 (US\$10,708,000).⁴²⁶

⁴²³ Human Rights Watch interview with Daoud al-Masri, Wadi Abu Hindi, December 21, 2009.

⁴²⁴ Id. See also Badil, <http://www.badil.org/en/article74/item/572-eviction-of-jahalin-bedouin-continues> (accessed September 15, 2010).

⁴²⁵ Human Rights Watch interview with Lhloud, Wadi Abu Hindi, December 21, 2009.

⁴²⁶ The budget includes NIS 5,782,000 (US \$1,521,600) for security, NIS 648,000 (US\$170,500) for construction permits / city planning, NIS 2,346,000 (US \$617,400) for sidewalks and roads, NIS 2,360,000 (US\$621,000) for street lights, a total of NIS 940,000 (US\$247,400) for services for new immigrants, and NIS 18,055,000 (US\$4,751,300) for water.

A retired teacher told Human Rights Watch that she moved to Ma'ale Adumim in 1984, four years after moving to Israel from the United Kingdom, because it was economically attractive. At the time, she said, "the Labor party wanted to fill it up. It had some of the best deals on mortgages."⁴²⁷ The settlement has expanded rapidly since she first arrived, she said; new neighborhoods were constructed in 2003, 2006 and 2007. Today Ma'ale Adumim features a shopping mall and excellent health services; in case of emergency, she said, residents need only a five-minute ambulance ride to reach Hadassah hospital in Jerusalem.

The resident denied that the settlement had displaced any Palestinian residents. "We didn't turn anybody out when we arrived. We were living in the edge of what was then the only neighborhood, and underneath us there was a valley. Sometimes goats or sheep would come close by, sometimes with a shepherd, but it was not the same shepherd, and it only happened occasionally." She was not aware of any security threats from Palestinians, but felt that "Ma'ale Adumim is safer than some parts of Jerusalem."

The Bedouin communities are far from healthcare facilities that Palestinians are allowed to access. As noted, the communities fall within the administrative area of "Area C," over which Israel exerts full military and civil control, and Israeli civil and military authorities restrict all non-settlement building permits with very limited exceptions. As a result, the Jahalin Bedouin cannot build health clinics in their communities, and must go to clinics elsewhere. Settlement clinics are also off-limits to them; Palestinian clinics are available in the towns of Abu Dis and Azariya a few kilometers away, but can be difficult for villagers to access.

Abu Yousef, a member of the Abu Hindi community, told Human Rights Watch that in 2005, a two year-old boy suffering from cancer needed to go to Jordan for medical care. "We rented a van to drive to the border, but it was raining, and on these unpaved roads it floods quickly. At the end, we had to stop and take a donkey in the rain until we got to the main road, seven kilometers away." Abu Yusef recounted another case, also in 2005, when a woman had to give birth in the middle of the road on her way to a hospital. "It was winter and snowing, and I took the woman on a donkey. But it took too long, and in the middle of the way we stopped and I made a shelter, and she delivered the baby."⁴²⁸ Abu Yusef said that in some cases "the Israelis do send ambulances," which wait for patients at the main road, although Bedouins, like all Palestinian residents of the West Bank, had to obtain permits first in order to be able to enter Jerusalem to access hospitals there – Israel has constructed a concrete wall

⁴²⁷ Human Rights Watch interview with R., Ma'ale Adumim, June 27, 2010.

⁴²⁸ Human Rights Watch interview with Abu Yousef, Wadi Abu Hindi, December 21, 2009.

separating much of East Jerusalem from the rest of the West Bank– and that it was difficult to depend on settlers’ assistance, which was only available informally.

According to the Israeli military Civil Administration, the PA is responsible under the 1995 Interim Agreement (the Oslo accords) for providing water and other services to Palestinian villages in the West Bank. Israel, however, never transferred the authority to the PA to provide these services in Area C, which continues to fall under absolute Israeli military and civil control; the PA can provide no services without the approval of the Civil Administration and the IDF, with the exception of teachers and doctors or other educational and health personnel. Israel retains full security and administrative control over planning and construction in Area C, while the Palestinian Authority is responsible for the provision of education and health services. As a joint survey by UNRWA, UNICEF and WFP found, “This division has created problems in ensuring that basic services are provided to the most vulnerable communities in Area C.” The PA, for example, faced “difficulties in obtaining building permits from the Israeli Civil Administration (ICA) for the construction or expansion of schools and health clinics,” which “significantly impedes the fulfillment of this responsibility.”⁴²⁹ In one recent case, Civil Administration in Judea and Samaria Director Brig.-Gen. Yoav Mordechai, “decided to link” the village of al-Tawani, in the South Hebron Hills area of the West Bank to the Israeli water network, “in light of the villagers’ plight.”⁴³⁰

In general, in other Area C villages, cases where Israeli authorities have granted PA requests to provide access to services that require any construction, including water, electricity, schools and clinics, are the exception, although the PA provides employees such as teachers and medical personnel who staff schools and conduct weekly visits to provide basic medical care to various communities.⁴³¹ The Civil Administration stated that in the case of al-Tawani, it would offer a tender for the construction of the necessary water infrastructure “at its own expense” and “will continue to work to improve the fabric of life for all residents of Judea and Samaria.”⁴³² Such examples of the Civil Administration taking responsibility for the welfare of Palestinian residents under its control are partial and infrequent.⁴³³ As a result,

⁴²⁹ UNRWA, UNICEF and WFP, Food Security and Nutrition Survey for Herding Communities in Area C, February 2010, p. 9.

⁴³⁰ The statement did not note that village residents had been requesting water connectivity for years, or that it had recently become the subject of a popular campaign (“An Action A Day”) by Israeli rights activists.

⁴³¹ Human Rights Watch interviews in Umm al Kheir (a Bedouin community near the settlement of Carmel) and Wadi Abu Hindi, February 20, 2010, and December 21, 2009.

⁴³² Civil Administration Spokesman, “Civil Administration to Link A’Tuwani Village to Mekorot Water Infrastructure,” July 25, 2010.

with Israel refusing to grant access to services, and the PA and international humanitarian agencies and NGOs unable to do so because of the threat that Israel will demolish unpermitted construction, Palestinian villagers in Area C largely have to fend for themselves in figuring out how to access these services.

In contrast, the Israeli government provides medical clinics in the Ma'ale Adumim settlement and has invested in roads to facilitate the access of settlers to hospitals in Jerusalem. Ma'ale Adumim has several health clinics but no hospital. A website intended to attract English-speaking Jews to immigrate to Ma'ale Adumim from abroad states that the settlement has buses to Jerusalem every five minutes, quality schools, as well as medical clinics, an emergency medical care facility, "dentist clinics, and alternative medicine practitioners."⁴³⁴ In case of emergency, residents can use the newly paved road, opened in 2003, connecting Ma'ale Adumim with Jerusalem. According to Ma'ale Adumim's website, "the new highway will permit residents of Ma'ale Adumim, and other Jewish towns located on the Jerusalem-Jericho highway, to reach Ramat Eshkol in the capital in about seven minutes, instead of the present 15-20 minutes. The NIS 320 million (US \$84 million) project is one of Israel's largest public works projects."⁴³⁵

The expansion of the settlements and related restrictions on Palestinian movement and access to land in the area has harmed the Jahalin Bedouin's traditional source of income: raising cattle and sheep. According to residents, restrictions on access to grazing lands have forced them to buy fodder and tankers of water for their sheep, significantly increasing costs and reducing the number of livestock they can afford to own. According to Ra'id Sourakhi, the fodder costs between NIS 1,000 and 2,000 (US\$260-\$520) per ton, and each sheep eats around two kilograms a day.⁴³⁶

Abu Yusef told Human Rights Watch:

In the 1950s and 60s we were already living in the area around here, but we moved around a lot. We were here in this village since the 1970s. On average,

⁴³³ Al-Tawani, for example, continues to lack any connection to the electricity network, after Israeli authorities prevented it from connecting to the network in 2009. The Civil Administration has issued a demolition order against a paved road that runs inside the village on the grounds that villagers did not obtain permits to pave it. Human Rights Watch interviews with al-Tawani residents, April 24, 2010.

⁴³⁴ Tehilla, "Communities – Ma'ale Adumim," <http://www.tehilla.com/pilottrips/communities.asp?id=341> (accessed July 23, 2010). Information about the emergency medical clinic is available at <http://www.terem.com/eng/aboutE.php?id=Ma'aleadumim> (accessed July 23, 2010).

⁴³⁵ Ma'ale Adumim, <http://www.jr.co.il/ma/history.htm> (accessed August 20, 2010).

⁴³⁶ Human Rights Watch interview with Ra'id Sourakhi, Wadi Abu Hindi, December 21, 2009.

each [family] had 200 sheep. You used to be able to roam around a lot. Now we have around 50 or 60 sheep per family. There's no land left. In the 1980s, the growth of the settlements here pressured people to cluster together.

Abu Yusef added that movement restrictions also affected his ability to sell milk and meat products obtained from the sheep. "We used to sell it in Jerusalem, but now we can't get there so we sell it to nearby villages." An additional problem is that the community of Wadi Abu Hindi is located at the base of a valley; a garbage dump is located halfway down the valley. "Sometimes the sheep and cows eat nylon bags from the dump, and then they die," said Abu Yousef.

Problems are not very different in the other Jahalin communities nearby. In Muntar, adjacent to the Qedar B settlement, two kilometers south of Ma'ale Adumim, there is no electricity, water, or roads.⁴³⁷ When there is a medical emergency, locals walk to Azariya (a four-kilometer distance) to get a vehicle. But a resident explained that the direct road goes through the settlement of Qedar. According to Israeli military orders, settlements are "closed military zones" to Palestinians, who require special permits to enter them, including in cases where roads pass through settlements. The Bedouin have to go around the settlement, he said, which takes longer.⁴³⁸

The Bedouins of Muntar are shepherds and make an income selling cheese. The lack of electricity makes it difficult to keep the milk fresh, and residents said they have to salt the meat to keep it from going bad. "We use to be able to go to the sheep market in Jerusalem near Anata. Now we can't," Abu Na'im, resident of Muntar, told Human Rights Watch. Because of lack of space to graze, here too shepherds must buy food, and "many of us had to sell our sheep because it was unaffordable." Often, men will take their sheep away to graze. Abu Na'im took the sheep to Nablus "last year in April, and came back in August. The rest of the year we had to buy the sheep's food."⁴³⁹

In Murassas, another Jahalin community near Ma'ale Adumim, residents told Human Rights Watch that before Ma'ale Adumim was constructed, there were 14 water wells in the area. Although the wells now are gone, the community receives water and electricity from the Palestinian town of Azariye. Human Rights Watch observed the community's water pipe, a

⁴³⁷ Qedar was founded in 1985, 852 residents as of 2008. Israeli Central Bureau of Statistics, <http://cbs.gov.il> (accessed April 12, 2010).

⁴³⁸ Human Rights Watch interview with Abu Na'im, Muntar, December 21, 2009.

⁴³⁹ Human Rights Watch interview with Abu Na'im, Muntar, December 21, 2009.

small black tube around six centimeters in diameter running along the hillside. Residents said that they cannot build new homes. Mhammad Khamis Jahalin told Human Rights Watch,

Fear of displacement is our biggest problem. Everything is temporary. We could be gone tomorrow. All our houses have stop-work orders [from the Israeli Civil Administration]. When our children get married, we cannot add a new home for them, or they'll be demolished.⁴⁴⁰

He added that grazing had become very difficult and that a combination of restrictions on building and movement was forcing Bedouin to leave the area. "The land we used to graze is now too close to the settlement, so they tell us that for security reasons we can't go there. Many people had to sell their sheep, and some moved out, to Nablus or Jenin."

