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Sida Decentralised Evaluation

Jessica Montell

Learning From What Works: Strategic Analysis of the Achievements of the Israel-Palestine Human Rights Community

Final Report

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**Final Report
September 2015**

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The views and interpretations expressed in this report are the authors' and do not necessarily reflect those of the Swedish International Development Cooperation Agency, Sida.

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First they ignore you, then they ridicule you, then they fight you, and then you win.

-- Mahatma Gandhi

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Executive Summary

Despite the immense challenges of human rights advocacy in the Israel-Palestine context, this research demonstrates that the local human rights community has had a clear impact. The human rights community is the primary source of information for a range of influential audiences, and a major force in shaping the public conversation. On the individual level, organizations have provided concrete aid and assistance to hundreds of thousands of people. The work of human rights organizations influences diplomatic and political processes, and has contributed to concrete policy changes that improve human rights, including but not limited to the following:

- Stopping systematic torture by the Israel Security Agency (1999)
- Halting punitive home demolitions for the decade between 2004 and 2014
- Rerouting the Separation Barrier (2004 and onward)
- Greatly reducing the use of Palestinians as human shields (2005)
- Preventing forced displacement of West Bank Bedouin communities (2011-present)
- Mass release of administrative detainees (1997 and 2012)
- Family unification in the West Bank: obtaining legal status for foreign spouses of Palestinians (2007)
- Ending the prohibition of Palestinians on using Road 443 (2009)
- Promoting accountability for civilian deaths (2009-present)
- Preventing forcible transfer of Palestinians from West Bank to the Gaza Strip (2002)
- Preventing displacement of communities in S Mt Hebron (1999-present)
- Exposing Israel's Secret Prison and Ending its Use (2003)
- Renewing prison visits from Gaza (2012)
- Shortening pre-trial detention periods in the military justice system (2012)

The achievements are invariably partial. Success sometimes consists merely of preventing further deterioration. Relief may be obtained for victims without obtaining any recognition of their rights in principle. Gains are often reversed. This is the nature of human rights work around the globe.

An analysis of the factors contributing to each policy change results in a human rights tool kit. The research includes a matrix that quantifies the relative weight of the various tools:

- Documentation and analysis have played a crucial role in virtually every achievement of the human rights community;
- Domestic policy dialogue with the Israeli military and other Israeli decision-makers has only rarely played a role in human rights achievements;
- Litigation, primarily to the Israeli High Court of Justice, is the most significant tool in virtually every human rights achievement;
- International policy dialogue: the engagement of the diplomatic community, international policymakers and international bodies has been crucial in virtually every achievement;
- Mobilizing domestic Israeli opposition has played a role in only a few achievements;
- Mobilizing and leveraging Palestinian popular organizing has played a role in only a few tangible achievements, but has the potential to be more significant;
- Pursuing accountability at the international level (Universal Jurisdiction) is a relatively new tool that has the potential to make a significant contribution;
- Video documentation is also a new tool that promises to be significant.

Several lessons emerge from the research:

- Human rights organizations are part of a broader system and operate at their best when they direct their efforts to mobilize and strengthen other actors.
- Every success requires a combination of strategies. There is no case where international pressure alone succeeded in changing Israeli policy. Likewise without an international advocacy component, domestic Israeli advocacy will rarely succeed.
- Timing is everything. Few successes were recorded during periods of crisis. Positive change is much easier to effect when the situation is relatively quiet, and these gains are not necessarily reversed when violence increases.
- Not every organization has to engage in every strategy. In fact, it appears to be more effective for organizations to develop a “relative advantage.”
- The effectiveness of the human rights community would be improved through greater coordination and joint strategizing. Israeli and Palestinian human rights organizations operate largely in isolation from each other.
- Achievements may provoke a backlash, generating greater hostility among government officials and the Israeli public. This should not deter organizations but must be factored into strategic planning.
- Some issues lend themselves more easily to success, particularly those solely within the purview of the military. Human rights violations that stem from the heart of the political conflict – such as settlements – are the most intractable.

Far too often human rights organizations are too busy to take note of their achievements, or too quick to dismiss achievements given the many human rights violations that persist. For this reason it is important to state categorically that human rights organizations have positively impacted human rights. To acknowledge this in no way belittles the work still left to be done.

Despite its many achievements, the human rights community has so far been powerless to influence the broader trends of entrenched occupation, settlement expansion and more bloody military operations. Can and should the human rights community develop strategies aimed at ending the Israeli occupation or limit itself to addressing the human rights violations that result from occupation? There are real dilemmas in developing effective human rights strategies to tackle occupation and this question should be at the heart of a conversation within the Israeli and Palestinian human rights communities.

For the donor and policy community, the research offers an opportunity to take stock of their role in positively affecting human rights in Israel-Palestine and examine how they might increase their impact.

About the Author

Jessica Montell has been a leading figure in the Israeli human rights community for two decades. For thirteen years she headed B'Tselem: the Israeli Information Center for Human Rights in the Occupied Territories. In 2011, Ms. Montell was selected by Ha'aretz newspaper as one of "the year's 10 most influential Anglo immigrants in Israel." In 2013, the UK-based Action on Armed Violence selected her as one of the 100 most influential people working to make the world a safer place.

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Introduction

In the intense, never-ending pace of human rights advocacy in Israel-Palestine, human rights organizations have little time to step back from their daily operations and reflect on their accomplishments. The reflection that does take place is invariably self-critical. Human rights activists excel at identifying problems and working to fix them. So when evaluating our own work, we also tend to focus on what is problematic. Even when we make gains, we are quick to focus on what is left to do rather than acknowledge achievements.

For this research I have chosen the opposite approach: to identify human rights achievements and see what we can learn from them.

The research focuses on human rights advocacy regarding Israel's occupation of the West Bank, East Jerusalem and the Gaza Strip over the past two decades. I do not address advocacy regarding human rights violations inside Israel nor violations by Palestinian authorities. While these issues are inter-related, the struggle for human rights under Israeli occupation warrants scrutiny in its own right.

The paper begins with some general thoughts about how to measure impact in human rights advocacy, then briefly gives the broader context of human rights work in Israel-Palestine. Next I lay out the tangible achievements of the local human rights community over the past two decades. The fourth section offers a cautionary tale about how to identify achievements and failures; in some cases we may mis-characterize success as failure and vice versa. Section 5 analyzes the various components of the “human rights toolbox” and attempts to quantify the significance of each tool. Three in-depth case studies give a chronology and analysis of the factors involved in making change regarding punitive home demolitions, the Separation Barrier and accountability for civilian deaths. Section 9 draws some lessons from an overview of the achievements. The final chapter links the specific human rights achievements to the broader context of Israel's occupation, asking whether our objectives and strategies are sufficiently tailored to address the root cause and not just the symptoms of human rights violations.

1. Evaluating Impact

The human rights community can be defined very broadly. The UN Declaration on Human Rights Defenders refers to “individuals, groups and associations ... contributing to ... the effective elimination of violations of human rights and fundamental freedoms of peoples and individuals,” providing the individuals or groups are acting peacefully and do not deny the universality of human rights. Even a narrow definition of human rights defenders in our context must include private attorneys representing victims, journalists that expose violations of rights and academics researching, teaching and writing on these issues. A central component of the Israeli-Palestinian human rights community consists of some two dozen professional human rights NGOs (non-governmental organizations) and these are the primary focus of this research. While they are using a variety of tools to advance different objectives, the over-arching goal of all of the organizations is ensuring respect for human rights through the following:

- bringing about positive change that advances human rights;
- preventing changes that result in a deterioration of human rights;
- aiding people who have been harmed;
- promoting accountability for human rights violations (generally criminal prosecution of perpetrators and compensation of victims).

