



State of Israel

Racial Discrimination

Alternative Report on the State of Israel submitted by
Geneva International Centre *for* Justice (GICJ)
to the
Committee on the Elimination of Racial Discrimination
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This document is submitted by Geneva
International Centre for Justice (GICJ)
as an alternative report for
consideration by the Committee on the
Elimination of Racial Discrimination
during its review of the State Party
Report of the State of Israel.

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Introduction

1. Geneva International Centre for Justice (GICJ) is a Geneva-based, non-profit and independent organisation, dedicated to the protection and promotion of human rights, and to bringing awareness on human rights violations throughout the world.
2. GICJ is pleased to present this report to the Committee on the Elimination of Racial Discrimination (CERD or the Committee) regarding the implementation and respect of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD or the Convention) by Israel, during the review of Israel's combined seventeenth to nineteenth Periodic Reports (the State reports). This review will take place during the Committee's 100th session in Geneva, Switzerland, from 25 November to 13 December 2019.
3. We note with grave concern that Israel continues to maintain its position that the Convention is not applicable in the West Bank but is applicable in the whole of Jerusalem, and reiterated this point during its review by the Committee on Economic, Social and Cultural Rights (CESCR) in early October 2019. Israel argued that international humanitarian law and human rights law cannot be applied because the Occupied Palestinian Territories (OPT) are not part of the territory of Israel and therefore the ICERD will not be applied there either.
4. We would like point out, as members of the CESCR did, and as CERD did in its previous concluding observations¹, that it is a widely accepted principle of international law that human rights duties also apply to areas under the effective control of the State party, as affirmed by the International Court of Justice in its 2004 advisory opinion on the Wall; and that human rights law and humanitarian law can apply concurrently in situations of armed conflict such at the present one.
5. We regret that Israel uses this pretext to avoid answering the Committee's questions regarding issues in the OPT.
6. Our report will focus on the discrimination in law and practice against the Arab population living both in Israel and the OPT.
7. We will include, at the end of this report, questions and recommendations that we suggest the Committee ask Israel during its review.

I. Discrimination against the Arab population in Israel

8. The Arab citizens living in Israel constitute up to 21 per cent of the total population of people living in the Israeli territory.
9. As Arabs constitute one fifth of the Israeli population, their culture and interests must be taken into account when drafting legislation and policies. As outlined by scholars, "Democracy is about majority rule while respecting the rights of minorities."²

Basic Law: Israel – the Nation State of the Jewish People

10. One prominent issue at the moment is the Basic Law adopted on 19 July 2018 and entitled "Israel - the Nation State of the Jewish People" (the 2018 Basic Law).

¹ CERD Concluding observation on Israel, 3 April 2012. CERD/C/ISR/CO/14-16

² Cohen-Almagor, Raphael and Wattad, Mohammed S., "The Legal Status of Israeli-Arabs/Palestinians in Israel", 13 March 2019. GNLU Law & Society Review, Vol. I, 2019, page 5.

Available at SSRN: <https://ssrn.com/abstract=3351753>

11. The 2018 Basic Law stipulates that the right to exercise national self-determination in Israel is "unique to the Jewish people"; establishes Hebrew as Israel's official language, downgrading Arabic to a "special status"; and constitutionally elevates "Jewish settlement as a national value."
12. Each of these points is worrying. First, all people have the right to self-determination according to the Charter of the United Nations. Second, the fact that Arabic is no longer considered an official language in Israel is contrary to the goal of including Arabs in the population, even though officials stated that this will lead to no changes regarding translation of official documents into Arabic. Finally, considering Jewish settlements as a national value while they are prohibited under international law³ clearly disregards Israel's international obligations.
13. Moreover, the 2018 Basic Law reiterates that Jerusalem, "complete and united, is the capital of Israel"⁴; this wording is problematic as it highlights the will of the State to be in control of both parts of Jerusalem, while East Jerusalem is currently the capital of Palestine.
14. The very act of describing Israel as a Jewish State, in every basic law and other documents, discriminates against minorities living in Israel and prevents their full integration.
15. During the CESCR review, the questions asked regarding the 2018 Basic Law unfortunately received only partial answers. The delegation stated that the government does not derogate on rights protected under other basic laws, but that they could not further elaborate as the High Court of Justice is currently examining petitions filed against this 2018 Basic Law, and a response is expected on 17 November 2019.
16. We hope that, as the review of Israel by CERD will be held after the 17 November, the delegation will this time provide adequate answers to the concerns raised.