Plans for further settlement construction in the area would significantly harm the Jahalin Bedouin. The planned route of the separation barrier in the Ma'ale Adumim area would leave the city and the smaller adjacent settlements (Kfar Adumin, Almon, Qedar, Nofey Prat, and Alon) on the "Israeli side of the barrier. As well, Israel has planned settlement construction on a large area adjacent to Al'ale Adumim and contiguous with the greater Jerusalem municipality known as "E1." Despite US opposition, Israel began to implement parts of the E1 outline plan, building the new "Samaria and Judaea Police District Headquarters" there and paving an extensive system of roads to serve hundreds of housing units.⁴⁴¹ The E1 plan and the route of the separation barrier around the E1 - Ma'ale Adumim settlement block, if implemented, would encompass 52 square kilometers and over 50,000 Jewish settlers.⁴⁴² Enacting these plans would entail the eviction of all Jahalin Bedouin from the area.

⁴⁴⁰ Human Rights Watch interview with Mhammad Khamis Jahalin, Marassas, December 21, 2009.

⁴⁴¹ E1 is the name used for the area adjacent to Jerusalem's municipal borders, as defined after 1967, encompassing some 1,200 hectares, mostly land declared by Israel as government property, some expropriated land, and a small area of state land registered in the Land Registry as government property during the period of Jordanian rule. See Bimkom and Btselem, *The Hidden Agenda*, 2009, p. 25-30.

⁴⁴² Group of NGOs including Badil, al-Haq, ARIJ, ICAHD, DCI, JLAC, and others, "Urgent appeal on the situation of the Jahalin Bedouin living in the occupied Palestinian territory and threatened by forced displacement," [http://www.reliefweb.int/rw/RWFiles2007.nsf/FilesByRWDocUnidFilename/TBRL-74XR7B-full_report.pdf/\\$File/full_report.pdf](http://www.reliefweb.int/rw/RWFiles2007.nsf/FilesByRWDocUnidFilename/TBRL-74XR7B-full_report.pdf/$File/full_report.pdf) (accessed May 5, 2010).

X. East Jerusalem

Background: Overview of Israeli Planning and Building Policies in East Jerusalem

Around 190,000 (40 percent) of the approximately 470,000 Israeli settlers in the occupied Palestinian territories live in East Jerusalem.⁴⁴³ The Palestinian population of East Jerusalem is approximately 270,000.⁴⁴⁴

Under Jordanian rule from 1948 to 1967, the eastern part of Jerusalem comprised six square kilometers. When Israel seized the West Bank in the 1967 Middle East War, it unilaterally annexed an additional 65 square kilometers of land from the surrounding 28 Palestinian villages in the West Bank to the municipality of Jerusalem; it declared the entire annexed municipal area to be part of Israel.⁴⁴⁵ Whereas Israeli military orders apply to the rest of the West Bank, Israel applies its own civil laws to East Jerusalem, which it considers to be part of the city of Jerusalem, Israel's capital. Human Rights Watch is not aware that any other state recognizes Israel's annexation of East Jerusalem or the surrounding areas of the West Bank, which remain occupied territory under international law.

Israel treats residents of Jerusalem differently depending on their citizenship and national origin. Under Israeli laws, Palestinian residents of East Jerusalem are neither Israeli citizens nor West Bank residents, but have residency permits allowing them to live in the city. Israel can revoke a resident's permit (called an "ID") if it determines that Jerusalem is not the ID-holder's "center of life", for example, if he or she works elsewhere in the West Bank, obtains a foreign passport or resides outside East Jerusalem for more than three years for purposes other than education. On this basis, Israel revoked the residency permits of some 4,500 East Jerusalemites in 2008 alone. Jewish settlers in East Jerusalem are exempt from such laws and may, for example, enter and exit Jerusalem while holding foreign passports in between travels abroad. Palestinians who carry PA identity cards and live in other parts of the West Bank need special permits to access East Jerusalem, much of which is separated from the West Bank by concrete segments of the separation barrier. These Palestinians may enter

⁴⁴³ EU Heads of Mission Report on East Jerusalem, December 15, 2008, p. 2.

⁴⁴⁴ Jerusalem Institute of Israel Studies, 2009/10, "Table 3/1, Population of Israel and Jerusalem, By population group, 1922-2008."

⁴⁴⁵ As a result of the annexation, the territory of the Jerusalem Municipality almost tripled in size from 38 to 108 square kilometers. Bimkom and Ir Amim, "Making Bricks Without Straw: The Jerusalem Municipality's New Planning Policy for East Jerusalem," January 2010.

East Jerusalem through four established crossings in the wall. Israeli citizens, including Jewish settlers, may cross between the municipality and the rest of the West Bank through eight crossings, without permits.⁴⁴⁶

Israel regulates construction in East Jerusalem according to the 1965 Israeli Building and Planning Law. According to the law, the application of which Israel extended to East Jerusalem in 1967, a building permit issued by the Jerusalem Municipality is required for construction in Jerusalem.⁴⁴⁷ In combination with other practices and policies, the law's restrictions on construction strictly limit Palestinian construction in East Jerusalem while facilitating Jewish construction there.⁴⁴⁸

Israel has zoned far more territory in East Jerusalem for the construction of settlements and other uses than it has for Palestinian construction. Of the Jerusalem municipality's 71 square kilometers, Israel has designated 35 percent for the construction of Israeli settlements; 30 percent of the area lacks a Local Planning Scheme, which is a prerequisite for granting building permits; and 22 percent has been zoned as a "green area" in which construction is prohibited. Only 13 percent, or 9.18 square kilometers, of zoned land is available for Palestinian construction.⁴⁴⁹ Israeli authorities reject most Palestinian applications on the grounds that the requested permits were for buildings in areas that lacked approved Local Planning Schemes or were zoned as "green" rather than "residential."⁴⁵⁰

The growth of the Palestinian population of Jerusalem requires 1,500 new housing units per year, yet in 2008 the municipality issued 125 building licenses for around 400 housing units.⁴⁵¹

⁴⁴⁶ According to statistics of Israel's Ministry of Interior, between 1967 and 2006 more than 8,200 Palestinians had their Jerusalem ID's revoked. World Bank, *Movement and Access Restrictions in the West Bank: Uncertainty and Inefficiency in the Palestinian Economy*, May 9, 2007, pp. 10-11, <http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/WestBankrestrictions9Mayfinal.pdf> (accessed June 10, 2010).

⁴⁴⁷ Planning and Building Law, July 14, 1965, Paragraph 145. At the time Israel occupied East Jerusalem in June 1967, the law in force in the area regarding building and planning was the Jordanian Law of Cities, villages and Buildings No. 79 of 1966. Under the law of occupation, Israel is obligated to act according to this law, except as necessary to maintain order or for the benefit of the occupied population. Israel's extension of the Israeli Planning and Building Law of 1965 to East Jerusalem exceeds its authority as an occupier. The law also violates the Fourth Geneva Convention's prohibition against an occupier transferring its civilian population into occupied territory, insofar as it regulates Israeli as well as Palestinian construction within occupied East Jerusalem.

⁴⁴⁸ Building and Planning Law, July 14, 1965, chapter 5.

⁴⁴⁹ OCHA, *The Planning Crisis in East Jerusalem*, OCHA Special Focus, April 2009, p. 8.

⁴⁵⁰ "After US pressure, Barkat to halt 70% of Occupied East Jerusalem house demolitions," Haaretz, June 29, 2009.

⁴⁵¹ Ir Amim, "A Layman's Guide to Home Demolitions," March 2009, pp. 4-5.

Inside the 13 percent of East Jerusalem in which Israel allows Palestinians to build their homes, construction has, in many cases, already reached or exceeded its legal limit, because of Israeli limitations on the density of construction and the maximum height of buildings. These limitations are themselves discriminatory: for example, whereas municipal regulations have allowed Jewish settlements in East Jerusalem to be built up to eight stories on small lots, the regulations have limited most Palestinian buildings to two floors.⁴⁵² The municipality has explained the limitations on Palestinian house size and height as necessary to preserve the character of the neighborhoods—but it has failed to enforce these regulations against settlement buildings in the heart of Palestinian neighborhoods that are many stories taller.

The 30 percent of East Jerusalem that lacks a Local Planning Scheme includes areas with thousands of Palestinian residents, whose homes are thus in danger of being demolished for lack of building permits. Palestinian neighborhoods that have no Local Planning Scheme include (but are not limited to) Al Bustan, Wallaje, Nu'eiman, and Wadi Hillwe.⁴⁵³ Under the planning and building law that Israel applies to East Jerusalem, local planning authorities must prepare and submit to the district authorities a Local Planning Scheme for any neighborhood that lacks one.⁴⁵⁴ In fact, Israeli planning authorities' failure to abide by this provision has forced Palestinian residents of East Jerusalem to pay for and submit planning schemes on their own behalf.

It is extremely difficult for Palestinians to obtain Israeli approval of planning schemes for these areas, and thus to have any chance of obtaining building permits. In 2008, Israeli authorities rejected 172 proposed Local Planning Schemes submitted by Palestinians.⁴⁵⁵ Human Rights Watch did not inquire into the stated reason for the rejection in each case, but the building law Israel applies to East Jerusalem contains numerous requirements that Palestinians may be unable to meet in most cases. The building law prohibits building in areas that lack adequate public infrastructure, and requires and specifies the planning and construction of, among others, roads, water and sanitation services, and public buildings such as schools and hospitals.⁴⁵⁶ In practice, these requirements are virtually impossible to meet in many Palestinian areas of East Jerusalem.

⁴⁵² B'Tselem, *A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem*, May 1995, p. 82.

⁴⁵³ Civic Coalition for Defending Palestinians' Rights in Jerusalem, *Aggressive Urbanism: Urban Planning and the Displacement of Palestinians within and from Occupied East Jerusalem*, December 2009.

⁴⁵⁴ Planning and Building Law, July 14, 1965, Para. 62(a).

⁴⁵⁵ Ir amim, *State of Affairs – Jerusalem 2008*, December 2008, p. 31, and “After US pressure, Barkat to halt 70% of Occupied East Jerusalem house demolitions,” *Haaretz*, June 29, 2009, <http://www.haaretz.com/hasen/spages/1096333.html> (accessed July 15, 2010).

⁴⁵⁶ Planning and Building Law, July 14, 1965, Para. 63.

The Jerusalem municipality has not directed adequate resources for the provision of such public services to East Jerusalem in the past. For example, according to Meir Margalit, a member of the Jerusalem municipal government, in 2003, 78.8 percent of the 608 public infrastructure plans implemented by the Jerusalem Municipal Planning Administration were located in West Jerusalem, as opposed to 21.2 percent in East Jerusalem.⁴⁵⁷ According to B'Tselem, almost 90 percent of the municipality's sewage pipes, roads, and sidewalks are located in West Jerusalem. Apparently, in East Jerusalem, where 65 percent of Palestinian families are impoverished (as compared to 30 percent of West Jerusalem families), residents cannot afford to pay for the infrastructure and services that the municipality has denied them.⁴⁵⁸ Israeli planning and building laws therefore prevents the legal construction of homes in Palestinian neighborhoods in East Jerusalem on the basis that Israeli authorities have failed to provide those neighborhoods with adequate public infrastructure.⁴⁵⁹

Moreover, because Israeli development plans for East Jerusalem provide inadequate housing and building, rendering it impossible for Palestinians to build "legally" and leaving entire neighborhoods threatened with demolition, Palestinians have had to pay to develop and submit plans that would retroactively grant them housing rights. This is in contrast to communities in West Jerusalem and settlements in East Jerusalem, where plans include abundant housing and infrastructure. It is also unlike the unlicensed housing built in settler communities in East Jerusalem, against which municipal authorities have not enforced building codes.

Since 1967, by contrast, Israeli authorities have approved and supported the construction of approximately 60,000 residential units in settlements in occupied East Jerusalem.⁴⁶⁰ In 2008,

⁴⁵⁷ Meir Margalit, *Discrimination in the Heart of the Holy City*, International Peace and Cooperation Centre, Jerusalem, 2006, pp. 29, 127.