This research evaluates achievements in the human rights community in realizing these four goals. Individual human rights organizations generally discuss their achievements in terms of exposing violations, generating awareness among policymakers and the general public, and influencing public opinion and the public discourse regarding human rights violations. While the human rights community can point to a long list of accomplishments in this realm, for the purposes of this research they are treated not as achievements in their own right, but as necessary steps in the realization of the broader goals listed above.

Measuring impact of human rights work is inherently difficult. Change can take a long time and the impact of our work is often not immediately apparent. We are operating in a complex environment, where many factors external to the human rights community affect events. So when good things happen - positive changes that advance human rights for example - it may be difficult to attribute the change to our work. It is even more difficult to measure our role in *preventing deterioration* of human rights, although this is also an important part of human rights advocacy.

The starting point of this research was the identification of the achievements of the human rights community. Working backwards, I then built theories of change to explain how these achievements came about and the role played by the human rights community. The research relies extensively on the insights of the leaders of the local human rights community, as well as on my own two decades of experience, working at the Israeli human rights organization B'Tselem. I conducted interviews with over a dozen leading human rights activists, as well as current and former government and military representatives, private attorneys and other experts (see annex for list of interviews). I also relied on impact assessments of several individual organizations, quantitative data primarily from B'Tselem, media reports, high court judgments and other primary source material to support or refute my theories of change.

The research does not evaluate the impact of any particular organization, but rather of the sector as a whole. In some cases, a single organization clearly played a central role in the achievement being examined. In other cases, many organizations made important contributions that jointly contributed to the change.

In fact, not everyone in the human rights community embraces questions about impact. There is some suspicion regarding a utilitarian attitude corrupting the human rights community. Some critics of this approach argue that human rights work is important regardless of its impact: our job is to raise a principled voice against violations, stand with victims and serve as a historical record. Others agree that we aspire to make a change, but argue that if we select the issues to be addressed based on considerations of where we can be effective, we will necessarily neglect some important but intractable human rights issues.

As discussed above, change regarding human rights often takes years and results from many concurrent forces and developments. Our impact may not always be visible and is difficult to measure. For these reasons, selection of human rights priorities must not be linked solely to questions of impact. Strategies, tactics and tools, however, can all be improved based upon past experience of what works. This retrospective analysis of human rights advocacy over the past two decades provides a tool to ensure that we do just that.

2. The Context of our Work

The challenging human rights reality in the Occupied Palestinian Territory has been well documented. Human rights organizations have highlighted violations of the full spectrum of civil, political, economic, social and cultural rights in the West Bank, East Jerusalem and the Gaza Strip. Excessive force, violence, abuse, arbitrary detentions and other restrictions are part and parcel of the Israeli occupation, now approaching half a century in duration. Israel's military control is compounded by several structural phenomena that create systemic rights violations. These include the following factors, which strengthen and reinforce each other:

1. Extensive settlement of the West Bank with Israeli civilians. Over half a million Israelis now live in the West Bank, including 200,000 in East Jerusalem. Israel exploits the natural resources in the West Bank for Israeli benefit, first and foremost land for the settlements, but also water, tourism sites and quarries;
2. The dual and highly discriminatory legal system in the West Bank in which Palestinians are subject to military law and tried for offenses in military courts, whereas settlers, theoretically subject to the same law, enjoy the rights and privileges of Israeli citizens in all aspects of their life;
3. The fragmentation of the Palestinian territories, both as a result of the Oslo Accords and subsequent Israeli policies. Israel has completely isolated the Gaza Strip and severed East Jerusalem from the rest of the West Bank. The West Bank is divided into three types of jurisdiction (Areas A, B & C). Since the 2007 political division between the West Bank and the Gaza Strip, Palestinians are now subject to three different governing authorities – Israel, the Palestinian Authority and Hamas – all of which have a record of human rights violations.
4. Large-scale Israeli military operations in the Gaza Strip in response to Palestinian rocket-fire into Israel have wreaked enormous destruction of property and infrastructure, and claimed a high price in civilian lives.

This reality imposes difficulties for human rights organizations in performing their work. Palestinian organizations face many of the same restrictions as the broader Palestinian public, preventing necessary travel between Gaza and the West Bank and limiting travel abroad. Human rights organizations have also been subjected to additional hardships, their offices raided by Israeli military forces, individual activists detained and banned from leaving the country.¹

Israeli human rights organizations must contend with a hostile public climate, and the constant threat of governmental measures to restrict their work. Many Jewish Israelis perceive Palestinians as the enemy in a

¹ See for example: Al-Haq condemns Israeli raids against Palestinian organisations in Ramallah, 11 December 2012, <http://www.alhaq.org/advocacy/topics/human-rights-defenders/651-al-haq-condemns-israeli-raids-against-palestinian-organisations-in-ramallah>; Addameer chairperson Abdullatif Ghaith receives ban from leaving the country, 9 August 2012, <http://www.alhaq.org/advocacy/topics/human-rights-defenders/615-yet-another-palestinian-civil-society-leader-targeted-by-israel-addameer-chairperson-abdullatif-ghaith-receives-ban-from-leaving-the-country>; Palestine: Travel ban on human rights defender Mr Shawan Jabarin continues, December 1, 2011, <https://www.frontlinedefenders.org/node/16756>.

national conflict and this increases opposition to Palestinian human rights. In polling done by B'Tselem, over half of the population consistently express extremely hostile views toward human rights organizations and Palestinians' rights. Only 15-20% of Israelis express support for B'Tselem, the brand name for human rights in Israel. The limited support for Palestinian human rights has remained fairly constant for over a decade.

Beginning in 2009, the Israeli government has proposed legislation to restrict funding for human rights organizations, either by placing a limit on funds NGOs can receive from European governments or by taxing those funds. To date, no such restrictions have been legislated, though new proposals are currently before the Knesset.

This is the context in which human rights work takes place and in which achievements must be placed.

3. The Achievements of the Human Rights Community

Human rights achievements are invariably partial. The situation improves, but problems remain. A policy is amended to better respect human rights, but the policy remains imperfect. Furthermore, the situation isn't static. Achievements can be and often are reversed, making human rights advocacy a Sisyphean endeavor by definition. So recognizing success is not self-evident.

Because human rights activists are inherently critical, some will always see the glass as half-empty, or even completely empty. Yet in fact the human rights community has made impressive achievements in the face of numerous obstacles over the past two decades:

On **the individual level**, the human rights community has provided concrete aid and assistance to hundreds of thousands of people: releasing people who were arbitrarily detained, improving detention conditions, preventing demolition of a house, facilitating access to medical care, obtaining residency permits, enabling people to travel within the occupied territories and abroad, removing a roadblock to a village, obtaining compensation for victims of violence, and facilitating access to farmlands.

On **the level of public discourse** the achievements have been no less impressive. For those looking for information about what is taking place, there is no substitute to the reporting of human rights organizations. Human rights reports are the definitive source for facts, statistics and analysis regarding a broad range of issues. Journalists, diplomats, policymakers looking for information on these issues turn first to the human rights community.

The information and analysis generated by human rights organizations have shaped the public conversation, both in Israel and internationally. One example of this is the shift away from a discourse of an "enlightened occupation;" as a result of the information regarding human rights violations, few argue any more that Israel's control of the OPT has not harmed Palestinians. Not only do human rights organizations ensure attention to specific issues, their analysis also frames the discussion and influences diplomatic and political processes.

While achievements regarding individual cases and the public discourse are largely undeniable, identifying positive influence on policy change is more challenging. My research suggests that the **human rights community has effected positive changes regarding human rights in the following cases:**

Stopping systematic torture – After a decade of individual High Court petitions, as well as domestic and international advocacy, in 1999, Israel's High Court ruled that the Israel Security Agency (the ISA, also known as the *shabak*) has no authority to employ physical force in interrogations. This ruling resulted in an immediate halt to what had been the systematic torture of hundreds of Palestinians every year in ISA interrogations.