Allocation of benefits linked to military service

17. Several laws provide that social benefits in Israel are bound to the completion of military service, which exclude minorities that are exempted from such service, such as the Palestinian citizens of Israel. For example, Israelis who served in the army may obtain certain jobs that are not available to exempted minorities,⁵ and they can receive tuition and housing benefits.⁶
18. However, many ultra-Orthodox do not serve in the army either but do receive State support for their studies, which is not the case for Arabs.⁷
19. We regret that the Committee previously recommended the abrogation of laws discriminating against non-Jewish minorities with reference to the access to economic and social benefits,⁸ but that such discriminatory laws are still implemented.

³ SC/12657, "Israel's Settlements Have No Legal Validity, Constitute Flagrant Violation of International Law, Security Council Reaffirms", 23 December 2016. <https://www.un.org/press/en/2016/sc12657.doc.htm>

⁴ See 1980 Basic Law "Jerusalem – Capital of Israel".

⁵ Mitchell Bard, "Israeli Arabs: "Status of Arabs in Israel", 2019, Jewish Virtual Library <https://www.jewishvirtuallibrary.org/the-status-of-arabs-in-israel>

⁶ Absorption of Discharged Soldiers Law - Amendment No. 7: Benefits for Discharged Soldiers, Adalah. <https://www.adalah.org/en/law/view/508>

⁷ Cohen-Almagor, Raphael and Wattad, "Mohammed S., The Legal Status...", op.cit., page 24.

⁸ CERD/C/ISR/CO/14-16 para. 16.

Insufficient legal framework for protection against discrimination

20. The Israeli core document refers to the **Prohibition of Discrimination in Products, Services and Entry into Places of Entertainment and Public Places Law** 5761–2000, which prohibits discrimination in the provision of public products of services;⁹ the **Women's Employment Law** 5714–1954, amended in 2010 and 2011 to legally enshrine the obligation to ensure equality and to prohibit discrimination of women and differing familial units;¹⁰ and the **Law for the Authority for Advancing the Status of Women** 5758–1998, which aims, among other goals, to implement the International Convention on the Elimination of All Forms of Discrimination against Women.
21. The document then mentions that "there are also several laws which have been specifically created to protect certain minority and disadvantaged groups, who have historically suffered from discrimination. In the Israeli context, such groups have tended to include Arab, Druze and individuals who were born in Ethiopia or who have at least one parent born in Ethiopia."¹¹
22. Nevertheless, these laws only relate to the adequate representation of Druze and Ethiopians in the civil service.¹²
23. Even though the State reports affirms that "Israel condemns all forms of racial discrimination, and its Government has maintained a consistent policy prohibiting such discrimination,"¹³ it is worrying to note that according to the 2015 Israeli core document, Israel does not have a law which provides a comprehensive definition of discrimination – definition which was requested by the CERD in the last two concluding observations.¹⁴

Lack of policy implementation leading to increased discrimination

24. While Government resolution No. 2579 of 2007 aimed to attain 10 per cent Arab representation in the Civil Service by 2012¹⁵, annex 1 of the current State reports proudly announces that "In December 2015, 9.7% of all the Civil Service employees were Arabs, including Bedouins, Druze and Circassians (compared to 8.4% in 2012 and 6.17% in 2007)."¹⁶ We regret that the efforts towards the inclusion of minorities in the Civil Service are not fulfilled.
25. According to the delegation's statements to the CESCR, they acknowledge that there are challenges in the labour market, especially regarding inclusiveness of Arabs and ultra-orthodox Jews, but claimed that 2018 research shows that policy implementation led to improvements regarding demographic and cultural issues in almost all sectors of employment. Nevertheless, they also noted that only half of ultra-orthodox men and 37 per cent of Arab women are employed and that those who, among these populations, are employed are often paid significantly less than average.

⁹ Common core document, Israel, 6 March 2015, para. 61. HRI/CORE/ISR/2015.

¹⁰ Ibid, para. 64.

¹¹ Ibid, para. 65.

¹² Common core document of Israel, 6 March 2015, para. 66 and 67. HRI/CORE/ISR/2015.