⁴⁵⁸ ACRI, *Human Rights in East Jerusalem: Facts and Figures*, May 2010, p. 42, <http://www.acri.org.il/pdf/eastjer2010.pdf> (accessed October 20, 2010).

⁴⁵⁹ Even if Palestinian applicants for building permits meet all the above criteria, they may face difficulties meeting the Israeli criteria required to prove their ownership of the land on which they wish to build. (For a discussion of these criteria, see Meir Margalit, *No Place Like Home; House Demolitions in East Jerusalem*, Israeli Committee against House Demolitions, 2007, p. 20.) Palestinian families in East Jerusalem who acquired their land through traditional family inheritance, or through the Jordanian Table of Rights in the name of a third party, probably do not possess what the Jerusalem Municipality accepts as 'official documents' to prove land ownership. "In such cases, the Jerusalem Municipality requires the physical presence of both the new and previous owner to transfer entitlement at the Ministry of Justice in Jerusalem, criteria that have consistently proved impossible to fulfill." As well, applicants must list all heirs to a piece of land on the permit application. "If a joint heir lives outside of the municipal boundaries of Jerusalem, the Custodian of Absentee Property can expropriate the land to the State of Israel. For this reason, many Palestinian families in occupied East Jerusalem are extremely hesitant to register their land with the Israeli Land Registration Bureau for the well-founded fear that they will be told they hold no legal entitlement to it." (Civic Coalition for Defending Palestinians' Rights in Jerusalem, *Aggressive Urbanism: Urban Planning and the Displacement of Palestinians within and from Occupied East Jerusalem*, December 2009, p. 14.)

⁴⁶⁰ Statistics from the Jerusalem Land Research Centre, <http://www.lrcj.org/Eng/site.php> (accessed July 15, 2010).

the number of tenders for settlement construction in East Jerusalem, which must be authorized by the municipality, increased by a factor of nearly 40 compared to 2007.⁴⁶¹ Since 2007, the Jerusalem Municipality and the Israeli Ministry of Housing have announced plans to construct roughly 10,000 housing units in East Jerusalem settlements for which planning has been approved or is in the approval process.⁴⁶² (Israeli authorities financially supported the construction of fewer than 600 homes for Palestinians in East Jerusalem, most recently in the early 1980s).⁴⁶³

In addition to the discriminatory restrictions on Palestinian life in East Jerusalem imposed by zoning and Israeli building laws, the Jerusalem municipality's plans further restrict Palestinian construction there. The Jerusalem Master Plan provides overall guidance for the Israeli planning authorities' approval of plans and permitting of construction in East Jerusalem. The current "master plan" is a combination of a number of plans that have been approved de jure or are applied de facto, including Jerusalem Master Plan 2030, which Mayor Nir Barkat submitted on May 5, 2009. This master plan, intended to define the scope of all development throughout Jerusalem until 2030, was drafted by a 31-member steering committee; only one committee member was Palestinian.⁴⁶⁴ The planning authorities have rejected at least two Palestinian planning proposals on the grounds that they are inconsistent with provisions of the Jerusalem Master Plan 2030, even though this plan has not been formally approved and is not yet legally valid.

The plan continues a longstanding policy on the part of Israeli authorities to reduce or at least cap the Palestinian percentage of Jerusalem's overall population, which dramatically increased as a result of Israel's annexation of a large amount of the West Bank to the municipality in 1967.⁴⁶⁵ An estimated 722,000 people live in Jerusalem (both East and West); the current demographic breakdown is 64 percent Jewish and 36 percent Palestinian.⁴⁶⁶ Despite this, the Master Plan states that one of its objectives is to "maintain a ratio of 70

⁴⁶¹ EU Heads of Mission Report on East Jerusalem, December 15, 2008, p. 2, copy on file with Human Rights Watch.

⁴⁶² Ir Amin Monitoring Report, "Negotiations Towards an Accord on Jerusalem: Declarations vs. Actions," April 2008, p. 4.

⁴⁶³ Ir Amim, "State of Affairs – Jerusalem 2008," December 2008, p. 30. The homes were in the Nusseibah Housing Project in Beit Hanina, according to Rabbis for Human Rights, "Home Demolitions in East Jerusalem," <http://www.rhr-na.org/homedemolitions/questions.html> (accessed October 20, 2010).

⁴⁶⁴ Civic Coalition, *Aggressive Urbanism*, p. 25.

⁴⁶⁵ In 1972, an Inter-ministerial Committee known as the "Gafni Commission" determined that the "demographic balance of Jews and Arabs must be maintained at what it was at the end of 1972": 73.5 percent Jews and 26.5 percent Arabs. B'Tselem, *A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem*, May 1995, p. 45.

⁴⁶⁶ Table III/4 - Population and Population Growth in Jerusalem, Statistical Yearbook 2008. Of the city's 426,000 Jewish residents, as noted, approximately 190,000 live in settlements.

percent Jews and 30 percent Arabs” within Jerusalem.⁴⁶⁷ According to one analysis, the plan will impose further discriminatory restrictions on Palestinian construction by requiring landowners to prove that the area in question has no environmental protections in place or “any archeological or Jewish religious significance.”⁴⁶⁸

Having made it impossible for many Palestinians to build “legal” houses, Israel has demolished a disproportionate number of Palestinian homes on the grounds that they violate building codes. From 1996 to 2000, more than 80 percent of recorded building violations were in West Jerusalem, but 80 percent of actual demolition orders issued by Israeli authorities were against buildings in Palestinian East Jerusalem.⁴⁶⁹ Between 1999 and 2003, 157 Palestinian-owned buildings were demolished, while only 30 Israeli-owned buildings met the same fate.⁴⁷⁰ According to the UN, Israeli authorities demolished 80 structures, displacing 300 people, in East Jerusalem in 2009.⁴⁷¹

At the same time, Palestinians—who must scrupulously pay their municipal taxes in order to have proof that Jerusalem is their “center of life” and thereby avoid the cancellation of their residency permits]—suffer from inadequate municipal services, lack of school classrooms to inadequate sewage services, unpaved roads, and poor or non-existent garbage collection.⁴⁷² Israel’s discriminatory limitation of the amount of land on which Palestinian construction is permitted has significant overcrowding and artificially pushed up rents. (This report does not address in detail other discriminatory aspects of Israel’s treatment of East Jerusalem Palestinians, notably the occasional application of the “Absentee Property Law” that allows Israel to confiscate property from any Palestinian owner who was not physically present in Jerusalem on the date Israel annexed the area in 1967).⁴⁷³

⁴⁶⁷ Report No.4, Local Outline Plan Jerusalem 2000, Proposed Plan and the Main Planning Policies, Planning Administration, City Engineer, City Planning Department, Jerusalem Municipality, 2000. Hereinafter, The Jerusalem Master Plan.

⁴⁶⁸ Suad Makhak, The Israeli Master Plan for Jerusalem 2030, The Civic Coalition for Defending Palestinian Rights in Jerusalem, September 2009, p. 45.

⁴⁶⁹ From 1996-2000 there were 17,382 recorded building violations and 86 demolition orders in West Jerusalem, and 3,846 building violations and 348 demolition orders in East Jerusalem. World Bank, Movement and Access Restrictions in the West Bank, p. 11, citing B’Tselem, “Statistics on Demolition of Houses built without Permits in East Jerusalem.”

⁴⁷⁰ World Bank, Id., pp. 10-11.

⁴⁷¹ Information according to OCHA, on file with Human Rights Watch.

⁴⁷² Human Rights Watch interview with Attorney Sami Eshied, Jerusalem, April 12, 2010.

⁴⁷³ See Ir Amim, “Absentees against Their Will – Property Expropriation in East Jerusalem under the Absentee Property Law,” July 2010, http://www.ir-amim.org.il/Eng/_Uploads/dbsAttachedFiles/Absenteesagainsttheirwill.pdf (accessed July 24, 2010).

Al-Bustan and the City of David

Directly to the south of the walled Old City of Jerusalem – in close proximity to the Haram al-Sharif and Western Wall -- the Palestinian neighborhood of Silwan covers a sloping hillside leading down to a valley.

Israeli authorities have granted no permits to build homes in Al Bustan since occupying East Jerusalem in 1967, and have demolished homes in the area. Residents of Al Bustan appear to be particularly at risk of further home demolitions and forced displacement because of a plan, developed and promoted by the municipality that envisions turning Al Bustan into a tourist attraction. Human Rights Watch is unaware of any cases in which the Jerusalem municipality has threatened Jewish settlers with eviction due to plans to boost tourism. Current municipal plans call for the demolition of 22 buildings in Al Bustan, almost all of them residential homes, to make way for “a blossoming park that will flourish alongside a residential neighborhood, in which there will be restaurants, artists’ studios, souvenir and local-art shops and more.”⁴⁷⁴ The Jerusalem municipality has issued demolition orders against 43 Palestinian homes in Al-Bustan on the grounds that they were constructed without permits.⁴⁷⁵

Israeli authorities have argued that the new plan will address the issue of “massive illegal construction” by Al Bustan’s Palestinian residents. Israeli law prohibits issuing building permits for houses in an area without an approved town plan. Residents of Al Bustan have repeatedly hired planners and submitted their own neighborhood plans to the municipality. To date, the municipal authorities passed one plan through the initial stages of the approval process before rejecting it three years later, and rejected a second plan, which Al Bustan residents are now attempting to redraft in order to negotiate an alternative to the municipality’s plan for the area.

Since 1991, Jewish settlers have created several settlements in Silwan, with assistance from municipal and national Israeli authorities. One settlement, located at the top of Silwan immediately to the south of the Old City, is called the City of David. The settlement, which houses 27 families in 10 buildings, includes homes that El Ad, a settler organization, obtained on the basis of fraudulent declarations, according to Israeli court rulings.⁴⁷⁶ Israeli authorities have not carried out enforcement measures against settlers in these buildings. In addition to a settlement, the City of David is also a tourist site and an archaeological excavation, which the

⁴⁷⁴ Jerusalem Municipality, “Launch of the King’s Garden Plan, 2.3.2010,” on file with Human Rights Watch.

⁴⁷⁵ Bimkom and Ir Amim, “Making Bricks Without Straw: The Jerusalem Municipality’s New Planning Policy for East Jerusalem,” January 2010.

⁴⁷⁶ Meron Rapoport, *Shady Dealings in Silwan*, Ir Amim, pp. 12-13.

settlers are operating and funding through their company, El Ad.⁴⁷⁷ The Jerusalem municipality has developed an overall plan for the Silwan area that links the City of David to the “King’s Garden Plan” for Al Bustan further down the hillside in order to develop tourism in the area.

A second settler group, Ateret Cohanim, constructed an illegal seven-story building called “Beit Yehonatan” near the Al Bustan neighborhood in southern Silwan. Although Israeli courts ordered final, immediate demolition orders against the building in 2007, these have not been carried out, and the Israeli government continues to pay the private security company that guards the building.

Discrimination in Silwan

Since 1967, the Jerusalem municipality has issued no construction permits for homes in Al Bustan, and in the larger Silwan neighborhood of which Al Bustan is a part, Israeli authorities have convicted hundreds of Palestinian residents for illegal construction, demolished scores of houses, and levied large fines.⁴⁷⁸ Future plans for settlement construction also threaten Palestinian communities in Al Bustan as well as in the upper part of Silwan, known as Wadi Hilweh (the location of the “City of David” settlement and archaeological tourist site). At the same time, Israeli authorities have not enforced laws against unlawful settler takeovers or construction of buildings in these neighborhoods. Future plans developed by the municipality will benefit settlements in the area.

