



מרכז המידע הישראלי לזכויות האדם בשטחים (ע.ר.).

B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories

**Comments on Israel's Combined 10th, 11th, 12th and 13th
Periodic Report Concerning the Implementation of
The International Convention on the Elimination of Racial
Discrimination (ICERD)**

**Submitted to the United Nations
Committee on the Elimination of Racial Discrimination**

May 2006

69th Session of the Committee

B'Tselem is the leading Israeli NGO addressing human rights in the Occupied Territories. Founded in 1989 by a group of Israeli public figures and jurists, B'Tselem has published over 100 reports on human rights issues, organized advocacy campaigns, and served as a resource center for the media, policymakers, and researchers. B'Tselem's activities receive extensive media coverage, generate public debate within Israeli society, and encourage changes in Israeli policy.

In filing this limited report, B'Tselem is seeking to assist the Committee on Elimination of Racial Discrimination (CERD) in its discussion on the periodical report submitted by Israel.

As the members of the Committee know, Israel considers itself exempt from implementing its obligations under the International Convention on the Elimination of Racial Discrimination (ICERD) in the Occupied Territories and is, thus, reluctant to discuss the issues relevant to this area in its periodical reports. We, however, believe that Israel is, indeed, responsible for the implementation of the Convention in all the territories under its effective control and should, therefore, report to the Committee on its conduct in the Occupied Territories.

B'Tselem is aware of the various reports submitted to the Committee by fellow Israeli and Palestinian NGOs and would like to call particular attention to the severe situation in Hebron, as detailed in the report of the Association for Civil Rights in Israel (ACRI) submitted to the Committee. We have decided to deliver a short report regarding two issues only, which have not been comprehensively discussed in any of the other reports – the discriminatory roads regime in the West Bank and the issue of state-lands in the West Bank.¹

The roads regime forbids the entire Palestinian population from traveling on many of the main roads in the West Bank while, at the same time, allowing Israelis to use these same roads freely. This regime discriminates between people based on their national origins and, hence, goes against Israel's obligations under ICERD. Practiced on a daily basis, this regime gravely violates the Palestinians' right to freedom of movement – guaranteed under Article 5(d)(i) of the Convention – and affects their enjoyment of the economic and social rights guaranteed under Article 5(e) of the Convention.

Israel's policy regarding lands in the West Bank – of seizing Palestinian privately-owned and community lands, declaring them state-lands and, later, allocating those lands exclusively to the building and expansion of Israeli Jewish Settlements – amounts to yet another blatant violation of the Convention. The procedure under which Israel seizes the land infringes Palestinians' right to property, under Article 5(d)(v), as well as their right to effective remedy, under Article 6 of the Convention. Furthermore, the discriminatory use of the seized land – which, as state-land, is meant to be used for the welfare of the Palestinian public – goes against the very basic spirit of the Convention and the obligations of the State, as a party to the Convention.

¹ This report is based on B'Tselem's extended report "Forbidden Roads – Israel's Discriminatory Road Regime in the West Bank", August 2004. http://www.btselem.org/Download/200408_Forbidden_Roads_Eng.doc

Following a short discussion of each of the two issues, you will find a list of questions which we hope will assist Committee members in their discussions with the State representative, as well as a list of recommended actions that Israel could take in order to amend the current situation. A map, illustrating the roads regime discussed in the first part of this report, is also attached for your convenience.

The Forbidden Roads Regime

Restrictions on movement of Palestinians in the West Bank – permanent staffed check points, surprise temporary check-points, closures and physical obstacles that seal off villages – are all familiar practices, imposed daily by Israel under the claim of 'security needs'. Each restriction cannot be viewed in isolation. Rather, all of these measures are part of Israel's Road Regime, through which it restricts Palestinian travel along most major roadways in the West Bank, making them, to one degree or another, “roads for Israelis only”. The Roads Regime has never been put into writing, neither in military legislation nor in any official decision, yet it is a permanent fixture of Palestinian reality in the West Bank. Under this regime, the right of every person to travel in the West Bank is based on his or her national origin.

In an attempt to justify its policy, Israel contends that the restrictions on Palestinian travel along these roads result from imperative security considerations and not from racist motives. Indeed, since the outbreak of the second Intifada, in September 2000, there has been an alarming increase in the number of attacks by Palestinian organizations against Israeli civilians inside Israel and in the Occupied Territories – including attacks on Israeli cars on the roads. However, the Roads Regime does not target individuals suspected of security offenses. Instead, it is based on the premise that *all* Palestinians are security risks and therefore it is legitimate to restrict their movement. This is a racist premise that leads to a policy that indiscriminately harms the entire Palestinian population.