Preventing forcible transfer of Palestinians from West Bank to the Gaza Strip - In the 2002 Ajuri case, the High Court limited use of forcible relocation to the Gaza Strip ("assigned residence") to individuals who themselves constituted a security danger. Amid extensive international attention, the litigation forced the military to abandon its intention of engaging in a wider policy of forcible transfer from the West Bank to the Gaza Strip as a collective punishment (see discussion page 16).

Exposing Israel's Secret Prison and Ending its Use - In 2003, HaMoked discovered the existence of Prison 1391, a secret facility in an unknown location, with no oversight on its condition and operation, used

to hold Palestinians as well as prisoners from Lebanon and elsewhere. A High Court petition alongside extensive media and diplomatic attention ended use of this facility. It appears no prisoners have been held there since 2006.

Halting punitive home demolitions – In 2004, the Israeli military established a committee to re-examine the policy of demolishing homes of family members of Palestinians involved in violent attacks against Israelis. In February 2005, the Minister of Defense accepted this committee's recommendation to halt these demolitions. As a result of this decision, no punitive demolitions were carried out in the West Bank for almost a decade (see case study).

Rerouting the Separation Barrier – In July 2004, following an advisory opinion of the International Court of Justice, Israel's High Court voided a section of the Separation Barrier around the Palestinian village of Beit Surik, ruling that the route caused disproportionate harm to Palestinians. As a result of this judgment, Israel rerouted large sections of the Barrier to reduce harm to Palestinian communities. Subsequent petitions were also successful, including that of the residents of Bil'in, a village that conducted weekly demonstrations throughout the High Court proceedings (see case study).

Prohibiting use of Palestinians as human shields – In October 2005, Israel's High Court categorically prohibited the Israeli military from using Palestinian civilians to perform military functions. The ruling was in response to a petition based on dozens of documented cases during Operation Defensive Shield in 2002, where soldiers compelled Palestinians to enter buildings to check if they were booby-trapped; to remove suspicious objects from roads; and to walk in front of soldiers to shield them from gunfire. The High Court decision resulted in a significant reduction in such cases, though security forces continued to compel Palestinians to perform military functions, particularly in the Gaza Strip.

Family unification: obtaining legal status for foreign spouses of Palestinians in the West Bank - A decade ago, tens of thousands of people lived in the West Bank with no legal status. These were foreign spouses of Palestinians who had not received family unification permits or any other residency rights in the West Bank. In 2007, after the filing of dozens of individual petitions as well as a principled petition on this issue, the state announced that it would examine 12,000 requests for family unification as a “political gesture” to the Palestinian Authority. On the eve of the hearing on the petition, in October 2008, the state announced it would increase the number of requests to be processed to 50,000. While there has never been recognition of Palestinians' *right* to live with their spouses and children, to date 23,000 family members have received permanent residency status in the West Bank.

Delaying forced displacement of West Bank Bedouin communities - In late 2011, the Israeli military announced its intention to relocate some 20 Palestinian Bedouin communities, comprising some 2,300 people, from the area around Ma'ale Adumim settlement. Humanitarian and human rights organization succeeded in putting this issue prominently on the agenda of international diplomats and policymakers. Attention focused particularly on the community of Khan al-Ahmar, which had built a school that served the neighboring Bedouin communities. This attention forced the Israeli military to abandon, or at least freeze its plans to forcibly relocate these communities.

Mass release of administrative detainees - In the first intifada (1987-1993), Israel held tens of thousands of Palestinians in administrative detention. These numbers declined to several hundred, though some detainees were held for periods of several years without charge or trial. A 1997 public campaign in Israel

succeeded in releasing all detainees held for over two years. In 2012, a hunger strike of Palestinian prisoners and detainees resulted in release of over 150 administrative detainees.

Limiting the prohibition on Palestinians using Road 443 - In 2009, the High Court of Justice ordered cancellation of the ban on Palestinian travel along the section of Route 443 that lies inside the West Bank. The road had been built on land expropriated from Palestinians ostensibly for Palestinian use. Yet beginning in 2002, the Israeli military restricted Palestinian traffic. The Court held that the military commander is not authorized to impose a ban on Palestinian traffic and that it causes disproportionate harm to Palestinians (see discussion page 16).

Promoting accountability for harm to civilians – In 2011, the Israeli military reversed its policy of the previous decade and announced that it would automatically open a criminal investigation into every case where soldiers killed unarmed Palestinian civilians in the West Bank. Domestic efforts to promote accountability dovetailed with international efforts, most significantly Palestine's accession to the International Criminal Court in January 2015 (see case study).

Preventing displacement of communities in S Mt Hebron - In 1999 the Israeli military expelled the approximately 700 Palestinian residents of a dozen small villages in the south-eastern Hebron Hills. The expulsion orders were given on the grounds of "illegal residence in a live-fire zone," Firing Zone 918. As a result of a petition to the High Court, strengthened by a high profile public campaign inside Israel, the residents were allowed to return to their homes and cultivate their fields pending a ruling in the case. Fifteen years later, the State agreed to mediation in order to reach an agreement acceptable to both the residents and the State.

Renewing prison visits from Gaza - For five years, Israel did not allow Palestinians in Gaza to visit family members held in prisons inside Israel. In July 2012, as a result of a hunger strike of Palestinian prisoners, Israel reinstated these visits.

Decreasing Pre-trial detention - As a result of petitions to the High Court of Justice, the Israeli military decreased the pre-trial detention periods for Palestinians. Detention before seeing a judge was reduced from 8 days to 48-96 hours. Initial detention for interrogation was reduced from 30 days to 20 days. Detention periods during the criminal process were reduced as well. Detention periods for Palestinians are still twice as long as for Israelis (including settlers) and legal advocacy continues.

Many will find this list unsatisfying: the numbers of Palestinians tortured by the ISA decreased, but torture by soldiers and Border Police and also by the ISA continued. Some sections of the Barrier were rerouted, yet most of the Barrier was built and remains inside the West Bank on Palestinian lands. Punitive demolitions were halted, yet other demolitions continued, and a decade later even punitive demolitions were renewed. Virtually every achievement on the list is partial. Gains are reversed. Sometimes merely preventing deterioration is a success, rather than making improvement. In some cases, the human rights community succeeded in obtaining concrete relief for the victims without obtaining any recognition of their rights in principle. This is the nature of human rights work around the world, and Israel-Palestine is no exception. The following sections will analyze the achievements listed above in order to understand what can be learned from them.

4. When Success Looks Like Failure - On Failure Looks Like Success

Whether a new development is a net gain or a net loss in terms of human rights is not always immediately apparent. A positive ruling of the High Court may never be implemented or may lead to a more serious backlash. A loss in the High Court may actually generate important public attention, positively affect the human rights discourse and even positively alter the human rights situation on the ground. Several examples illustrate the idea that failure may look like success – but that success may also initially look like failure.

The Israeli High Court categorically accepted the petition of the Association for Civil Rights in Israel and 6 Palestinian villages regarding road 443, ruling that the military commander did not have the authority to impose a total ban on Palestinians traveling on the segment of the road inside the West Bank, and that the ban caused disproportionate harm to the residents of the Palestinian villages alongside the road. Ostensibly this judgement constitutes a categorical success for human rights. However, the ruling had very little impact on the ground. Because the High Court allowed the continued functioning of the checkpoint at the eastern end of 443 (the Jerusalem end of the road), villagers can only access the road through Israeli-controlled checkpoints and can only use 443 to travel between one village and another, not to get to Ramallah or other locations.

Likewise several petitions to remove settlement outposts have been successful, both obtaining a positive judgment that recognizes Palestinian property rights and in some cases, actually having the outposts removed. In terms of the public discourse, the petitions have succeeded in generating extensive public attention but they have also created a distinction between “illegal” outposts and all the other “legal” settlements. On the ground, these cases have actually resulted in the expansion of settlements. Each time the government is compelled to remove a few homes in an outpost, they have compensated the settler lobby with much larger settlement construction elsewhere in the West Bank. So the court cases on the outposts may have only entrenched occupation further.