¹³ Israel 17th to 19th reported submitted to CERD, 14 March 2017, para. 4. CERD/C/ISR/17-19.

¹⁴ CERD/C/ISR/CO/13, para. 16 and CERD/C/ISR/CO/14-16 para. 13.

¹⁵ Prime Minister Office, Government decisions, "Appropriate representation of members of the Arab, Druze and Circassian population in the civil service", decision number 2579, 11 November 2007. https://www.gov.il/he/departments/policies/2007_des2579

¹⁶ State of Israel, Ministry of Justice, Annex No. 1 attached to the 17-19th Periodic Report by the State of Israel before the CERD, 2017, page 2. INT_CERD_ADR_ISR_26778_E.

26. Being aware of these difficulties, more steps should be taken to ensure the inclusion of the Arab population in the labour market and to address the wage gap for Arab women.

Lengthy remedies

27. We regret that Israel does not list, neither in its core document nor in its State reports, the remedies available for people subjected to discrimination, hate speech and hate crimes.
28. It is worrying that table No. 2 in annex 1 of the State reports shows that almost all discrimination cases filed since October 2015 are pending. Moreover, some cases dating from early 2014, especially relating to incitement of violence, are still pending.
29. The length of the procedure raises questions regarding the compliance with article 6 of the ICERD, that requests effective protection and remedies.

Hate speech online

30. The issue of online incitement to hatred has been prevalent in the last few years, due to an increase in the use of the Internet. The case of Israel is particularly of concern as members of the Government and high officials have been, through social media or the press, trying to fuel hatred against Arabs and Palestinians across Israel.
31. A study from 7amleh Center states that in 2018 alone, 474,250 posts with hate content were written on the different social media platforms.¹⁷ These posts are either global or directed to an individual, such as Arab political representatives in the Knesset (Parliament).
32. Israeli political representatives used hate speech widely during the recent election campaigns. For example, the leader of the Blue and White party, Benny Gantz, who was running for prime minister at that time, published a video campaign boasting about the bombing of Gaza. In these videos, he showed images of Gaza after the 2014 war expressing pride in the fact that he sent parts of the Gaza Strip "back to the Stone Age".¹⁸ Worryingly, Mr. Gantz has now been entrusted with the formation of the new Israeli Government.¹⁹ In one statement from 9 April 2019 during the last Knesset elections, at that time Prime Minister Netanyahu clearly stated that being Israeli means being a Jew.
33. This violates the ICERD, which prohibits the dissemination of ideas based on racial superiority and hatred. This prohibition is compatible with the freedom of opinion and expression, as recalled in the CERD's last concluding observations.²⁰

¹⁷ "The Index of Racism and Incitement in Israeli Social Media 2018: An inciting post against Palestinians every 66 seconds", 11 March 2019, 7amleh. <https://7amleh.org/2019/03/11/the-index-of-racism-and-incitement-in-israeli-social-media-2018-an-inciting-post-against-palestinians-every-66-seconds/>

¹⁸ "The rise in hate speech by political representatives and on social media in Israel", 26 June 2019, NGOs joint statement. A/HRC/41/NGO/146

¹⁹ "Israël : l'ancien chef de l'armée Benny Gantz chargé de former un gouvernement", 23 October 2019, Le Monde. https://www.lemonde.fr/international/article/2019/10/23/israel-l-ancien-chef-de-l-armee-benny-gantz-charge-de-former-un-gouvernement_6016666_3210.html

²⁰ CERD/C/ISR/CO/14-16 para. 14.

II. Discrimination against the Arab population in the OPT

34. The International Court of Justice in its advisory opinion on the legality of the construction of a wall in the OPT, members of other Committees, and the current state of international law all provide that the ICERD and other Conventions, Treaties and Covenants ratified by Israel, must be implemented and respected in the OPT.
35. Nevertheless, Israel decided not to apply the instruments it ratified to the OPT and even apply different laws on settlers living in the OPT and Palestinian citizens of the OPT, which allows constant violations of the rights of Palestinians, and discrimination against them.