Municipal authorities have discriminated in favor of settlers in Silwan. In some cases, Israeli authorities have failed to uphold the law against settlers who took over Palestinian property in the area. In one case, according to a report by investigative journalist Meron Rapoport, settlers from the El Ad group—which established the “City of David” settlement—continue to occupy a home belonging to the Abbasi family, which they broke into in 1991, despite a judicial ruling that “it has been proven beyond doubt that both the declaration of the entire property as absentee property and its [subsequent] sale [for development as a settlement] ...

⁴⁷⁷ This report does not discuss the failure of Israeli authorities to monitor excavations conducted by El Ad and to require it to compensate Palestinian residents whose property has been damaged by these excavations. Excavations at the “City of David” site are nominally conducted by the Israeli Antiquities Authority, an Israeli government agency, with financial support from El Ad; however, El Ad has itself carried out excavations on several occasions, and excavations have violated Israeli regulations. One excavation led to the disposal rather than preservation of skeletons from a Muslim cemetery from the 8th or 9th century discovered at the site; the find was not reported to the Ministry of Religious Affairs as required. In January 2008, residents of the Palestinian neighborhood of Wadi Hilweh discovered that the Israel Antiquities Authority’s excavation, begun in 2007, went under their homes and lands. “The Israel Antiquities Authority refused to provide details about the excavation, or to allow the residents to examine it. Seven local residents filed a petition to the High Court of Justice to stop the work. The day after the petition was submitted, the police arrested five of the petitioners on suspicion of ‘damaging the City of David visitor center.’ They were released the next day; no charges have been brought against them.” For a detailed description of El Ad’s running of the site, see Meron Rapoport, *Shady Dealings in Silwan, Ir Amim*, pp. 23.

⁴⁷⁸ Meron Rapoport, *Shady Dealings in Silwan, Ir Amim*, May 2009, p. 10.

are both unacceptable because they were done in an extreme lack of good faith and there is no factual or legal basis to legalize them.⁴⁷⁹ A second example is the illegal seven-story building known as Beit Yehonatan, which the settler group Ateret Cohanim built in 2002 without a permit on a plot of 800-square meters in another part of Silwan close to the Al Bustan area.⁴⁸⁰

The current master plan that applies to the area permits buildings that are a maximum of two stories high. A final court order directing that the building be sealed and vacated has been in effect since January 2007. The municipality stated that the building was to be demolished immediately in a document published in October 2009.⁴⁸¹ Municipal authorities have taken no further action against the building; and Israeli authorities continue to pay the salaries of the private security company that guards the settlement.⁴⁸² Al Bustan residents told Human Rights Watch in February 2010 that eight settler families lived in the building.⁴⁸³

In other cases, Israeli authorities have applied planning and building laws in discriminatory ways. The Jerusalem Municipality's licensing authority allowed the settler group that operates the City of David "to carry out a 127 m² "sanitary expansion" in a building whose existing area is 188 m²," according to journalist Rapoport, even though according to applicable plans "the entire area is defined as a "special open area" where all construction is prohibited." The same planning authorities "rejected a request by a Palestinian neighbor for a 23 m² "sanitary expansion of a 249 m² building," on the grounds that applicable plans prohibited the expansion request.⁴⁸⁴ In another case, a judge threw out a demolition order issued by municipal authorities against illegal renovations of a Palestinian building, on the grounds that those authorities had only ordered El Ad settlers to "stop work" on a neighboring building, which they had illegally expanded by 345-square meters without a permit: "the difference in

⁴⁷⁹ Rapoport, p. 32, citing "Legacy of the late Ahmad Hussein Musa al-Abbasi et al v. the Jerusalem Development Authority et al," civil file 895/91. The El Ad settler group established several settler buildings in the City of David on the basis of the "Absentee Property Law," which Israel applied to East Jerusalem from 1977 to 1992, and again from 2004 to 2005. According to the law, Israeli authorities could seize and transfer to settlement organizations any property belonging to a Palestinian East Jerusalemite who was not present in East Jerusalem at the time it was occupied in 1967.

⁴⁸⁰ See Meir Margalit, *Seizing Control of Space in East Jerusalem*, 2009, p. 62.

⁴⁸¹ Bimkom and Ir Amim, "Making Bricks Without Straw: The Jerusalem Municipality's New Planning Policy for East Jerusalem," January 2010.

⁴⁸² The settlement is guarded by Modi in Ezrahi company for 20 million New Israeli Shekels a year (as of 2005), funded by the Housing Ministry. Rapoport, p. 10 and appendix.

⁴⁸³ Human Rights Watch interview with Fakri Abu Diab, Silwan, February 19, 2010.

⁴⁸⁴ Rapoport, *Shady Dealings in Silwan*, Ir Amim, p.

the procedures applied by the [municipality] towards the two [buildings] is discordant and insufferable to such an extent that the court can no longer disregard it".⁴⁸⁵

Residents of Al Bustan told Human Rights Watch that their attempts to prove ownership of their homes had been unsuccessful and that municipal authorities had previously carried out several demolitions. An Al Bustan resident, Sheikh Musa, told Human Rights Watch that the first home demolition in Al Bustan occurred on May 11, 2008, accompanied by arrests.⁴⁸⁶ Fakri Abu Diab, a representative of the neighborhood, said,

Our problems really began in 2005. To this point they've demolished six of the 88 houses here, but they say they all of them are illegal. My home is in the area where the other demolitions have taken place, and I'm anxious that I'll be next. I have paid "arnona" [a municipal property tax] ever since I built my house in the 1990s, and they only told me in 2009 that it is illegal and should be destroyed. Another man in the neighborhood was arrested a month ago. They want to demolish his house, but he only moved into it after settlers turned his old house into part of the City of David up the hill.⁴⁸⁷

Israeli authorities have also repeatedly announced plans to destroy the majority of Palestinian homes in Al Bustan and transform the area into a tourist park. In 2004, international pressure halted the Jerusalem city building inspection department's announced plans to demolish 88 houses in the neighborhood; the municipality then began negotiations with residents of Al Bustan to prepare a town plan scheme that would legalize Palestinian construction there.⁴⁸⁸ The residents submitted Town Plan Scheme 11641 in 2005; three years later, the Regional Planning and Construction Committee announced that the plan met its threshold requirements. Nonetheless, in November 2008, city bulldozers, accompanied by police, demolished the home of the Siyam family. Al Bustan residents rejected a subsequent offer from the municipality to evacuate voluntarily to another part of East Jerusalem.⁴⁸⁹ The Jerusalem municipality announced again on March 7, 2009, that it intended to demolish illegal homes in

⁴⁸⁵ Meir Margalit, "Case 2: Revoking of Demolition Order by Judge Lahovsky," *Seizing Control of Space in East Jerusalem*, p. 63.

⁴⁸⁶ Human Rights Watch interview with Sheikh Musa, Silwan, February 19, 2010.

⁴⁸⁷ Human Rights Watch interview with Fakri Abu Diab, Silwan, February 19, 2010.

⁴⁸⁸ Rapoport, *Shady Dealings in Silwan*, Ir Amim, pp. 32-33. Rapoport cites letters from plan examiners at District Planning Committee from 2008 regarding the acceptance of Al Bustan residents' proposed town plan, and minutes of the Regional Planning and Construction Committee, Jerusalem District, February 17, 2009, finally rejecting it.

⁴⁸⁹ Rapoport, *Shady Dealings in Silwan*, Ir Amim, p. 34.

the al-Bustan neighborhood, saying that there were effective demolition orders against three houses and legal proceedings under way against another 57 buildings.⁴⁹⁰

The Jerusalem municipality's stated basis for threatening the area with demolitions is that most buildings in Al Bustan were built without construction permits. Israeli authorities have not prepared plans that would allow Palestinian building in the area, and have repeatedly refused to accept plans prepared by Palestinian residents that would do so. In February 2009, the Israeli Regional Planning Committee ultimately rejected the plan, mentioned above, that Al Bustan residents presented in 2005, on the basis that the city intended to designate the area as a "green zone."⁴⁹¹ The planning authorities rejected a second plan residents submitted by planner Yusef Jabareen later in 2009, which is currently being revised as the residents hope to achieve a negotiated agreement.⁴⁹²

Instead, Israeli authorities have developed plans that would transform Al Bustan into a tourist attraction, linking it to the archaeological site being excavated and operated in Wadi Hilweh / the City of David by the settler group El Ad.

In late 2007, the Jerusalem municipality deposited Town Plan Scheme 11555 with the local building and planning committee, the first step in the process of the plan's final approval.⁴⁹³ Plan 11555 covers 548 dunams in Silwan, including eastern Wadi Hilweh (the "City of David") and most of Al Bustan. Plan 11555, developed by the municipality and planned by the office of architect Moshe Safdie, intends to transform these two areas of the Palestinian residential neighborhood of Silwan into an Israeli archaeological park, and requires the expropriation of land and the demolition of 88 homes in Al Bustan, evicting approximately one thousand residents. Plan 11555 designates the area – referred to as "area cell 309" – as "areas for roads, parking lots, paths, a promenade, open areas, a special public area, public buildings and institutions, engineering installations and housing."⁴⁹⁴ The plan would include a tunnel leading from Al Bustan, at the bottom of Silwan, underneath the neighborhood's remaining homes, up to the City of David and exiting near the Western Wall inside the Old City. The

⁴⁹⁰ *Id.*, p. 32

⁴⁹¹ Bimkom and Ir Amim, "Making Bricks Without Straw," January 2010.

⁴⁹² Human Rights Watch notes of meeting with Al Bustan residents, Mr. Jabareen, and others, UN OCHA, Jerusalem, April, 2010.

⁴⁹³ Plan 11555 has not yet been approved. Israeli authorities have fully approved two town planning schemes that cover Wadi Hilweh and Al Bustan: general Eastern City Plan 9 (AM/9), which designates them as an "open public area, special public area and area reserved for archaeological excavations," where construction requires special permission, and AM/6, which is also a preservation plan. Bimkom and Ir Amim, *Id.*

⁴⁹⁴ Town Plan Scheme 11555, Jerusalem local planning district, local outline plan with detailed provisions, cited by Rapoport, *Shady Dealings in Silwan*, Ir Amim, p. 31.

settler group El Ad's excavations of ancient tunnels in the upper part of Silwan have already undermined and damaged Palestinian homes and to roads and parking lots in the area.

Almost a year later, on January 10, 2010, Jerusalem Mayor Nir Barkat presented to a Knesset hearing a new municipal policy devised to "systematically address the illegal construction in Jerusalem." The plan chose, as "test cases" for implementing the new policy, the Al Bustan neighborhood (referred to as "King Solomon's Gardens" in the plan) and the nearby area where an illegal settler building known as Beit Yehonatan is located.⁴⁹⁵

On March 2, 2010, the Jerusalem municipality officially launched the "King's Garden Plan," which would radically change Al Bustan. According to the municipality's publicity brochure, the plan "even uses part of the area of the ancient garden in order to create an environment of coexistence between the residents and the natural and historical assets alongside," by allowing 21 or 22 Palestinian buildings to remain in Al Bustan, and only demolishing the "88 structures inside the [planned] garden area, all of which were built without building permits on an area that had been preserved as a garden [for] thousands of years."⁴⁹⁶ The plan promises to build a "large-scale community center" for the "benefit of the residents" of Silwan. (Human Rights Watch interviewed several residents of Al Bustan inside a large tent that they said was a community center with a demolition order pending against it for being constructed without a permit).⁴⁹⁷

Town Plan Scheme 11555 approves intensive construction for the settlement in the upper part of the "City of David," even though this is the area where most of the site's archaeological findings are concentrated. By contrast the building density under the plan for the Palestinian areas further down the hill, where the concentration of archaeological findings is significantly thinner, is lower.⁴⁹⁸ The Jerusalem municipality's other plans for Al Bustan and the rest of Silwan include expropriating privately-owned Palestinian property to build parking lots for tourists expected to come to the City of David; a court order halted the expropriation, announced in March 2008, after Israeli NGOs petitioned against it.⁴⁹⁹

⁴⁹⁵ Bimkom and Ir Amim, "Making Bricks Without Straw."