Happily, the reverse is also true: sometimes what looks like a failure in fact constitutes an important achievement for human rights. The Ajuri case is one example. In 2002, the Israeli military adopted a new measure in response to violent attacks against Israeli civilians: forcible transfer from the West Bank to the Gaza Strip of relatives of a suicide bomber or a person suspected of planning attacks against Israelis. The public and legal justification for the measure was that harming the families of attackers would deter future attacks. Three West Bank Palestinians were given assigned residence orders forcing them to relocate to the Gaza Strip and HaMoked petitioned the High Court against the relocation.

Hamoked lost the case. Their petition was rejected and two Palestinians were forcibly relocated to the Gaza Strip. However, Ajuri must be seen as a trial balloon by the military for a wider policy of mass forcible transfer from the West Bank to Gaza and this policy was prevented. The legal challenge – both the military appeal and the High Court petition – made the process of assigned residence lengthy and costly for the state. Furthermore, by the time of the final judgment by the High Court, the rationale for the transfers had been fundamentally altered. It was no longer a measure against innocent people solely due to their familial relationship (i.e. a collective punishment). The High Court authorized the transfer of Intissar and Kipah Ajuri because it was found that they themselves took an active part in the suicide bombing (sewing the explosive belt and acting as a lookout). The Court rejected the transfer of Abed al-Nassar Asida, who the Military Appeals Board found gave his car to his brother without knowing what it would be used for.

The Court reiterated the prohibition on collective punishment in order to deter future attacks:

An order of assigned residence can be made against a person only if there is a reasonable possibility that the person himself presents a real danger to the security of the area. If he does not, considerations of deterring others are insufficient for making an order of assigned residence.

After Ajuri, the military no longer attempted to transfer uninvolved relatives to Gaza.

The Ajuri case was also part of a broader policy of Israel to separate Gaza from the West Bank. Yet the legal process had the exact opposite effect. Ironically, in order to argue that the order constituted an illegal deportation from one territory to another, HaMoked had to argue that the West Bank and the Gaza Strip were separate territories. In order to prove the legality of the order, the State had to argue the reverse: that the West Bank and Gaza Strip constituted a single legal territory. The High Court accepted the state's position and held that the West Bank and the Gaza Strip "are effectively one territory subject to one belligerent occupation by one occupying power."

Thus the 'Ajuri judgment prevented implementation of a new form of collective punishment. It also provided human rights advocates with a tool to strengthen the connection between the West Bank and Gaza and to advocate for access between the two areas.

5. The Human Rights Toolbox

From an analysis of the achievements of the human rights community a toolbox emerges of various advocacy strategies. In an attempt to quantify impact, I have assigned a numerical value to represent the significance of each tool in each of the achievements: 0 indicates the tool played no role and 3 indicates an essential, decisive contribution. These numbers were assigned based on my assessment and then verified with experts from each case. As there is no mathematical formula to give a precise calculation, the values should be treated as indicative rather than definitive. I have not included some of the newer advocacy strategies (universal jurisdiction and video) in the matrix.

Matrix of tools and their significance

	Documentation	Israeli policy dialogue	Int'l Advocacy	Litigation	Israeli Public	Palestinian protest
Stopping systematic ISA torture	3	1	2	3	1	0
Halting punitive house demolitions	1	2	2	2	0	0
Rerouting the separation barrier	3	0	3	3	2	2
Reducing use of Palestinians as human shields	2	0	0	3	0	0
Preventing forced displacement of Bedouin communities	1	0	3	2	0	0
Mass release of administrative detainees	2	1	1	0	2	3
Family unification – West Bank from Abroad	1	0	1	2	0	0
Reducing prohibition on road 443	1	0	1	3	0	0
Promoting accountability	1	2	3	1	0	3
Preventing forcible transfer from West Bank to Gaza	1	0	1	3	0	0
Preventing displacement in S Mt Hebron	3	1	1	3	2	0
Exposing Secret Prison 1391	2	0	2	2	1	0
Renewing Prison Visits from Gaza	1	1	2	0	0	3
Shortening detention periods	1	2	1	2	0	0
Average value of each tool	1.6	0.7	1.4	2.1	0.6	0.8

Documentation and Reporting

The documentation work of the human rights community constitutes a crucial first step to almost any successful advocacy. The importance of documentation is reflected in the high score in the matrix, second only to litigation.

Israel-Palestine probably has a larger corps of foreign journalists than any other conflict zone on earth. In this small territory with great international attention, ostensibly the media will seek out and cover all issues. Yet some human rights violations continue under the radar until they are exposed by human rights organizations. No one knew of the existence of Israel's secret prison, facility 1391, until HaMoked tried to locate a prisoner held there. While everyone saw the Separation Barrier under construction, it was not understood to be a human rights issue until B'Tselem published the intended route and the expected human rights implications. Even those issues prominently on the public agenda require the proper framing and analysis to be addressed as human rights issues. In other cases, the phenomenon is known in general terms, with no statistics to quantify its scope.

The battle against torture illustrates the importance of the various kinds of documentation and reporting of the human rights community. Al-Haq first exposed ISA methods of torture in 1984. Initially, the Israeli government denied that Palestinians were being physically abused in interrogations. Human rights groups publicized testimonies of Palestinians subjected to various forms of abuse in interrogation. The government subsequently denied the scale of the violations. In response, the human rights community documented that various forms of abuse were standard practice in the interrogation of hundreds of people. Next the government argued that even if such practices were being used, they did not constitute torture, or that "the defense of necessity" entitled interrogators to take such "exceptional measures" in response to "ticking bomb" situations. The human rights community's legal analysis and framing of the discussion was crucial also to respond to these rhetorical attempts to justify torture. The documentation lay the groundwork for international advocacy and the High Court petitions. And after the High Court outlawed torture, the factual documentation was again crucial to monitor to what extent the ruling was being respected.

As the torture example illustrates, legal analysis, defining the scope of the problem, placing the violation in a broader context and engaging with the official justifications for the violation are equally important to the provision of the raw facts from the ground.

The information generated by the human rights community mobilizes and empowers other influential actors. It also feeds into all the other tools: litigation, policy dialogue, international advocacy and mobilizing popular opposition. The press constitutes an important tool for disseminating the documentation and analysis of the human rights community. Often press coverage is the first step in putting the issue on the public agenda and also generating the attention of policymakers. This is true both in Israel and internationally.

Accuracy of the information is crucial. Human rights organizations are subjected to rigorous scrutiny, particularly by those who would like to silence their criticism. Israeli government officials and groups whose primary goal is to discredit human rights groups exploit any mistakes or inaccuracies. Unreliable or irresponsible reporting by a single organization can have damaging implications on the sector as a whole. For this reason, human rights organizations need to be rigorously accurate in the information they produce.

Domestic Israeli Litigation

The bulk of the litigation to promote human rights takes place before the High Court of Justice. This court enjoys immense prestige, both domestically and internationally. Advocates of the Court take particular pride in the fact that the Court is accessible to every Palestinian from the Occupied Territories and that it issues judgements, sometimes in real time, on issues regarding the conduct of military activities.