The Forbidden Roads Regime was designed in accordance with the geopolitical division established in the Oslo Agreements, which divided the West Bank into Areas A and B (in which the Palestinian Authority has certain governmental powers) and Area C which remains under complete Israeli authority. Palestinians travel relatively freely within Areas A and B; in Area C Israel restricts Palestinian travel, and on some of the roads Palestinian travel is completely prohibited. Israeli civilians are prohibited from traveling in Area A, and on most roads in Area B. They travel without restriction in Area C.

A careful look at the “Oslo map” exposes the discriminatory and harmful basis on which the policy is based. Areas A and B constitute dozens of islands separated by a sea defined as Area C. Palestinians who want to go from one Palestinian block to another must cross Area C, which is

subject to the Roads Regime. Israelis, on the other hand, can move freely between the settlements and into Israel, without ever having to enter Areas A or B.

Means of Enforcement²

Three primary means are used to enforce the Roads Regime: staffed checkpoints, physical roadblocks (dirt piles, concrete blocks, trenches, and iron gates), and patrols, all of which are used, in one combination or another, on almost all the forbidden roads. Enforcement of the regime is also achieved by measures that deter Palestinian drivers from traveling on these roads, such as extensive delays and imposition of fines. The patrols operated by the SHAI (i.e., West Bank) District of the Israeli Police strictly enforce the traffic laws against Palestinian vehicles traveling on the restricted roads. B'Tselem's daily observations over the past years clearly show that the police focus their law enforcement efforts disproportionately on Palestinian drivers, and rarely stop Israeli vehicles.

The Different Types of Prohibited Roads:

The following classification of the roads is based on the degree to which Palestinian drivers are able to travel on them in practice. As mentioned above, no official prohibition in writing exists from which we can learn the exact nature of the restrictions on Palestinian movement along each of the roads. The restrictions are based on oral instructions from local military commanders. Nevertheless, frequent observations reveal the following:

A. Roads on which Palestinian travel is completely prohibited

Some of the roads in the West Bank are completely prohibited for Palestinian drivers, although there is no sign on the roads indicating such a prohibition.

On some of these roads, the prohibition is explicit and obvious: Israel places a staffed checkpoint through which only Israeli vehicles are allowed to pass. On other roads where Palestinian travel is totally forbidden, the IDF enforces the prohibition by blocking the access roads to the adjacent villages. Since the outbreak of the second Intifada, the IDF has used hundreds of physical roadblocks to restrict access to the forbidden roads from nearby Palestinian villages.

In some instances, not only is travel forbidden, but merely crossing the road by car is also not allowed. Palestinians must then leave their car on the side of such a road, cross the forbidden road by foot, and continue on in another vehicle on the other side. This prohibition also restricts Palestinians from reaching roads that are not prohibited.

² The report deals only with those roads in the West Bank that served both Palestinians and Israelis until the outbreak of the second Intifada and, since then, are restricted or prohibited for the use of Palestinians. Roads in East Jerusalem are not included in the report.

The West Bank contains sixteen roads and sections of roads in which Palestinian vehicles are completely prohibited. The total length of these roads and sections of road is about 110 kilometers.

B. Roads on which Palestinian travel is allowed only with permits.

Roads in this category are those on which Palestinians are allowed to travel only if they have a “Special Movement Permit at Internal Checkpoints in Judea and Samaria” [the West Bank]. These permits are only valid during periods of “calm”. When the situation is “tense”, the IDF closes these roads to private vehicles and only allows Palestinians to travel on these roads on buses with permits.

This category also includes roads on which the army allows access to Palestinians whose identity cards indicate that they live in villages that can only be accessed by restricted roads, in addition to holders of the special permits.

The West Bank contains ten roads and sections of roads that fall within this category, totaling 245 kilometers.

C. Roads on which Palestinian travel is restricted

This category includes roads on which Palestinians are allowed to travel but which can be reached only via an intersection at which the IDF maintains a checkpoint. All other access roads from Palestinian villages adjoining these roads are blocked by physical obstacles. Some of the main traffic arteries in the West Bank fall into this category, including Route 60 which runs through the West Bank from north to south. There is greater presence of Israeli police patrolling these roads, where the police strictly enforce the traffic laws in a discriminatory manner against Palestinians, and readily issue tickets to Palestinian drivers for a broken headlight, driving without a seatbelt or other offenses.

At some of the checkpoints at the entry points to these roads (especially around the city of Nablus), the IDF also prevents Palestinians holding movement permits from crossing by car. Exceptions are made in humanitarian cases and for individuals holding VIP cards. At these checkpoints, the Palestinians have to get out of the vehicle, cross the checkpoint by foot and get into another vehicle on the other side.

Fourteen roads or sections of roads in the West Bank are included within this category, totaling some 337 kilometers.