⁴⁹⁶ Jerusalem Municipality, "Launch of the King's Garden Plan, 2.3.2010," on file with Human Rights Watch.

⁴⁹⁷ Human Rights Watch interviews with Al Bustan residents, February and April, 2010.

⁴⁹⁸ Detailed blueprint of the City of David/Wadi Hilweh area from Plan 11555, cited by Rapoport, *Shady Dealings in Silwan*, Ir Amim, p.32.

⁴⁹⁹ *Id.*, p. 32.

Israel's application of its own planning laws in ways that privilege Jewish settlers and severely hinder Palestinian development violates its obligation, as the occupying power in East Jerusalem, to refrain from changing local legislation, and the prohibition against discriminatory treatment of people under its control based solely on their citizenship or national origin.

Coda: Increasing Harassment

Residents of Al Bustan told Human Rights Watch in February and April that they had little contact with settlers in the area, but that police authorities had recently begun to harass them, both by threatening them not to participate in a planned demonstration against the municipality's plans to demolish their homes, and by repeatedly arresting children from the neighborhood and detaining them without charge. By October, clashes with settlers and settler security guards had become more frequent.

According to one resident, Sheikh Musa, police summoned six members of the Al Bustan resident's committee, which had planned a march through the neighborhood, to a police station in West Jerusalem, and threatened "to arrest us if we went on the march and told us to promise not to." The committee spokesman, Fakri Abu Diab, interviewed separately, said, "they came to the homes of the residents' committee, and summoned us, so we went. They told us they had orders to arrest us for 48 hours and that we had to sign a paper saying we would not join the march. So we signed it, otherwise we'd go to jail. But we had the march anyway."

Both men told Human Rights Watch that police had recently begun what appeared to be a campaign, leading to the arrest of "dozens" of children from the neighborhood on suspicion of throwing stones. The Israeli human rights organization B'Tselem documented cases of police arrests of children as young as 12 years old from the area in February, 2010, in which police beat and threatened the children and denied them access to their parents or lawyers during interrogations, in contravention of Israeli law regarding the treatment of children in custody.⁵⁰⁰

Human Rights Watch spoke to three children between ages 12 and 14, who had been detained by police during raids on their homes from between 2 a.m. and 4 a.m., allegedly for having thrown rocks at the Jewish settlement known as "Beit Yehonatan" in the area.⁵⁰¹ In each case, the children said that police had taken them to the "Moskobiyya" police station

⁵⁰⁰ B'Tselem, "Israel police arrests children aged 12 to 15 in night raids in Silwan, East Jerusalem," February 17, 2010, http://www.btselem.org/english/jerusalem/20100217_jm_minors_arrested_and_abused_by_police.asp (accessed July 21, 2010).

⁵⁰¹ Human Rights Watch interviews with A. Z., A. A., and M. O, Silwan, February 25, 2010.

in West Jerusalem, verbally insulted them, and ordered them to sign confessions written in Hebrew without explaining the statement or allowing a parent, guardian or lawyer to be present during their interrogation. One 14-year-old boy said he was punched so hard during interrogation that he threw up.⁵⁰² One child, a 12-year-old, said he had been detained three times in the past three months, for as long as four days. Another child told Human Rights Watch that after police came to his home at 4 a.m., detained him, handcuffed and blindfolded him and put him in a jeep. He said he was driven around for roughly one hour as the jeep picked up another child in the neighborhood of Al-Thuri, and then went to the police station, where he was physically abused and coerced into signing more than 20 documents written in Hebrew, which he could not read.⁵⁰³

The boy's father said he had to pay 4000 shekels (US\$850) to pay his bail and lawyers' fees.⁵⁰⁴ Other residents said they faced similar unsustainable costs associated with the detention of their children, and that they felt they would be unable to continue to live in Al Bustan if faced with continued harassment and costs. "I had to pay 2000 shekels (US\$425) to get my son out of jail. He's now under house arrest, and my house has a demolition order against it," said Zeyad Zedane.⁵⁰⁵

In September, a settlement security guard reportedly killed a Palestinian after driving through Silwan late at night and having rocks thrown at his vehicle.⁵⁰⁶ In October, the head of El-Ad, David Be'eri, ran over a Palestinian child who was standing in the road and threatening to throw rocks at his car.⁵⁰⁷ The child was hospitalized before being put under house arrest.

Discrimination and Forcible Transfer in International Law

International law has long established the basic principles of non-discrimination and equality.⁵⁰⁸ Discrimination is where laws, policies or practices treat persons in similar

⁵⁰² Human Rights Watch interview with A. Z., Silwan, February 25, 2010.

⁵⁰³ Human Rights Watch interview with A. A., Silwan, February 25, 2010.

⁵⁰⁴ Human Rights Watch interview with Daoud Siyam., Silwan, February 25, 2010.

⁵⁰⁵ Human Rights Watch interview with Zeyad Zedane, Silwan, February 25, 2010.

⁵⁰⁶ Maan News Agency, "Clashes in Silwan After Guard Kills Palestinian," September 22, 2010, <http://www.maannews.net/eng/ViewDetails.aspx?ID=316888> (accessed October 20, 2010).

⁵⁰⁷ The incident was recorded and can be viewed at <http://www.youtube.com/watch%3Fv%3DQAFo9-2nyOc> (accessed November 5, 2010).

⁵⁰⁸ Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 2. UN Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989),

situations differently due to, among other criteria, race, ethnic background or religion, without adequate justification. States are obliged not to take any step that “has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms” based on race, color, descent, or national or ethnic origin.⁵⁰⁹ The prohibition against racial discrimination is considered one of the most basic in international human rights law – the ICCPR states specifically that even in times of public emergencies, measures taken by states to derogate from other rights obligations must not “involve discrimination solely on the grounds of race ... or religion” a fundamental obligation that states owe not only to their own citizens but to one another; any agreement to discriminate into which states may enter is invalid.⁵¹⁰

The prohibition against discrimination is codified in the major human rights treaties that Israel has ratified, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the Children’s Rights Convention (CRC).

Israel’s human rights obligations—including the prohibition against discrimination—extend to all persons under its jurisdiction, including residents of the occupied West Bank, which is under effective Israeli control.⁵¹¹ Successive Israeli governments have argued that the PA rather than Israel is responsible for the human rights of Palestinians in the West Bank.⁵¹² In

Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1,1994, para. 1.

⁵⁰⁹ International Convention on the Elimination of Racial Discrimination (ICERD), Article 1. Israel ratified the Convention on January 3, 1979.

⁵¹⁰ These are the “erga omnes” and “jus cogens” aspect of the prohibition against discrimination in international law. See, e.g., International Court of Justice (ICJ), *Barcelona Traction, Light and Power Company Ltd. (Belgium v. Spain)* (1970), paragraph 34, and *Restatement (Third) of Foreign Relations of the United States*, Section 702 cmts. d- i; section 102 cmt. k (1987).

⁵¹¹ See, e.g., ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, July 9, 2004 (ICJ Reports 2004, p. 136), paragraphs 111 (applicability of ICCPR in occupied territory), 112 (applicability of ICESCR in occupied territory), 113 (applicability of Convention on the Rights of the Child in occupied territory); Human Rights Committee’s concluding observations in 2003 (“in the current circumstances, the provisions of the Covenant apply to the benefit of the population of the Occupied Territories, for all conduct by the State party’s authorities or agents in those territories that affect the enjoyment of rights enshrined in the Covenant and fall within the ambit of State responsibility of Israel under the principles of public international law,” CCPR/Co/78/1SR, para. 11); and the Committee on the Elimination of Racial Discrimination’s concluding observations in 1998 (“Israel is accountable for implementation of the Convention, including the reporting obligation, in all areas over which it exercises effective control,” Concluding Observations, March 1998, CERD/C/304/Add.45, paragraph 12).

⁵¹² Recently, Israel stated that its obligations under the ICCPR did not extend to the occupied West Bank because, first, “human rights and the Law of Armed Conflict” are “two systems-of-law, which are codified in separate instruments, [... and] remain distinct and apply in different circumstances,” and second, because “the Convention, which is a territorially bound Convention, does not apply, nor was it intended to apply, to areas outside [Israel’s] national territory.” “Replies of the Government of Israel to the List of Issues to be taken up in connection with the consideration of the third periodic report of Israel,” July 12, 2010, CCPR/C/ISR/Q/3/Add.1, p. 3.

fact, both parties bear responsibilities to the extent that their actions (or failures to act) affect residents of the territory. Under the laws of occupation, Israel is ultimately responsible for the well being of the Palestinian population. As discussed in this report, Israel has particular and immediate responsibilities regarding the welfare of Palestinians living in areas over which it claims full and exclusive authority, including “Area C” of the West Bank and East Jerusalem.

Palestinian residents of the occupied West Bank—including most residents of East Jerusalem—are not Israeli citizens. While it is possible that Israeli authorities could lawfully treat Israelis and Palestinian residents of West Bank differently on the basis of their citizenship in the narrow circumstances described below, discrimination against non-citizens for reasons of their ethnicity, religion or national origin alone is not justifiable. Rules and laws applied in occupied territories that distinguish between citizens and non-citizens to the detriment of non-citizens, without any reasonable justification, are unlawful and discriminatory. According to the Committee for the Elimination of Racial Discrimination (the body responsible for interpreting and applying the convention of the same name),

... differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.⁵¹³

The classic justifiable differential treatment for citizens is in political rights (e.g. the right to vote). It is difficult to see how any difference in treatment between Israeli citizens and non-Israeli citizens in occupied territory, that privileges the former, could be justified, especially if those citizens have been transferred into the territory in violation of international humanitarian law. Therefore in principle any differential treatment in the occupied Palestinian territories based on citizenship will be unjustifiable discrimination.

In 2007 the CERD Committee rejected Israel’s position “that the Convention does not apply in the Occupied Palestinian Territories and the Golan Heights,” expressed its concern at Israel’s “assertion that it can legitimately distinguish between Israelis and Palestinians in the Occupied Palestinian Territories on the basis of citizenship,” and recommended that

⁵¹³ CERD, General Comment No. 30, 2004, paragraph 4.

Israel “ensures that Palestinians enjoy full rights under the Convention without discrimination based on citizenship and national origin.”⁵¹⁴

In its General Recommendation No. 30, the CERD Committee recommended that states, inter alia:

Ensure that non-citizens enjoy equal protection and recognition before the law and in this context, to take action against racially motivated violence and to ensure the access of victims to effective legal remedies and the right to seek just and adequate reparation for any damage suffered as a result of such violence;

Remove obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens, notably in the areas of education, housing, employment and health; [and]

Ensure that States parties respect the right of non-citizens to an adequate standard of physical and mental health by, inter alia, refraining from denying or limiting their access to preventive, curative and palliative health services.⁵¹⁵

In July 2010, the Committee of the ICCPR considered Israel’s human rights record and concluded in a number of areas that its policies in the West Bank discriminated against Palestinian residents.

The committee criticized Israel’s “frequent administrative demolition of property, homes, as well as schools in the West Bank and East Jerusalem due to the absence of construction permits, their issuance being frequently denied to Palestinians”. It also noted that Israel imposed “discriminatory municipal planning systems, in particular in “area C” of the West Bank, as well as East Jerusalem, disproportionately favoring the Jewish population of these areas.”⁵¹⁶ These policies amount to violations of the right to non-discrimination, to privacy and a home, and to a family life.

⁵¹⁴ CERD, Concluding Observations, 2007, paragraph 32.

⁵¹⁵ UN Committee on the Elimination of Racial Discrimination, General Recommendation No.30: Discrimination Against Non Citizens (2004), paras. 18, 29, 36.

⁵¹⁶ CCPR, “Concluding observations of the Human Rights Committee: Israel,” July 29, 2010, CCPR/C/ISR/CO/3, para. 17.