While the accessibility of the Court is indeed a unique phenomenon, the rulings of the High Court engender much criticism from the human rights community. On matters of principle and petitions challenging policy, the Court rarely sides with human rights organizations against government or military policy. Nonetheless, the Court has played a central role in virtually every human rights achievement. In the matrix of tools, it received the highest score. The High Court positively influences human rights in several ways:

- On rare occasions, the High Court issues a ruling requiring the State to amend its policies and practices to bring them in line with human rights obligations. In these cases, the role of the High Court is definitive: the High Court judgment is what actually brought about the change. Examples include the 1999 prohibition on torture, the 2005 prohibition on the use of Palestinians as human shields, and several rulings requiring rerouting of portions of the Separation Barrier.
- In many other cases, High Court petitions are successfully resolved through out-of-court settlements. In its 25 years of operation, HaMoked filed over 1,100 petitions to the High Court where a Palestinian was denied a permit to travel abroad. In over 96% of these cases, the mere filing of the High Court petition was enough for the denial to be reversed and the person to be granted the travel permit. One academic study of High Court petitions between 1989-1995 found that 69% of ACRI petitions and 89% of HaMoked petitions were resolved successfully through out-of-court settlements.²
- Multiple petitions to the Court can erode government and military resistance and force a change in policy. In this strategy, dozens of individual petitions are filed until either the court issues a ruling on the broader policy or the military adopts a policy change. The principled petition against torture was filed in 1994 yet the Court avoided issuing a ruling. Over the next five years, organizations and attorneys filed over 100 individual petitions on behalf of Palestinians under interrogation until the court finally ruled in 1999.

HaMoked used this same strategy regarding punitive home demolitions and family unification. In fact, the Court never issued a principled judgment on either of these issues, nor required the military/state to change its practices. However, it is likely that the endless discussions before the High Court contributed to the military's willingness to re-examine and ultimately change the existing policy in both cases.

- The fear of High Court scrutiny may also serve as a deterrent to the adoption of even worse policies. Representatives from the Ministry of Justice and from the MAG corps report that the

² Dotan and Hofnung

knowledge that human rights organizations are likely to petition the High Court prevents policymakers from adopting certain policies and practices that violate human rights.³

Domestic Israeli policy dialogue

This category includes Israeli Knesset discussions on policies affecting human rights, engagement of government civil servants, including senior Justice Ministry officials, and various forms of advocacy with the Israeli military. The latter constitutes the central address for domestic advocacy given that, under the law of occupation, the military fills the role of the sovereign in the Occupied Territories. The military acts as legislator: military orders and not Knesset legislation have the force of law. Likewise the military is both the Executive Branch and the Judiciary, with Palestinian suspects tried before military courts.

Human rights organizations engage in three types of advocacy vis a vis the military:

- ☐ advocacy for individual cases – demanding permits necessary for daily life; demanding the opening of criminal investigations when Palestinians are harmed by soldiers; defending Palestinians indicted and tried in military courts;
- ☐ dialogue with the military legal system – on issues like the definition of the age of criminal responsibility, investigation policies, lengths of pre-trial detention, treatment of minors throwing stones, or what constitutes a legitimate military target;
- ☐ policy dialogue either with the operational commanders regarding military operations, or with the Civil Administration, for example on issues related to planning and destruction of Palestinian communities.

However, in practice the military is not sovereign in the occupied territories, but rather an organ of the Israeli state, subordinate to the Defense Ministry. On the issue of settlements, the military is merely the security detail for a policy set entirely by the government. Given the prolonged and entrenched nature of the occupation, the civilian leadership influences all aspects of military policy. For this reason, the Knesset and ministries such as Justice and Defense also constitute potential levers of influence. The Knesset Law Committee was instrumental in pushing the military to re-evaluate punitive home demolitions, for example, leading to the 2005 moratorium (see the case study).

The positive role of domestic Israeli policy dialogue in halting punitive home demolitions is the exception to the rule. This tool received one of the lowest scores in the matrix of various tools indicating that it rarely played a positive role in the achievements of the human rights community. This is due to two inter-related factors: the human rights community does not invest many resources in this strategy (Palestinian organizations rarely engage in dialogue with Israeli officials and most Israeli organizations only do so intermittently); and this policy dialogue – both with the military and in the Knesset – is often not effective, which serves as a disincentive to organizations to invest additional resources in this strategy.

Mobilizing domestic Israeli opposition

The Israeli public has rarely aided in promotion of Palestinian human rights; this strategy received the lowest score in the matrix. More often Israeli public opinion serves as a negative factor: public *hostility* to

³ Internal ACRI evaluation that included interviews with Justice Department and MAG officials.

Palestinian rights, or demands for more aggressive security measures to protect Israelis increase pressure on politicians to violate rights.

Given the public climate, generating a majority of Israelis to support greater respect for Palestinian human rights is not a viable strategy. This does not mean that Israeli public opinion does not play a role in policy change. The 1999 legal advocacy against forced displacement of Palestinian communities in South Mount Hebron was strengthened by a public campaign in which high profile Israeli personalities visited these communities and spoke out against their displacement. A moving opinion piece by Israeli author David Grossman is credited with encouraging the judges to issue an interim injunction which has prevented displacement of these communities to this day.

In 1997, a group of Israeli activists organized a high-profile campaign to release long-term administrative detainees. An Israeli soldier went to prison for refusing to serve in the Megiddo prison where administrative detainees were being held. Imad Sab'i, held in Megiddo, wrote an eloquent letter to the soldier, and their exchange, published in the newspaper, generated much interest. The Israeli television's Friday evening news aired an item on administrative detention featuring Sab'i's family. I wrote B'Tselem's 1997 report on administrative detention and met with the OC Central Commander during this period to push for changes. While he justified the detentions and indicated no willingness to reconsider, he noted that even his wife had been "nagging him" about administrative detainees. A few months later, all of the long-term detainees had been released.

These cases did not generate the support or even the attention of a *majority* of Israelis. However they did create a certain resonance in the Israeli press and among the relevant decision-makers, and this played a positive role. The examples show the potential of a vocal, well organized minority of Israelis. While this cannot constitute the primary advocacy strategy in the current climate, strategic use of popular organizing inside Israel can have impact.

Leveraging Palestinian popular protest

Both the Palestinian Authority and Palestinian popular organizing are important factors in the environment in which the human rights community operates. The Palestinian Authority often does not prioritize human rights in its dialogue with Israel and the international community; in some cases it even constitutes an obstacle to advancing rights. Family unification claims, for example, are stymied as the PA accedes to the instructions of their Israeli counterparts and refuses to submit family unification requests. Occasionally, however, the PA has played a crucial role in promoting human rights, such as its involvement in having the Separation Barrier referred for an advisory opinion of the International Court of Justice. Another example is Palestine's accession to the International Criminal Court, which constitutes a potentially significant new tool to promote accountability. In both these examples, Palestinian popular organizing and Palestinian human rights organizations pushed the PA to engage with these international bodies (the ICJ and the ICC).

Palestinian protests played a decisive role in at least two other achievements of the human rights community:

- ☐ The Friday demonstrations against the Separation Barrier in Bil'in contributed to the High Court ruling that the Barrier around the village had to be changed to return lands to the village (see case study);

- The 2012 hunger strikes of prisoners and administrative detainees succeeded in releasing over 150 detainees and in renewing prison visits from families in Gaza. Organizations like Addameer provided the context and analysis that engaged European policymakers to speak out regarding the hunger strike.

Palestinian popular protest received a relatively low score in the matrix of tools. These examples show the potential of popular organizing to play a greater role in promoting Palestinian human rights.

Mobilizing international popular opposition

Palestinian civil society served as the catalyst for a global movement to apply economic pressure on Israel. This BDS (Boycott, Divestment, Sanctions) movement has garnered extensive attention in Israel, with Prime Minister Netanyahu naming it alongside the Iranian nuclear threat as among Israel's top security concerns. The movement took center-stage in global political discourse when both US President Barak Obama and Secretary of State John Kerry used the movement as a "bogey-man" to warn Israelis that failure to negotiate a successful peace deal with Palestinians will lead to increased isolation and boycotts. This indicates the influence of the movement in shifting discourse.