The practical effects of the Roads Regime on Palestinians' enjoyment of rights under the ICERD:

Violations of Article 5:

- The roads regime in the West Bank, implemented in an explicitly discriminatory manner, gravely violates the Palestinians' **right to freedom of movement**, as stated in Article 5(d)(i) of the Convention. Rather than traveling on the main roads between the cities, most of the population is forced to use long and winding alternate routes. This makes all travel fraught with uncertainty, more time-consuming and expensive;
- The roads regime disrupts all aspects of daily life for Palestinians in the West Bank. Employment, commerce and health are particularly affected, in violation of the **economic and social rights** guaranteed under Article 5(d)(e) of the Convention. Since the beginning of the al-Aqsa intifada in 2000, B'Tselem has documented dozens of cases in which Palestinian civilians died following delays at checkpoints or soldiers' refusal to let them cross. Many have been delayed at checkpoints on their way to receiving medical treatment, as have medical crews on their way to providing treatment.
- Serious harm is caused by this regime to family and social life, in addition to the regular humiliation that the entire Palestinian population suffers as a result of the blatant discrimination.

Recommended Questions Regarding the Roads Regime

- **How is the practice of permanently restricting the entire Palestinian population in the West Bank from traveling on certain roads, while at the same time allowing free movement of Israelis on those same roads, compatible with Israel's obligations under the ICERD?**
- **According to information provided to B'Tselem by the IDF, all of the orders prohibiting the traveling of Palestinians on roads in the West Bank were issued orally, in accordance with military orders. In light of this, what steps does the State of Israel take in order to ensure that these prohibitions are implemented in proportional, non-arbitrary and non-discriminatory ways? How can the State of Israel monitor the Roads Regime and the implementation of non-written policies, and hold the implementing forces accountable for their actions?**
- **Why does the State of Israel avoid issuing written orders and instructions regarding the use of roads and freedom of movement?**

Recommendations:

- **The State of Israel should immediately end the discriminatory Forbidden Roads Regime and respect the right of Palestinians to freedom of movement on all roads inside the West Bank.**
- **In case where security needs require the restriction of movement, such restrictions should precisely target the specific individuals or areas of concern, and avoid harming the Palestinian population as a whole.**
- **If for a particular period of time or in a particular area, restrictions on the freedom of movement in the West Bank are indeed a necessity, all such restrictions should be formally written in military orders and publicly announced. Furthermore, the written orders must include the situations in which restrictions could be enforced; the maximum length of such restrictions; the specific roads to which they apply; and the different types of prohibitions that apply to different roads.**

State Lands in the West Bank

The declaration of land as "state-land" has been the principal method used by Israel to take control of Palestinian lands in the West Bank since 1979. These lands are then generally allocated for the building of Israeli Jewish settlements and designated as land reserves for their future expansion.³ Until 1979, the State seized private lands by using the claim of "military need", which often required that the State prove before the High Court of Justice that the taking was indeed a military necessity.⁴

In declaring privately-owned land as state-land, Israel relies on its manipulative use of the Ottoman Land Law of 1858, which was incorporated into British Mandate legislation, and later into Jordanian law. This law was part of the local law at the time Israel occupied the West Bank and, as such, has remained in effect. According to this law, land that is uncultivated for three consecutive years is considered state-land, and can be transferred to the government. The power to declare land as state-land and to administer it is articulated in the Israeli military legislation on the Custodian for Government and Abandoned Property in Judea and Samaria [the West Bank].⁵

However, even according to a strict reading of the Ottoman Land Law, a substantial portion of the lands declared as state-land, used for the establishment of settlements and as land reserves for their expansion, was cultivated and privately owned by Palestinians in the past. This practice is made possible, in part, due to the nature of the bureaucratic process in which the declaration of the land as "state-land" is carried out.

A parcel of land that is examined prior to registering it as state-land is classified as "survey land."⁶ Until the examination is completed, the Custodian declares the parcel state-land, and enables Palestinians who claim rights on the parcel to file an appeal before a military committee, within forty-five days of the declaration. At the end of this period, or following the Committee's decision on any appeal that had been filed, the land is registered as state-land. According to an

³ For further discussion on this issue, see B'Tselem report: *Land Grab*, Israel Settlement Policy in the West Bank (2002) Chapter 3.

⁴ The decision to move from this method to that of declaring the land state-land was made following the Elon Moreh case, in which the High Court nullified an order requisitioning private land to build a new settlement, the court having been convinced that no military need existed. See *Land Grab*, 49-50.

⁵ Order Regarding Government Property (Judea and Samaria) (No. 59), 5727 – 1967.