The committee found that Israel's allocation of water resources in the West Bank led to water shortages affecting "disproportionately the Palestinian population ... due to prevention of construction and maintenance of water and sanitation infrastructure, as well as the prohibition of construction of wells," and called on Israel to "ensure that all residents of the West Bank have equal access to water," to "allow the construction of water and sanitation infrastructure, as well as wells," and to "address the issue of sewage and waste water in the occupied territories emanating from Israel."⁵¹⁷

With regards to freedom of movement, the committee criticized the restrictions Israel imposed on Palestinians (but not settlers), in particular Palestinians living in the "seam zone" between the separation barrier and Israel, "the frequent denial of agricultural permits to access the land on the other side of the wall or to visit relatives, as well as irregular opening hours of the agricultural gates." Israel's policies and the physical obstacle of the separation barrier violate Palestinians' rights to freedom of movement, which may be limited only for such reasons as national security and public order. As noted, while Israel contends that the separation barrier was built to prevent terrorist attacks against Israelis, 85 percent of the barrier is being built inside the West Bank, and its route places some 60 settlements on the "Israeli side" of the barrier. The committee noted its concern that "the settler population continues to increase," in violation of the Palestinian people's right to self-determination.⁵¹⁸ The International Court of Justice ruled in an advisory opinion in 2004 that the route of the sections of the barrier that fall inside the occupied West Bank violate international law.⁵¹⁹

The Israeli authorities' ongoing home demolitions prevent residents of the West Bank from enjoying the right to adequate housing. In its General Comment 4, the Committee on Economic, Social and Cultural Rights, which monitors the compliance of states parties to the ICESCR, held that "the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity."⁵²⁰

Israel's settlement policy as a violation of the laws of occupation has been exhaustively discussed. The fourth Geneva Convention prohibits the transfer of the civilian population

⁵¹⁷ *Id.*, para. 18.

⁵¹⁸ *Id.*, para. 16.

⁵¹⁹ ICJ, *Construction of a Wall*.

⁵²⁰ CESCR General Comment 4, "The right to adequate housing (Art.11 (1))," December 13, 1991.

into occupied territory.⁵²¹ As regards government property (including “state lands”), article 55 of the Hague Regulations, considered to be customary law, stipulates that “the occupying State shall be regarded only as administrator and usufructuary” of such property in the occupied territory.⁵²² The use of government property allowed the occupying power is subject to its obligation “to restore, and ensure, as far as possible, public order and safety.”⁵²³ Israel is thus obligated to act, where its security needs do not prevent it, for the welfare of the local population. The use of “state lands” would be legitimate only where it is done in conformity with international law and benefits the Palestinians in the Occupied Territories. “Underlying all the limitations,” a noted commentator writes, “is the idea that the occupying power is not the sovereign in the territory.”⁵²⁴ Consequently, the occupying power may not do any act that constitutes “unilateral annexation of all or part of the occupied territory.”⁵²⁵

Forcible Transfer

The cumulative impact of Israel’s restrictions on Palestinian life in Area C of the West Bank affect Palestinian residents of Areas A and B, as defined under the Interim Agreements of 1995, but particularly affect residents of Area C. In several cases documented in this report, and also as documented in numerous media and NGO reports, these policies have made life so difficult for Palestinian residents of Area C that they have had to abandon their homes and livelihoods and relocate, usually to towns or cities under the administrative and civil control of the PA. Israel’s demolitions of hundreds of Palestinians homes and other structures in East Jerusalem, which Israel annexed in 1967, have also forcibly displaced thousands of Palestinians there, although it is not known how many were permanently displaced.

The Fourth Geneva Convention permits the occupying power temporarily to “evacuate a given area if the security of the population or imperative military reasons so demand,” while

⁵²¹ Fourth Geneva Convention of 1949, Art. 49(6). Israeli officials have argued that the settlements are the result of voluntary movement by Israeli citizens and that this is not prohibited by international humanitarian law. E.g., Israel Ministry of Foreign Affairs, “Israeli Settlements and International Law,” May 20, 2001 (“The provisions of the Geneva Convention regarding forced population transfer to occupied sovereign territory cannot be viewed as prohibiting the voluntary return of individuals to the towns and villages from which they, or their ancestors, had been ousted”) <http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Israeli+Settlements+and+International+Law.htm> (accessed October 20, 2010). This interpretation has been widely rejected; it also fails to address the Israeli government’s continuing policy of supporting, financing and providing military protection for settlers. Declaration of the Conference of the High Contracting Parties to the Fourth Geneva Convention, December 5, 2001, para. 12 (“reaffirm[ing] the illegality of the settlements in the said territories and of the extension thereof”), <http://domino.un.org/unispal.nsf/o/8fc4fo64b9be5bad85256c1400722951?OpenDocument> (accessed October 20, 2010).

⁵²² On the customary nature of Article 55 of the Hague Regulations, see Jean-Marie Henckaerts, Louise Doswald -Beck, International Committee of the Red Cross, *Customary International Law: Rules*, Vol. 1, p 1041.

⁵²³ Article 43 of the Hague Regulations.

⁵²⁴ Dinstein, *Laws of War*, p. 220.

⁵²⁵ *Id.*, p. 211.

requiring that power to ensure, “to the greatest practicable extent, that proper accommodation is provided” and that evacuated persons are returned to their homes as soon as possible after “hostilities in the area in question have ceased.”⁵²⁶ In cases documented in this report, Israel has not contended that evictions were temporary or necessitated by hostilities in the area. The forced displacement documented in this report further breached Israel’s obligation pursuant to this article to ensure the proper accommodation of the evacuees and that they be removed in satisfactory conditions of hygiene, health, safety and nutrition. The laws of war also prohibit the confiscation and destruction of private property.⁵²⁷

The Geneva Conventions and customary international law prohibit the intentional mass forcible transfer of civilians within an occupied territory as a grave breach of the laws of war.⁵²⁸ According to the International Criminal Tribunal for the Former Yugoslavia (ICTY), “Forcible transfer is the movement of individuals under duress from where they reside to a place that is not of their choosing.”⁵²⁹ The elements of the crime include “the occurrence of an act or omission, not motivated by the security of the population or imperative military reasons, leading to the transfer of a person from occupied territory or within occupied territory,” as well as “the intent of the perpetrator to transfer a person,” meaning that his “aim” is to ensure “that the person is not returning.”⁵³⁰

The prohibition of forcible transfer extends beyond cases where a military force directly and physically relocates a population under its control, to cases where the military force renders life so difficult for the population that they are essentially forced to leave.⁵³¹ For example, Article 8(2)(b)(viii) of the Rome Statute of the International Criminal Court states that the war crime of forcible transfer can occur “directly or indirectly.” The ICTY Appeals Chamber has held that “forcible transfer” is “not to be limited to [cases of the use of] physical force” but that “factors other than force itself may render an act involuntary, such as taking advantage of coercive circumstances.”⁵³² The ICTY’s *Krajišnik* judgment found that Serb municipal

⁵²⁶ Article 49 of the Fourth Geneva Convention.

⁵²⁷ Article 46 of the Hague Regulations of 1907.

⁵²⁸ Fourth Geneva Convention of 1949, Art. 49 (1); Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law – Volume I: Rules* (Cambridge, Cambridge University Press, 2005), p. 457.

⁵²⁹ *Naletilic and Martinovic*, (Trial Chamber), March 31, 2003, para. 519-521, cited in *Case Law of the International Criminal Tribunal for the Former Yugoslavia*, http://www.hrw.org/reports/2004/ij/icty/2.htm#_Toc62882623.

⁵³⁰ *Id.*

⁵³¹ The following analysis draws from Grazia Careccia and John Reynolds, *Al-Nu’aman Village: A Case Study of Indirect Forcible Transfer*, Al Haq, 2006, pp. 24-26, <http://www.alhaq.org/pdfs/Al-Numan%20Village.pdf> (accessed July 5, 2010).

⁵³² *The Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, Appeals Chamber, Judgment, 22

authorities and armed forces were responsible for forcible transfer when they “created severe living conditions for Muslims and Croats” –through house searches, arrests and physical harassment, as well as cutting off water, electricity and telephone services—“which aimed, and succeeded, in making it practically impossible for most of them to remain.”⁵³³

March 2006, para. 281, 279.

⁵³³ The Prosecutor v. Momčilo Krajišnik, Case No. IT-00-39-T, Trial Chamber I, Judgement, 27 September 2006, para. 729, 732.

XI. Rights to a Home, Adequate Housing and Property

Article 17 of the ICCPR requires Israel to respect the right of everyone to a home. This means any interference with a person's home life must not be arbitrary, i.e. be based on clear law, non-discriminatory and giving the person a fair hearing in challenging any interference in these rights. The interference must be done for legitimate reasons and be strictly proportional – i.e. the least restrictive means of obtaining that aim. Eviction and destruction of family's home requires very strong justification. The Human Rights Committee, the international expert body that interprets the ICCPR, has said that the relevant domestic legislation on interference with the right to a home “must specify in detail the precise circumstances in which such interferences may be permitted.”

The ICESCR requires Israel to respect the right to adequate housing. In its General Comment 4, the Committee on Economic, Social and Cultural Rights, which monitors the compliance of states parties to the ICESCR, stated that “the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity.” It stated that forced evictions “can only be justified in the most exceptional circumstances.” The Committee's General Comment 7 found that where otherwise lawful, such evictions should be carried out only on the basis of clear laws, should not render people homeless, and should only use force as a last resort. Unlawful forcible evictions should be punished.

The Fourth Geneva Convention, which governs occupied territories, an occupying power may only carry out total or partial “evacuation” of an area if “the security of the population or imperative military reasons so demand.” In any event, any population so evacuated must be transferred back to their homes as soon as the hostilities in the area have ceased, and in the meantime the occupying power must ensure those evacuated have “proper accommodation.”

The right to respect for one's property is set out in Article 17 of the Universal Declaration of Human Rights, which says “no one shall be arbitrarily deprived of his property”. Article 46 of the 1907 Hague Regulations states that the occupying power must respect private property, which cannot be “confiscated.” Article 53 of the Fourth Geneva Convention says “destruction” by Occupying Power of private property is prohibited, unless “absolutely necessary” in military operations.

In international jurisprudence on the right to property, courts, including the European and Inter-American Courts of Human Rights, have concluded that states must recognize as property, individual, family and group traditional use and occupation of buildings and lands, even where such property rights have not been formally recognized in property registries. All property rights can only be interfered with when there is clear domestic law, the interference is for a legitimate aim and the interference is the least restrictive possible, and adequate compensation is paid. Permanent seizure or destruction of property can only be justified where no other methods are possible and where compensation is paid.