The goals of the BDS movement extend beyond an agenda of advancing human rights, for example their promotion of a One-State solution to the conflict. However, Palestinian human rights organizations have tailored the logic of BDS to advance a narrower human rights agenda, organizing campaigns targeting corporations involved in the occupation: companies doing business in Israeli settlements, companies involved in construction of the Separation Barrier and those like G4S supplying equipment to the Israeli prison system.

While these efforts have gained some traction, with universities, banks, charities and trade unions around the world divesting from companies operating in the West Bank, only on rare occasions have they had tangible impact on the ground. Palestinian organizations point with satisfaction to the decision of Sodastream to relocate its plant from a settlement industrial zone⁴ and the decision of G4S, which was the target of a concerted Addameer campaign, to end all its contracts with Israeli prisons within three years.⁵

Palestinian organizations have also targeted settlement products, with some working (successfully) to exclude settlement products from the beneficial terms of the EU-Israel Association Agreement and others calling for a European ban on settlement products, a move they see as gaining traction.

International Advocacy

International advocacy constitutes an important component of virtually every achievement of the human rights community, as reflected in the high score in the matrix of tools. The central strategy is advocacy with the local diplomatic community and policymakers in Europe and the United States. The international press also plays a role in amplifying the concerns of the local human rights community and placing them on the international agenda. In some cases, international bodies, such as UN agencies, the ICJ and the ICC have played a decisive role.

⁴ "SodaStream Closing West Bank Factory After Boycotts," Bloomberg Business, October 29, 2014.
<http://www.bloomberg.com/news/articles/2014-10-29/sodastream-to-close-factory-at-center-of-israel-palestinian-spat>

⁵ "G4S to end Israeli jail contracts within three years," FT June 5, 2014.

In rare cases, international bodies have an official role in the advocacy process. In the “Goldstone process,” regular review by the Human Rights Council and other UN bodies was formal and highly public and drove domestic advocacy efforts (see case study). Likewise the UN General Assembly’s referral of the Separation Barrier case to the International Court of Justice gave this international body a formal role (see case study).

In most cases, the role of the international community is primarily behind the scenes, but no less influential. In the torture case, pressure from the international legal community, including respected jurists and high court judges from around the world, played a positive role in pushing the Court to finally issue a judgment. The outspoken objections of European governments and the U.S. administration has prevented construction of the E-1 settlement.

Universal Jurisdiction and the International Criminal Court

For over a decade, Palestinian organizations have worked with international partners to pursue international accountability – criminal charges and compensation suits – for Israeli crimes. To date, these suits have only been possible in states whose legal system includes universal jurisdiction provisions, i.e. whose courts exercise jurisdiction over internationally condemned crimes regardless of where they were committed, and often without the state having a connection to the perpetrator or the victim. Two high-profile cases illustrate the potential and limitations of this strategy:

- In 2005, a UK judge issued an arrest warrant against Major-General Doron Almog, former head of the Israeli Southern Command on suspicion of committing a grave breach of the Fourth Geneva Convention (which is a criminal offence in the UK). The warrant came in response to a complaint submitted by the Palestinian Centre for Human Rights (PCHR) and UK solicitors Hickman & Rose regarding the demolition of 59 houses in Rafah refugee camp in January 2002. Intervention by the UK Foreign and Commonwealth office prevented the UK police from executing the warrant. Almog returned to Israel under the glare of the media spotlight and had to answer uncomfortable questions in the international media. Following issuance of a similar arrest warrant against former Israeli Foreign Minister Tzipi Livni in 2009, the UK government passed legislation specifically designed to protect senior Israeli officials while visiting the UK.⁶
- PCHR together with the U.S. organization Center for Constitutional Rights brought a class-action lawsuit against former Director of the ISA Avi Dichter for his participation in the aerial bombing of a building in Gaza that targeted Saleh Shehadeh and killed 14 other Palestinian civilians. The suit sought financial compensation under the U.S. Alien Tort Statute. A district court dismissed the case in 2007 and the plaintiffs appealed. The appeal was denied in 2009.

While these and similar cases have not succeeded, they did generate extensive press coverage and the attention of Israeli policymakers.

The possibility of holding Israelis accountable for crimes against Palestinians received a tremendous boost in January 2015 with Palestine’s accession to the International Criminal Court. Ideally the Court should both deter future crimes and promote greater domestic accountability for crimes that do occur. The very strong reaction of the Israeli government to Palestine’s accession shows the potential influence of the Court, even if it never tries a case (see case study).

⁶ Police Reform and Social Responsibility Act 2011.

Video documentation

Video is one of the newer strategies in the human rights toolbox. I have not included it in the matrix of tools, as regarding most of the achievements, this strategy had yet to be developed. Pioneered by B'Tselem, many organizations now use video to capture real-time evidence of human rights violations, as a research tool and to produce visual representations of human rights problems for public education purposes. Video strategies have already had some impact on the ground:

- 1) Video has assisted in promoting accountability: when violence is captured on video, it significantly increases chances of a criminal investigation being opened;⁷
- 2) Video has defended Palestinians against false claims from Israeli settlers and soldiers, getting Palestinians released from arbitrary detention.⁸
- 3) Video has acted as a deterrent to violence. In the H-2 section of Hebron and in South Mt. Hebron, where B'Tselem has distributed 55 video cameras to Palestinian volunteers, Palestinians report that the presence of the cameras has reduced incidents of settler violence;
- 4) Video documentation has generated extensive public attention to neglected human rights issues. Hundreds of thousands of people have watched short video clips regarding restrictions on movement, detention of minors and settler violence, a much larger audience than will read reports on those same issues.⁹

⁷ See for example: Video: Officer fires tear gas canister at B'Tselem videographer, causing injuries, http://www.btselem.org/press_releases/20131201_beit_omar

⁸ See Video: Detention of Palestinians who complained of trespassing settlers (http://www.btselem.org/press_releases/20130430_arrest_of_a_zaro_family) and

⁹ See viewing data on B'Tselem's YouTube channel: <https://www.youtube.com/user/btselem>

6. Case Study: Halting Punitive Home Demolitions

Of all Israeli policies that raise human rights concerns, punitive house demolitions are perhaps the clearest example of a collective punishment. The demolitions explicitly target innocent people, family members of Palestinians suspected of attacks against Israelis. The official objective of the house demolition policy is deterrence, based on the assumption that demolishing homes of the relatives of Palestinians who perpetrated, or are suspected of involvement in, attacks against Israeli citizens and soldiers would deter others from carrying out such attacks. So the rationale of the policy is to harm innocent people in order to convince others from committing a crime.

The scope of home demolitions has risen and fallen over the past four decades but reached a peak during the second intifada, from October 2001 through 2004, when the Israeli military demolished 664 Palestinian homes as a punitive measure, leaving over 4,000 Palestinians homeless.

In November 2004 the Israeli military established a committee, chaired by Major General Ehud Shani, to re-evaluate the policy of punitive house demolitions. In February 2005, then Minister of Defense, Shaul Mofaz, adopted the committee's recommendations to halt punitive house demolitions and for the next decade there were no punitive demolitions.¹⁰

The factors leading to the policy change

What caused the military to establish the committee to re-examine punitive home demolitions and what lead the committee to recommend halting this policy? What role did the human rights community play in these developments?

Punitive home demolitions were a priority issue for the human rights community for decades. Some claim that legal and public advocacy succeeded in reducing home demolitions as early as the first intifada.¹¹ In July 1989, Israel's High Court of Justice accepted the petition of ACRI and ruled that property owners had the right to appeal demolitions. While these appeals rarely, if ever, stopped a demolition, it did cause delays. The fact that demolitions could no longer be carried out immediately may have led to a subsequent decline in the use of punitive demolitions. Punitive demolitions did decrease and even halted between June 1992 and 1996, though this may also be attributed to the election of the Labor-Meretz government in June 2002. No punitive demolitions took place between 1998 and September 2001.