⁶ The examination process that is required before the land is registered as state-land is set forth in the Procedure for Supervision and Protection of Survey Lands, their Administration, and Evacuation of Squatters, which was approved in 1997 by the Attorney General. For the specific details on the procedure, see State Comptroller, *Annual Report 56A*, 206-208.

official report, issued at the request of the Prime Minister's Office, in many cases the State of Israel has regarded survey lands (the land that had not yet been proven to be state-land) as if they were already registered state-lands, and allocated them to the settlements.⁷

Although a right to appeal does exist as part of the procedure, this remedy is essentially cosmetic, as, in practice, it seldom changes facts on the ground. Often, the information indicating that a particular parcel was declared state-land does not reach its Palestinian owners until the time for filing an appeal has already passed. Where appeal hearings have taken place, Palestinians were mostly unsuccessful in their claims against the military authorities due to a variety of obstacles posed by the military authorities.

It should be noted that even if Israel had followed the strict letter of the Ottoman Land Law fairly and justly, and had not declared privately owned lands as state-lands, the State's actions with regard to state-land would have been improper, as the administration of state-lands was conducted in a discriminatory manner that contravenes the basic principles of the Conventions, to which Israel is a party. State-lands are public property, belonging to the lawful residents of the West Bank. The role of the occupying power, i.e. the State of Israel, as the temporary substitute of the sovereign, is to administer the public land for the benefit of that public, or, alternatively, to meet its military needs in the occupied territory. Rather than acting this way, Israel, since it started taking control of those state-lands, has completely denied the Palestinians their right to use these lands, and has allocated them exclusively for the establishment and expansion of Jewish settlements.

The scope of the state-lands policy is immense: according to the State-Comptroller report, approximately 224,371 acres of land in the West Bank were registered as state-lands between the years 1979-1992.⁸ Altogether, a total of 42% of the West Bank is now under the control of the Local and Regional Councils of Israeli Settlements – and declaration of land as state-land was the primary (although not exclusive) means by which control over this land was transferred to the Israeli settlements.

Not all of this land was privately-owned; much of it was community lands or public property. All of it, however, should legally be used for the benefit of the Palestinian population. Instead, there is little land for the development of Palestinian communities, or to develop agriculture, industry or tourism for the Palestinian population.

⁷ Talia Sasson, *(Interim) Advisory Opinion on Illegal Outposts*, 81-82.

⁸ State Comptroller Annual Report, 56A, page 206.

Unlike many of Israel's policies in the West Bank, the state-lands policies are not justified for security needs. The use of state-lands exclusively for the Israeli (Jewish) population is motivated solely by Israel's internal economic and political considerations.

Israel's illegal seizure of private and community land, and its exclusive use by the Jewish population, breach Israel's obligation, under Article 5(d)(v), to "guarantee the right of everyone... without distinction as to...national or ethnic origins... to enjoyment of the right to own property alone as well as in association with others". It also affects the Palestinians' enjoyments of other rights such as the right to housing, as the seizure of land prevents the ability to legally build new houses and the further expansion of villages in the West Bank.

The lack of accessible and effective means available to Palestinians by which they can challenge the expropriation of their land following its declaration as state-land, is incompatible with the State obligation, under Article 6 of the Convention, to "ensure to everyone within their jurisdiction effective protection and remedies...against any acts of racial discrimination...as well as the right to seek...just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination."

Recommended Questions regarding State-Lands

- **What are Israel's official policies regarding the allocation of state-lands in the West Bank? Are there any allocations for Palestinian communities, and if not – how is that compatible with Israel's obligation under ICERD? If state lands have not been allocated for the benefit of Palestinian communities, how does Israel intend to amend this?**
- **How does the State of Israel intend to amend the situation – officially acknowledged in the Sasson Report – under which private lands were declared state-land and were confiscated from their Palestinian owners? What procedures has the State of Israel initiated for returning these lands to their legal owners?**
- **How does the State of Israel intend to amend the appeal procedure – which, at the moment does not provide an effective, just and adequate remedy to Palestinian owners of land – in order to make it compatible with its obligations under Article 6 of the Convention? What measures will be taken to grant a remedy to those whose land was taken without a meaningful opportunity to appeal?**

Recommendations:

- **The State of Israel must establish formal procedures for returning lands that were confiscated from their private Palestinian owners and declared as state-lands. These procedures should be publicly announced and allow all Palestinians who claim to be affected by Israel's policy to seek legal relief.**
- **According to its obligation under Article 2(1)(c), the State of Israel must take "effective measures" to review the policies and procedures related to the declaration of lands as state-lands and to "amend, rescind or nullify" them, in order to modify their discriminatory nature and make them compatible with the Convention.**
- **The very existence of settlements in the Occupied Territories is illegal according to international humanitarian law, as they violate Article 49 of the Fourth Geneva Convention, which prohibits the transfer of civilians of the occupying state into the occupied territory. However, even given that Israeli will not immediately dismantle all of these settlements, it must re-examine its policies of state-land allocation, in order to ensure that land is allocated in a just and non-discriminating way.**