HUMAN RIGHTS WATCH

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: 212-290-4700
Fax: 212-736-1300

Appendix: Human Rights Watch Letters to Israeli Authorities and Their Responses

HUMAN
RIGHTS
WATCH

www.hrw.org

MIDDLE EAST AND NORTH AFRICA DIVISION

Sarah Leah Whitson, *Executive Director*
Joe Stork, *Deputy Director*
Eric Goldstein, *Deputy Director*
Christoph Wilcke, *Senior Researcher*
Nadim Houry, *Senior Researcher*
William Van Esveld, *Researcher*
Heba Morayef, *Researcher*
Rasha Moumneh, *Researcher*
Samer Muscati, *Researcher*
Amr Khairy, *Arabic translation coordinator and web editor*
Rana Abou Salman, *Development and Outreach Manager*
Faraz Sanei, *Researcher*
Priyanka Motaparthi, *Sandler Fellow*
Noga Malkin, *Research Assistant*
Nadia Barhoum, *Associate*
Adam Coogler, *Associate*

ADVISORY COMMITTEE

Hassan Elmasry, *Co-Chair*
Kathleen Peratis, *Co-Chair*
Bruce Rabb, *Vice Chair*
Gary G. Sick, *Vice Chair*
Gamal Abouali
Wajeha Al Huwaidar
Ghanim Alnajjar
Lisa Anderson
Shaul Bakhash
Asli Bali
M. Cherif Bassiouni
David Bernstein
Nathan Brown
Paul Chevigny
Ahmad Deek
Mansour Farhang
Fadi Ghandour
Aeyal Gross
Amr Hamzawy
Rita E. Hauser
Salah al-Hejailan
Prince Moulay Hicham
Robert James
Mehrangiz Kar
Edy Kaufman
Marina Pinto Kaufman
Ann M. Lesch
Robert Malley
Ahmed Mansoor
Stephen P. Marks
Rolando Matalon
Habib Nassar
Abdelaziz Nouaydi
Nabeel Rajab
Victoria Riskin
Charles Shamas
Sid Sheinberg
Mustapha Tlili
Andrew Whitley
James Zogby
Ahmed Zuaiter

Lt. Amir Koren
Civil Administration in Judea and Samaria
Spokesman

The office of the legal advisor to Samaria and Judea
PO Box 5, Beit El, 90631

November 16, 2010

Dear Sirs,

Human Rights Watch has carried out research regarding several settlements and nearby Palestinian communities in the West Bank, with the view to publishing a report later this year. We are writing to provide you with a summary of our interim findings, and to ask for further information regarding those findings before we reach our conclusions. We would appreciate it if you could provide us with a reply by November 28 so that we can reflect your views in our forthcoming report.

We researched in particular Palestinian communities around the settlements in the northern Jordan Valley; in the Talmon bloc; near Maale Adumim; around the City of David in East Jerusalem; near Beitar Illit; and near Tekoa and Noqdim. In cases Human Rights Watch examined, it appeared that the Israeli authorities provided substantial subsidies and services for settlers and settlements in Area C and East Jerusalem, which were not provided for Palestinian residents. Our research indicates that it is very difficult for Palestinian residents of Area C and East Jerusalem to obtain required building permits, whether for the construction of homes, schools, medical clinics, electricity pylons, water infrastructure, or other reasons, and that the Civil Administration has demolished a number of unpermitted Palestinian structures in Area C. We were not able to identify a lawful justification for this differential treatment.

HUMAN RIGHTS WATCH

Kenneth Roth, *Executive Director*
Michele Alexander, *Development & Outreach Director*
Carroll Bogert, *Associate Director*
Emma Daly, *Communications Director*

JAL

154

BEIRUT • BERLIN • BRUSSELS • CHICAGO • GENEVA • JOHANNESBURG • LONDON • LOS ANGELES • MOSCOW • NEW YORK • PARIS • SAN FRANCISCO •

General Questions

1. How does the Civil Administration see its responsibilities towards the Palestinian population residing in areas of the West Bank under Israeli civil control? Specifically:
 - a. Please provide as much information as possible regarding the provision of services to Palestinians residing in Area C of the West Bank, including the amounts of funding, personnel, and the types of services provided:
 - i. Medical services, including building, equipping or servicing hospitals or medical clinics, or providing ambulance or other emergency transport to Israeli hospitals.
 1. If so, please provide further information regarding the amounts of funding, number and tasks of personnel, and the types of services provided.
 2. In what cases does Israel provide medical services for Palestinian residents of the West Bank?
 - ii. Electricity, including construction of electric lines and pylons, transformers or other equipment or services required to connect Palestinian residents to the electricity network.
 - iii. Water resources, including construction of water pipes, wells, reservoirs, or other equipment or services required to connect Palestinian residents to the water network.
 - iv. Educational infrastructure or services, including building, or equipping kindergartens, elementary or secondary schools, transportation for children to and from schools, or salaries for teachers or service staff salaries.
 - v. Other infrastructure, including roads or road repair services, or other infrastructure.
 - vi. Provision of security services and security infrastructure, such as guards, fences, motion detection equipment, or other equipment.
 - vii. Town or village planning services, including preparation of plans, topographical maps, legal services, or other services.
2. Apart from the prohibition against Israeli civilians from entering Area A, are there any cases in which the Civil Administration has prevented settlers from accessing roads or lands to safeguard the security of Palestinian residents of the West Bank? If so, please provide details as to the location and length of the restrictions imposed.
3. Is it possible for Palestinian residents of the West Bank to obtain security permits from the Civil Administration to enter settlements for the purpose of purchasing property and living there?

4. Our understanding is that the Civil Administration has suggested in several cases that the Palestinian Authority is responsible, under the Israeli-Palestinian Interim Agreements of 1995, for dealing with all requests for connections to water and electricity of Palestinian residents of Area C. According to our information, Palestinian requests for any construction in Area C must be approved by the Civil Administration. Could you please clarify the Civil Administration's views of its and the PA's responsibilities regarding the approval of construction and provision of services to Palestinian residents of Area C?
5. Does the Civil Administration view itself as responsible for conforming to Israel's obligations under the Fourth Geneva Convention towards the Palestinian population of the West Bank, such as the limitation to destroy property only for reasons of military necessity?
6. Does the Civil Administration view itself as responsible for conforming to Israel's obligations under international human rights law regarding the Palestinian population of the West Bank, including with regard to international legal prohibitions against discrimination?
7. According to figures from the Civil Administration Planning Bureau, in 1972 and 1973, the Civil Administration approved 97 percent and 96 percent, respectively, of 3,665 Palestinian residential building permit applications in the "rural sector" of the West Bank. From 2000 to 2007, the Civil Administration approved 5.6 percent of 1,624 Palestinian building applications in Area C.
 - a. Please provide the criteria used to determine whether to approve or reject applications for building permits.
 - b. Please provide information regarding the number of Palestinian building permit requests received and approved from 2008 to 2010.
 - c. For the same period, please provide information regarding the number of building permit applications received and approved from settlers.
8. Military Order 418 Concerning Towns, Villages, and Buildings Planning Law (1971) created a category of planning committee (called a "special local planning committee") which, according to our information, is applicable only to settlements. Please explain why this planning framework is not also available for Palestinian residents of the West Bank.

Specific questions:

9. According to our information, the Civil Administration has repeatedly rejected requests for construction permits, electricity connections, and a master plan for Jubbet al-Dhib, a village to the south-east of Bethlehem, located adjacent to the Herodion. According to

our information, the Civil Administration has rejected requests that would allow the paving of the road leading to the village, to connect the village to the electrical network, and to erect solar powered street lights; the Applied Research Institute of Jerusalem and UNDP's Small Grants Program were involved in submitting the latter two requests. Residents of Jubbet al-Dhib claim they first filed a petition to be connected to the electrical network in 1988. Allegedly, the Civil Administration based its rejections of these permit requests on the village's lack of an approved master plan, but the Civil Administration has not provided the village with a plan and has also rejected the villagers' requests to approve a plan. Most recently, in August 2009, the Civil Administration rejected a master plan for the village created by the Applied Research Institution of Jerusalem (ARI), a non-governmental organization based in Bethlehem. The Civil Administration in 2007 allegedly demolished the home of Khamis al-Wahsh in Jubbet al-Dhib because it lacked a building permit.

Settlements near Jubbet al-Dhib include Sde Bar, Tekoa and Nokdim. According to our information, the Civil Administration approved a master plan for Sde Bar in 2003-04, but construction work had begun on the Sde Bar outpost in 1996-97, indicating that the Civil Administration retroactively authorized illegal construction. All these settlements are connected to the electricity network, and have paved access roads connecting them to roads, including the bypass road to Jerusalem.

- a. Please provide further information regarding the reasons behind the Civil Administration's rejection of Jubbet al-Dhib residents' permit and planning requests.
 - b. Please explain the Civil Administration's difference in treatment of Jubbet al-Dhib and nearby settlements in terms of planning, building permits, home demolitions, and access to electricity and road networks.
10. According to our information, the Civil Administration has issued stop-work and demolition orders to residents of the Palestinian town of Nahhalin, near the settlements of Beitar Ilit, in cases where they have improved their agricultural lands or have built homes or other structures outside the area of the town that was already built-up in 1995, on the basis that these areas lack approved plans. As a result, the building density inside Nahhalin has increased, as residents have resorted to building taller multi-story residential buildings, while residents say the water and sewage networks are inadequate. At the same time, the settlement of Beitar Ilit has expanded onto lands which Nahhalin residents say they own. According to our information, sewage runoff from a neighborhood of Beitar Ilit has contaminated a spring, Ain Fares, that Nahhalin residents traditionally used, and have destroyed a number of olive trees and grape vines planted near the spring.

- a. Please explain the different treatment of Nahhalin and Beitar Ilit in terms of planning solutions to allow for the natural growth of Nahhalin's population, and regarding claims that the Civil Administration has authorized settlement construction on lands confiscated from Nahhalin residents.
11. According to our information, Mekorot operates a number of wells in the northern Jordan Valley, including near the Palestinian village of Bardala and the settlements of Ro'i and Beqaot, from which the majority of water goes to settlements. Mekorot's pumping of water from wells near the town of Bardala has dried out shallower Palestinian water wells there. Bardala is connected to the Mekorot water network but according to our information, the amount of water provided to its residents has decreased and is inadequate to their drinking, sanitation and agricultural needs. Further, our information is that the pumps connected to Mekorot's wells do not operate unless the water reservoirs connected to settlements in the area have been depleted, and that Bardala residents who depend on the Mekorot wells for their water have no control over the operation of the pumps, and often suffer from lack of water when the pumps are not operating. The Civil Administration has not granted residents of the communities of Al Hadidiye, Al Farisiye, and Al Ras al Ahmar access to connect to the Mekorot water network that services nearby Israeli settlements.
 - a. Please provide information regarding the Civil Administration's reasons for refusing any requests by the communities of Al Hadidiye, Al Farisiye, and Al Ras al Ahmar to connect to water sources.
 - b. Please provide information regarding the policy whereby settlements such as Mehola, Shademot Mehola, Ro'i and Beqa'ot are granted access to water networks whereas Palestinian residents of nearby areas are required to purchase water in mobile tankers, and explain the Civil Administration's different treatment of Palestinian communities and settlements in this area in terms of access to water.
 - c. Please provide information regarding the Civil Administration's authority over the water supply provided to Bardala and to access points for water tankers from Mekorot's wells in the area.
12. According to our information, Israeli soldiers stationed at checkpoints on roads leading into the Jordan Valley require Palestinians to obtain permits to enter the area in private vehicles. Our information also indicates that Palestinians encounter extensive delays when they request the Civil Administration to change their registered addresses to locations in the Jordan Valley.
 - a. Please explain the Civil Administration's different treatment of Palestinians and settlers in the area in terms of restrictions on freedom of movement and residency, including:

- i. Why the Civil Administration requires permits for Palestinians to access the area, and any policies restricting the ability of Palestinians to register their addresses in the area.
 - ii. Whether the Civil Administration requires settlers in the area to have equivalent permits to those required of Palestinians or imposes similar restrictions on settlers' ability to register their addresses in the area.
13. According to our information, the Civil Administration does not recognize Al Farisiye, Al Ras al Ahmar, or Al Hadidiye, which are located in the northern Jordan Valley, as residential communities, and has issued and carried out demolition orders on the basis that residents' homes were unlawfully constructed in a closed military zone. Our understanding is that under military order no. 378 from 1970, Israeli authorities may evict persons living in a "closed military zone." Section 90 of the order states that "permanent residents" can remain in an area later designated as closed, and that eviction orders cannot change their status as permanent residents. Our understanding is that these villages existed prior to the declaration of the area as a closed military zone. Our understanding is that the Civil Administration does not accord pastoralists the status of "permanent residents" and will evict them from closed military zones.
 - a. Please provide information regarding the Civil Administration's interpretation of the term "permanent residents," and any other information that indicates why the Civil Administration does not consider the residents of these communities to be exempt from eviction.
 - b. Please provide any information that indicates that the military considered other alternatives when imposing the military zone that would have been less disruptive of the lives of these residents, and that indicates that the size and location of the military zone and the evictions of Palestinian residents there were both militarily necessary and proportionate.
 - c. Please also indicate whether any settlers have been evicted or settlement homes demolished on the basis that they are in a closed military zone, and whether any military zones have been declared over areas that contain settlements. If not, please explain the different treatment of Palestinian residents and settlers in the area regarding home demolitions.
14. Our understanding is that the Civil Administration in 2007 cut water pipes leading from a spring on the western side of Road 90 in the Jordan Valley to the farm of a Palestinian named Fa'iq Sbeih, located immediately to the east of the road and approximately 700 meters north of the Rotem settlement, without prior notice. Human Rights Watch observed a water pipe immediately adjacent to Sbeih's farm, which according to our

understanding leads from a water source to the Rotem settlement, to which Sbeih is prohibited from connecting.