With the outbreak of the second intifada, Israel resumed punitive home demolitions with a vengeance. The human rights community was quite active on the issue throughout the second intifada. HaMoked filed 67 petitions against individual demolitions between 2002-2004. B'Tselem released a comprehensive report in 2004 and campaigned on the issue, both inside Israel and internationally. B'Tselem's campaign served as the trigger for a discussion in the Knesset Law Committee in November 2004 in which the Military Judge Advocate General was called to justify the policy. Then-Chair of the Committee, MK Michael Eitan also

¹⁰ With the exception of the demolition of one home and the sealing of two others in East Jerusalem in 2009.

¹¹ Efrat Zilber, 'The Demolition and Sealing of Houses as a Means of Punishment in the Areas of Judea and Samaria During the Intifada up to the Oslo Agreement', MA thesis, Bar Ilan University, Israel, 1997 (Hebrew); internal ACRI assessment.

summoned the MAG for a private conversation with MK Zahava Galon (Meretz) and Professor David Kretzmer in which both challenged the legality and morality of punitive demolitions.

In December 2004 an unusual hearing took place at the High Court of Justice. HaMoked petitioned against the demolition of the home of Mahmoud Ali Nasser, whose son was charged with recruiting the suicide bomber that killed seven people and wounded many others in the Hillel Cafe in Jerusalem on August 9, 2003. At the hearing, Justices Hayut, Cheshin and President Barak (the latter two approaching their retirement from the Court) posed hard questions to the State's representative regarding the legality and morality of punitive home demolitions. According to attorneys who had filed dozens of similar petitions, such a challenge to the policy was unprecedented.

The hearing concluded with the Court declaring a 90 day postponement "in order for the sides to consider a proposal in which only one room on the second floor [of the Nasser home] would be demolished or sealed." It was in this 90 day period that the Shani Committee recommended the halt to all punitive home demolitions.

The proceedings and conclusions of the Shani Committee remain classified. However, in the course of legal challenges to a demolition order in East Jerusalem in 2008, HaMoked received a powerpoint presentation prepared by the military regarding the Committee's work. The presentation states the following:¹²

Why is a re-examination [of the policy] required now?

- *Israel's standing with the international community, including the appearance of international legal authority that challenges the authority of the High Court of Justice.*
- *The legitimacy of the action – the action is legal but is liable to not stand the test of legitimacy;*
- *The military's self-perception – conscience and morality;*
- *Israeli society's perception of the military;*
- *The timing: post-Arafat – political horizon. The threat has not been removed – successes in preventing terror in the face of multiple warnings*

The presentation gives both the military's rationale for the demolitions, and also raises questions about its effectiveness and legality:

A tool in counter-terrorism: house demolitions demonstratively lead to investing terror's money in compensating families, even harming other terror activity.

Deterrence: House demolitions have been proven to constitute an additional factor in deterring terrorists.

Everything depends on the context: house demolitions as strengthening the national identity of the Palestinian collective.

¹² My translation from Hebrew original. The Hebrew presentation can be found on the HaMoked website: <http://www.hamoked.org.il/TimelineFramesPage.aspx?returnID=timelinehousedemolitions&pageurl=http://www.hamoked.org.il/Document.aspx?dID=110467%22>

"Liberalism" – in a state that committed itself to values of liberalism and democracy, house demolitions is viewed as collective punishment that does not accord with the principle of human dignity and property rights.

The presentation then suggests that house demolitions achieves the *opposite* effect from that intended:

The activity harms individuals – but in large numbers

The activity damages personal property – but in large numbers

Fanning hatred

Strengthening collective public identity

→ **Encourages terrorism**

The presentation refers to the “price of the demolition,” meaning both international condemnation, as well as the resentment created among Palestinians and concludes that: “The “price of the demolition” in its broadest sense has intensified compared to its usefulness.”

The final slide of the presentation concludes that:

The IDF, in a Jewish and democratic state, cannot function on the edge of legality and even more so, on the edge of legitimacy!!!

Interestingly, the presentation addresses all forms of home demolitions, linking punitive demolitions to demolition of homes built without permits and demolitions in the course of military operations. The presentation (rightly) points out that Palestinians view all forms of demolition similarly, and recommends reduction/halt of ALL forms of home demolition.

The presentation includes three different sets of arguments for halting punitive home demolitions:

- legality and morality – The legal critique is phrased cautiously: “the action is legal but is liable to not stand the test of legitimacy”; “house demolitions is viewed as collective punishment.” This is to be expected given that this is a military committee reviewing a policy that has been conducted for decades with the approval of the High Court of Justice. However, it is clear that legal and moral concerns played a crucial role in the Committee’s deliberations.
- international criticism – the presentation refers explicitly to considerations regarding Israel’s international standing.
- effectiveness - the official justification is that the policy is no longer effective as a deterrent, and may even serve as an incentive to terrorism. Some legal experts familiar with the Committee’s deliberations argue that this is somewhat of “a cover story,” i.e. that the Committee had to base its recommendation to halt demolitions on effectiveness, although the legal and moral considerations in fact were paramount.

The first two arguments clearly show the influence of the human rights community: in mounting a legal and moral critique of the policy and in mobilizing the international community to speak out against the policy.

The Significance of the Policy Change

Some human rights activists dismiss the significance of the 2005 policy change. They raise two arguments:

- Demolitions continued for other reasons: punitive house demolitions is only one of the legal frameworks under which the Israeli military demolishes Palestinian homes in the OPT. In the decade of the moratorium on punitive demolitions, Israeli forces carried out over 1,300 “administrative demolitions” in the West Bank and East Jerusalem of homes built without permits. In Gaza, thousands of homes were destroyed in the course of military operations.
- The halt to punitive demolitions was the result of an assessment that the policy was not effective, not recognition that the policy was illegal or immoral.

These arguments have some merit, yet they do not invalidate the significance of the moratorium on punitive demolitions. There was no *increase* in other forms of demolition during the period that punitive demolitions halted. Therefore, hundreds of families were spared this cruel treatment as a result of the policy change. Even if the motivation for the change was solely due to security considerations, the result for the families is the same: their rights were not violated; their homes were not destroyed. However, as indicated above, the policy change was not solely due to security considerations. Human rights considerations – and human rights organizations – definitely played a role.

Finally, the rhetorical significance of the policy change deserves mention. For years the Israeli military argued that house demolitions, while they do harm families, are “an effective method that can deter terrorists.”¹³ This argument fits into the broader understanding that Israeli security and Palestinians' human rights constitute a “zero sum game” in which promoting one necessarily harms the other. In 2005, the Shani Committee said the opposite: by harming Palestinians the military in fact *endangers* Israeli security. The positive link between respect for human rights and ensuring securing extends far beyond punitive home demolitions. This is a central message of any human rights advocacy: that the best way to ensure security is to respect human rights. The fact that now the Israeli military has voiced this same message makes it all the more persuasive.

Reversal of the Moratorium?

In the summer of 2014, following the abduction and murder of three Israeli teenagers in the West Bank, the security establishment announced the resumption of punitive house demolitions. Four Palestinian homes were demolished between July and November 2014.

Despite the declared renewal of punitive demolitions, the military has not returned to the automatic demolition of homes following attacks on Israelis. Demolition orders have not been issued following every attack by Palestinians against Israelis, as was the case in the past, and the military has not carried out demolitions even after issuing demolition orders. The military issued six punitive demolition orders after the

¹³ See for example the response of the IDF Spokesperson's Office, published in the back of *Through No Fault of Their Own: Israel's Punitive House Demolitions in the al-Aqsa Intifada*, B'Tselem, November 2004.

demolition of the four homes last summer. The families, through HaMoked, petitioned the High Court of Justice, which approved the demolitions. However, to date, over six months after the High Court's approval, none of these demolitions have been carried out.