Disrespect of the right of return

36. After the invasion of Palestinian territory in 1947 and 1967, the United Nations General Assembly set out the right to return for Palestinians that had to flee their homes as a result of the invasion. This has been stated for the first time in resolution 194²¹, and reaffirmed in resolution 3236.
37. Irrespective to these resolutions, Israel created and implemented the 1950 Custodian of Absentee Property law, which defines persons who were expelled, fled, or who left the country after 29 November 1947 for any reason as absentees. Movable and immovable properties belonging to these absentees or to people determined as enemy nationalities were placed under the control of Israel's Custodian for Absentee Property.
38. The same year, Israel passed a 1950 Law of Return, giving Jews the right to automatically become Israeli citizens, regardless of the country they were born in.²²

Jurisdiction over the Gaza Strip and the West Bank

39. The 1995 Oslo Accord II divided the West Bank into areas A, B and C and established the Palestinian Authority (PA)²³. In Area A, representing 18 per cent of the territory of the West Bank, the State of Palestine exercise control over security and civil matters. Area B is administered by the PA, which have the control over civil matters, while the Israeli authorities jointly with the PA have security control. In Area C, which constitutes 62 per cent of the West Bank, the Israeli authorities have full control over security, planning and construction.²⁴
40. According to the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, the city of Hebron is divided into two areas: H1, under the control of the PA, and H2, representing 20 per cent of Hebron, under Israeli control, that has held all authority and responsibilities for internal security and public order.²⁵
41. Since 2007, two separate Palestinian administrations have coexisted in the OPT: the Fatah-led Palestinian Authority in the West Bank and the Hamas government in the Gaza Strip.
42. Based on this information, Israel has effective control at least over areas B and C of the West Bank and decides which laws it applies there. In the West Bank, Israeli military law is applied to the whole Palestinian population and Israeli settlers are

²¹ UN GA resolution 194. <https://www.un.org/unispal/document/auto-insert-177019/>

²² "Five ways Israeli law discriminates against Palestinians", 19 July 2018, AlJazeera. <https://www.aljazeera.com/news/2018/07/ways-israeli-law-discriminates-palestinians-180719120357886.html>

²³ "Israel-Palestinian Negotiations: Interim Agreement on the West Bank and the Gaza Strip (Oslo II)", 28 September 1995. <https://www.jewishvirtuallibrary.org/interim-agreement-on-the-west-bank-and-the-gaza-strip-oslo-ii>

²⁴ Special Rapporteur on Violence Against Women, visit to OPT in 2016, para. 12. A/HRC/35/30/Add.2.

²⁵ Ibid. para 13, referring to A/71/355, para.25-26

subject to the Israeli civilian and criminal legal system²⁶. This discriminates against Palestinians by not giving them the same rights and opportunities and thus weakens the protection of their rights.

Companies operating in the settlements

43. Both Israeli and international companies work in the OPT to provide services to Israeli settlers and Israel.
44. Given the prolonged occupation of the OPT, Israel began exploiting natural resources from the Palestinian soil for its benefit, including inter alia water, minerals, gas, and oil.²⁷ This deprives Palestinians of the goods and economic advantage they could obtain from exploiting these resources themselves.
45. The companies working in Palestinian lands to provide services only for Jewish people living in Israeli settlements located in the OPT discriminate against the rights of Palestinians, especially their right to work and prevents the realisation of their right to an adequate standard of living by not providing them adequate and equivalent services.

Access to health

46. In Gaza, the 12-year blockade hinders the right to health of Palestinians by prohibiting the entry of medical equipment. The severe restrictions on dual-use goods prohibits the entry of medicines and medical equipment.
47. Moreover, a list published by the Israeli Ministry of Foreign Affairs regarding the entry of goods in Gaza states that all materials needed for construction purposes are subjected to authorisation as they could be used "for Hamas military purposes".²⁸ This prevents the maintenance, reparation or construction of medical centres, which are lacking in Gaza.
48. The lack of medical infrastructure and of medicines leads Palestinians living in Gaza to look for treatments or care outside Gaza, especially in the West Bank or Israel.²⁹
49. The Israeli delegation claimed during the CESCR review that most applications from people willing to enter Israel for medical reasons are approved by Israel, but that the authorities in Gaza or the West Bank are often the ones not delivering the necessary permit to enter Israel.
50. Whether the fault rests on Israel or Palestine for denial of travel permits, Israeli authorities should facilitate entry into the country for medical purposes and delivery of medical supplies and other necessities in the OPT. It is a duty as occupying power, under articles 55 and 56 of the Fourth Geneva Convention, to ensure that the occupied territories have adequate medical supplies, and sufficient hygiene and public health standards.