- a. Please provide information regarding the decision to cut the water pipes to this farm.
 - b. Please provide any information regarding the administrative steps Sbeih could follow to obtain access to the water resources enjoyed by Rotem, or any other water resources.
 - c. Please explain the different treatment of Sbeih and settlers in Rotem regarding access to water.
15. According to our information, in 2006, on two occasions, the Civil Administration demolished buildings owned by a Palestinian named Abu Riyad on a hilltop in the Humsa area, several hundred meters to the east of the Hamra checkpoint, and issued a demolition order against one of the remaining buildings in April 2010. According to our information, in 2006, Abu Riyad was detained, and three of Abu Riyad's sons were detained and sentenced to three years in prison on charges of weapons possession and incitement to violence.
- a. Please provide information regarding the reasons for the 2006 demolitions and the 2010 demolition order.
 - b. Please provide any further information about Abu Riyad's detention, including whether he was charged or convicted of any offense, and the convictions and sentences of his sons.
16. According to our information, the Civil Administration has coordinated access for Palestinian villagers from the village of Yanun, near the settlement of Itamar, and the village of al-Janiya, near the settlement of Talmon, to their agricultural lands near these settlements for roughly two or three weeks per year, in the fall and spring, but the villagers are unable adequately to cultivate or harvest their olives and other agricultural produce in this short amount of time.
- a. Please provide information regarding the number of days and the times of day that the Civil Administration has coordinated with Yanun and al-Janiya residents to access their lands, why the Civil Administration has limited their period of access to these times, whether the Civil Administration has considered extending the period of access beyond current limitations, and if so why such extensions have not been granted.
 - b. Please explain the apparent difference in treatment between Yanun residents who are required to obtain "coordination" in order to access their lands and who

are allowed to do so only for a limited number of days each year, and settlers from Itamar and its outposts, who are not subjected to such limitations.

Thank you in advance for your responses.

Sincerely,

Sarah Leah Whitson
Director, Middle East and North Africa Division
Human Rights Watch

HUMAN RIGHTS WATCH

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: 212-290-4700
Fax: 212-736-1300

Ruth Rennert
Spokesperson,
Mekorot



www.hrw.org

November 16, 2010

Dear Ms. Rennert,

Human Rights Watch has carried out research regarding several settlements and nearby Palestinian communities in the West Bank, with the view to publishing a report later this year. We are writing to ask you for further information regarding water services to a number of communities in the northern Jordan Valley, before we reach our conclusions. We would appreciate it if you could provide us with a reply by December 1 so that we can reflect your views in our forthcoming report.

1. How many wells does Mekorot operate in the northern Jordan Valley?
2. For each well in this area, kindly provide information regarding the amount of water extracted each month during the past two years; if monthly figures are not available, please provide information for whatever time-period Mekorot uses to calculate extraction during the past two years.
3. Our understanding is that Israeli communities in the northern Jordan Valley receive water from Mekorot wells in the area. For the following communities, could you kindly inform us of the amount of water provided by Mekorot from wells in the Jordan Valley, and any amounts of water that these communities receive from other sources, on a monthly basis:
 - o Mechola
 - o Shademot Mechola
 - o Maskiyot
 - o Rotem
 - o Ro'i
 - o Beqa'ot
4. Please provide any information about the pricing structure for the water provided to these communities, such as whether water for

MIDDLE EAST AND NORTH AFRICA DIVISION

Sarah Leah Whitson, *Executive Director*
Joe Stork, *Deputy Director*
Eric Goldstein, *Deputy Director*
Christoph Wilcke, *Senior Researcher*
Nadim Houry, *Senior Researcher*
William Van Esveld, *Researcher*
Heba Morayef, *Researcher*
Rasha Moumneh, *Researcher*
Samer Muscati, *Researcher*
Amr Khairy, *Arabic translation coordinator and web editor*
Rana Abou Salman, *Development and Outreach Manager*
Faraz Sanei, *Researcher*
Priyanka Motaparthi, *Sandler Fellow*
Noga Malkin, *Research Assistant*
Nadia Barhoum, *Associate*
Adam Coogle, *Associate*

ADVISORY COMMITTEE

Hassan Elmasry, *Co-Chair*
Kathleen Peratis, *Co-Chair*
Bruce Rabb, *Vice Chair*
Gary G. Sick, *Vice Chair*
Gamal Abouali
Wajeha Al Huwaidar
Ghanim Alnajjar
Lisa Anderson
Shaul Bakhash
Asli Bali
M. Cherif Bassiouni
David Bernstein
Nathan Brown
Paul Cheigny
Ahmad Deek
Mansour Farhang
Fadi Ghandour
Aeyal Gross
Amr Hamzawy
Rita E. Hauser
Salah al-Hejailan
Prince Moulay Hicham
Robert James
Mehrangiz Kar
Edy Kaufman
Marina Pinto Kaufman
Ann M. Lesch
Robert Malley
Ahmed Mansoor
Stephen P. Marks
Rolando Matalon
Habib Nassar
Abdelaziz Nouaydi
Nabeel Rajab
Victoria Riskin
Charles Shamas
Sid Sheinberg
Mustapha Tlili
Andrew Whitley
James Zogby
Ahmed Zuaiter

HUMAN RIGHTS WATCH

Kenneth Roth, *Executive Director*
Michele Alexander, *Development & Outreach Director*
Carroll Bogert, *Associate Director*
Emma Daly, *Communications Director*

JAL

162

BEIRUT • BERLIN • BRUSSELS • CHICAGO • GENEVA • JOHANNESBURG • LONDON • LOS ANGELES • MOSCOW • NEW YORK • PARIS • SAN FRANCISCO •

Iain Levine, *Program Director*

agricultural use is provided at different price rates than water for domestic use, and the relevant prices.

5. Our understanding is that pumpage from the Bardala 1 well, drilled by Mekorot in 1968, and from the Bardala 2 well, drilled by Mekorot in 1979, dried up the older and shallower wells used by Palestinian residents of the village of Bardala, and that Bardala residents currently receive water from Mekorot. According to Bardala residents, the amount of water they receive is inadequate to meet their agricultural needs, and the amount of agricultural land they are able to cultivate has declined by as much as half since 1967. What amount of water does Mekorot provide to Bardala on a monthly basis?
6. Our understanding is that Mekorot supplies the village of Bardala with a set amount of water for a given price, and that it is possible for the village to purchase a certain amount of water exceeding that amount for an additional fee. Please provide any information regarding the pricing structure of Mekorot's supply of water to Bardala, and the maximum amounts that the village can purchase.
7. Our understanding is that the pumps operating Mekorot wells that provide water to the village of Bardala operate only when water tanks supplying Israeli communities in the area, such as Mechola and Shademot Mechola, decline to a given level. According to Bardala residents, they thus face occasional periods without water flow, which last for as long as several days in summer. Please provide any information about the maximum length of time Bardala residents could face a lack of running water due to this reason.
8. Our understanding is that other Palestinian communities in the area, including Al Hadidiye, Al Ras al Ahmar, and Al Farisiye, are not connected to the Mekorot water network, and that it is necessary for residents of these communities to fill up water tankers at filling-points. Please provide information regarding the location of any such filling points that receive water from Mekorot in the northern Jordan Valley, the costs of water per cubic meter at these filling points, and the amount of water dispensed at each filling point per month.
9. Please provide information about any other facilities or projects by which Mekorot provides water resources to Palestinian residents of the northern Jordan Valley.

Thank you in advance for your responses.

Sincerely,
Sarah Leah Whitson
Director, Middle East and North Africa Division
Human Rights Watch



יחידת שירות לקוחות



5.12.10

לכבוד
שרה לאה ויטסון
מנהלת חטיבת המזרח התיכון
התנועה לזכויות האזרח
פקס: 02-6284102

הנדון: נתונים לדו"ח זכויות האזרח

פנייתך התקבלה בחברת מקורות והועברה לטיפול הגורמים המקצועיים
הפנייה תיענה בהקדם האפשרי.

בברכה,

שרה חקלאי
אנשלת יח' שירות לקוחות

Acknowledgments

This report was researched and written by Bill Van Esveld, researcher. Noga Malkin, research consultant, who wrote initial drafts, and Saleh Hijazi, research consultant, also contributed research. Interns Bashar Abu Ahmad and Michal Cohen from the Minerva Center for Human Rights at the Hebrew University of Jerusalem, and Lily Hindy, provided assistance. Sarah Leah Whitson, director of the Middle East and North Africa division, edited the report. Clive Baldwin provided legal review and Iain Levine and Danielle Haas provided program review.

Human Rights Watch wishes to thank the residents and witnesses whose testimony the case studies in the report are based on, and to thank ACRI, Al Haq, B'Tselem, Bimkom, EAPPI, OCHA, Peace Now, Yesh Din and Who Profits for generously providing information and assistance.

Separate and Unequal

Israel's Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories

Israel's settlements in the occupied West Bank, including East Jerusalem, are widely viewed as illegal under international humanitarian law, which prohibits the occupying power from transferring its civilian population into the territories it occupies. This report focuses on the less-discussed aspect of Israeli laws and policies in the West Bank that discriminate against the Palestinian population in favor of settlers.

Based on case studies that compare Israeli settlements with next-door Palestinian communities in six areas of the West Bank, this report shows that Israel operates a two-tier system for the two populations in areas under its exclusive control--"Area C" and East Jerusalem; it provides preferential services, development and benefits for Jewish settlers, while imposing harsh conditions on Palestinians. The report highlights Israeli practices the only discernable purposes of which appear to be promoting life in the settlements while in many instances stifling growth in Palestinian communities and even forcibly displacing Palestinian residents.

Israeli policies control many aspects of the day-to-day life of Palestinians who live in Area C and East Jerusalem. Those policies often have no conceivable security justification for the harms they cause – such as denying access to electricity, water and roads, rejecting building permit applications for houses, schools, clinics and infrastructure, and demolishing homes and even entire communities.

By contrast, Israeli policies, such as substantial government financial incentives, promote Jewish settlements and encourage them to expand in "Area C" of the West Bank and East Jerusalem, often using land and other resources that are effectively barred to Palestinians. In some cases, Israel's discriminatory policies have forcibly displaced Palestinians from the same areas where settlements have encroached.

Such different treatment, on the basis of race, ethnicity and national origin and not narrowly tailored to meet genuine security or other legitimate goals, is not justifiable and therefore violates the fundamental prohibition against discrimination under human rights law.

The report calls on Israel to cease its discriminatory practices immediately, quite apart from its independent legal obligation to cease its support for settlements and to remove settlers from the West Bank. The report also calls on other countries and businesses to avoid supporting Israeli settlement policies that are inherently discriminatory and violate international law.

Palestinian Bedouin school children walk towards their tents on September 15, 2010 at their Bedouin camp outside the Israeli West Bank settlement of Ma'ale Adumin. Israel does not recognize the Bedouins' property claims and has demolished homes and schools in the area.

© 2010 ABBAS MOMANI/AFP/Getty Images