²⁶ "Military detention", Defense for Children International – Palestine. https://www.dci-palestine.org/issues/military_detention.

²⁷ Joint parallel report on Israel's violations of the ICESCR, September 2019, Al-Haq and Al-Marsad, para.10. INT_CESCR_CSS_ISR_37011_E

²⁸ "Gaza: List of controlled entry items", 4 July 2010, Israeli Ministry of Foreign Affairs. https://www.mfa.gov.il/mfa/foreignpolicy/peace/humanitarian/pages/lists_controlled_entry_items_4-jul-2010.aspx

²⁹ Shadow report to the CESCR, September 2019, Al Mezan Centre for Human Rights. INT_CESCR_CSS_ISR_37152_E.

Settler violence

51. Palestinians are facing violence and discrimination in the OPT, especially when living near settlements. This is a result of the widespread hate speech existing in Israel.
52. In early October 2019, settlers attacked three Palestinian farmers in Nablus and Bethlehem; four more were injured in the Israeli-controlled area of Hebron city and in the Khirbet al Marajim community.³⁰
53. In a case from December 2018, a bus driver that was dropping off passengers in the ultra-orthodox settlement of Modi'in Illit, was insulted and beaten by two men, yelling at him calling him a "dirty Arab" and other racist remarks.³¹
54. We are concerned that settler violence, which was raised by the CERD in the last two reviews of Israel,³² has not been adequately addressed.

House construction permits

55. Palestinians face daily evictions and demolitions of their homes for administrative measures, for deterrence or as punishment. The rate of the demolitions is worrying, especially in light of the lack of building permits authorised by the Israeli authorities.
56. In fact, this lack of permits leads Palestinians to build houses without permits, houses that are later destroyed by the Israeli authorities under the pretext that they have been illegally built, which creates a never-ending cycle. Nevertheless, Palestinians have no choice than to keep building houses, even without permits.
57. The fact that Palestinian houses and villages are at risk of demolition increase inequalities between Jewish and Palestinians and hinders Palestinian economic development.³³
58. Moreover, the eviction of Palestinians and destruction of their homes allow the expansion of Israeli settlements, going further and further into the Palestinian territory in a widespread violation of Israel's international obligations.

Recommendations

We note with concern that CERD reiterated most of its concluding observations from 2007 in its last concluding observations (2011) and hope that this session will witness improvements. GICJ suggests that the CERD ask the delegation of Israel and / or recommend in its concluding observation that Israel do the following:

- Repeal the 2018 Basic Law and reinstate Arabic as an official language.
- Do not bind social benefits to the condition of serving in the army.
- Adopt a comprehensive definition of racial discrimination in a dedicated legal instrument in accordance with the ICERD.
- Provide a comprehensive list of the existing remedies and bodies to support judicial claims and protect victims of discrimination, hate speech and hate crimes.
- Ensure adequate access to the labour market for Arab citizens, especially women, and ensure they are paid fair wages.
- Criminalise hate speech – including online – and prosecute the perpetrators in accordance with the rule of law.

³⁰ Protection of civilians' report, 1- 14 October 2019, OCHA OPT.

<https://www.ochaopt.org/poc/1-14-october-2019>

³¹ A/HRC/41/NGO/146 op. cit.

³² CERD/C/ISR/CO/13, para. 37 and CERD/C/ISR/CO/14-16 para. 28.

³³ Baroness Warsi, "Israel: Arab Citizens" 741(84). House of Lords Official Report, Hansard 1232, 1232 (2012).

- Allow Palestinians to return in accordance with UN resolutions and to get their properties back.
- Recognise the jurisdiction it has over the OPT and thus apply Israeli laws to Palestinian people without discrimination.
- Stop expanding settlements and make sure settlers are accountable for their actions.
- Provide disaggregated data on building permits authorised in the OPT and halt evictions and demolitions.



Geneva International Centre for Justice (GICJ) is an international, independent, non-profit, non-governmental organisation based in Geneva-Switzerland. GICJ has been tackling issues of justice and accountability pertaining to Israel. GICJ maintains partnerships with various NGOs, lawyers and a vast civil society and network within Israel and the Middle East region. Through these channels, GICJ receives documentation and evidence of human rights violations and abuses in Israel as they occur and report that to the human rights bodies in Geneva.



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