To conclude, the advocacy of the human rights community was a significant factor that led to the decision to re-evaluate the policy of punitive demolitions. The international pressure and the concerns about legality factored into the re-evaluation itself and the ultimate decision to halt these demolitions. As a result, hundreds of families were spared the collective punishment of home demolitions.

The partial renewal of punitive demolitions shows very clearly the arc of human rights work: while this is clearly a setback, not all of gains have been reversed: two steps forward, one step back.

7. Case Study: Rerouting the Separation Barrier¹⁴

In June 2002, the Israeli cabinet decided to construct a physical barrier separating Israel and the West Bank to regulate the entry of Palestinians from the West Bank into Israel. In most areas, the Separation Barrier consists of an electronic fence flanked by roads, barbed-wire fences, and trenches. In a few locations, the Barrier is a concrete wall six to eight meters high. The full route of the Separation Barrier – the portions already built, those under construction, and those not yet implemented – is 709 kilometers long, twice the length of the border between Israel and the West Bank (the Green Line) due to its circuitous route.

The Barrier has imposed new restrictions on movement for Palestinians living near its route. Israel established dozens of checkpoints and gates along the completed sections of the Barrier that allow permit holders to pass. However, not all those who request permits receive them, nor are the Barrier gates open at all times. Palestinians living in those villages entirely encircled by the Barrier particularly suffer. They require a permit to continue living in their village and must cross through checkpoints to leave their village. In addition, tens of thousands of Palestinians have difficulty reaching their farmlands and marketing their produce to other areas of the West Bank. The Barrier also impedes Palestinians access to jobs, hospitals and educational institutions.

In June 2004, the Israeli High Court ruled on a petition filed by a number of villages northwest of Jerusalem, including Beit Surik. The Beit Surik decision determined that the proposed route around these villages caused disproportionate harm and must be changed. In light of this ruling, the Israeli security establishment reviewed and proposed changes to the entire route. The amended route was approved by the Israeli Cabinet in February 2005.

Minor changes were made to the Barrier's route in response to dozens of High Court petitions. The Court also mandated two more significant changes. In September 2005, the High Court of Justice ruled that the state must alter the barrier's route around the settlement of Alfei Menashe, such that the Palestinian villages Wadi Rasha and Ras a-Tira would no longer be entirely surrounded by the Barrier. In September 2007, the High Court of Justice ruled that the barrier's route around the village of Bil'in must be adjusted in order to return 700 dunams of land to the village that had been cut off from it to expand the Modi'in Illit settlement. This section was moved in 2011.

Factors in the Amendments to the Barrier's Route

Human rights organizations conducted extensive international advocacy alongside the litigation to challenge to the Barrier's route. The organizations played a central role in putting the issue on the international agenda and in "branding" the Barrier as a human rights concern. Documentation and analysis by the human rights organizations was crucial, particularly given the lack of transparency in the process of planning and approving the Barrier.

¹⁴ The ICJ advisory opinion refers to "the wall" and most Palestinian organizations use the term "annexation wall". Israeli officials generally refer to a "security fence." I have used the more neutral term Separation Barrier, the term used by UN OCHA as well as the European Union External Action Service.

Based on the documentation of B'Tselem, the Negotiations Support Unit of the PLO drafted a series of resolutions which the UN General Assembly passed in December 2003, demanding that Israel halt construction of the Barrier and requesting an urgent advisory opinion of the International Court of Justice regarding “the legal consequences arising from the construction of the wall being built by Israel.”¹⁵ This process generated extensive media coverage, both around the world but also in Israel. The PLO’s presentation to the ICJ was broadcast live on Israeli television, perhaps the first time that most Israelis saw the route of the Barrier and heard the criticism of its consequences.

The Israeli High Court issued its decision in the Beit Surik case on 30 June 2004, just 10 days before the ICJ was to give its opinion. The two decisions are substantively different. The ICJ opined that any construction of the Barrier inside the West Bank was illegal. Israel’s High Court ruled that the Barrier was legal but that the route chosen caused disproportionate harm to Palestinians and must be moved. It is extremely rare for the Court to reject a policy which the State argues is necessary for security. The ICJ and international advocacy certainly influenced the Court. Domestic Israeli opposition to the route also played a role. The Council for Peace and Security, an Israeli NGO comprised of retired military officers, joined the Beit Surik petition and proposed an alternate route which would achieve Israel’s security objectives while lessening the harm to Palestinians. High profile residents of Mevasseret, an Israeli town adjacent to Beit Surik also joined the petition.

Villages harmed by the Barrier initiated grassroots protests in 2003, with several villages organizing weekly demonstrations in which residents of the village, together with Israeli, Palestinian and international supporters protested every Friday. Bil’in began its weekly protest in February 2005. At the same time, the villagers petitioned Israel’s High Court of Justice against the proposed route, which would leave about half of the village lands - 1,900 dunams - west of the barrier. The route of the barrier in this area was designed to facilitate the future expansion of the Modi’in Illit settlement.¹⁶

On 4 September 2007, the High Court of Justice [accepted the position](#) of the village’s residents, declaring that the route does not satisfy the standards of proportionality. The court instructed the state to consider an alternate, less injurious route. Bil’in’s attorney Michael Sfard sees a clear link between the weekly protests and the High Court ruling. He recalls one hearing in which the Justices specifically asked him, “Mr. Sfard, what is unique about Bil’in that they are demonstrating there every week?” In fact, Bil’in was not uniquely harmed by the Barrier. What is unique about Bil’in is that their protest succeeded in putting the village “on the map” for the Israeli public and the international community, and also for the High Court justices.

It took several years before the Barrier in Bil’in was moved. The alternate route proposed by the state was also invalidated by the Court in 2008, which instructed that “the security consideration that will determine the new route will take into account existing buildings [in the settlement] and not plans for future construction. The security distances will be measured from existing buildings and not from planned buildings that have not yet been constructed.” In June 2011, work began to move the Barrier. The

¹⁵ UNGA Resolutions ES-10/13 and ES-10/14. See <http://unispal.un.org/UNISPAL.NSF/0/0163EF0C6E99036F85256EB3004E6EBF#sthash.IW7oZzMQ.dpuf>

¹⁶ See: “Under the Guise of Security: Routing the Separation Barrier to Enable the Expansion of Israeli Settlements in the West Bank. B’Tselem and Bimkom - Planners for Planning Rights, December 2005.

demonstrations in Bil'in have not ceased as the adjusted route still leaves 1,300 dunams of village lands west of the barrier.

The Significance of the Amendments to the Barrier's Route

The initial route planned for the Barrier would have isolated 16% of the West Bank, directly harming 875,000 Palestinians: 250,000 Palestinians would have been encircled in enclaves; 400,000 would have lost unimpeded access to farmland and vital services, and 225,000 Palestinians in East Jerusalem would be separated from the rest of the West Bank.

The current route of the Barrier encircles or isolates 11.9% of the West Bank - some 280,000 dunams of West Bank land were "saved" compared to the previous route. The number of people directly harmed was also significantly reduced. If completed, the current route would directly harm some 500,000 Palestinians: the Barrier would encircle 30,500 people and would cut off farmlands or access to vital services to another 244,000 people. Even these numbers are still theoretical, as only 62% of the Barrier has been completed, with construction frozen since 2012. 11,000 people currently live in enclaves. The harm to the 225,000 Palestinians in East Jerusalem remains the same, as the Barrier (most of which is completed in this area) isolates Jerusalem from the rest of the West Bank.

The most invasive sections of the Barrier, extending deep into the West Bank - around Ariel, Kedumim and Immanuel settlements in the northern West Bank and around Ma'ale Adumim in the center - have not been constructed. It appears that outspoken opposition by the U.S. administration and European states succeeded in preventing completion of these portions of the Barrier.

The achievements regarding the Separation Barrier are of course partial. Long stretches of the Barrier isolate Palestinians from the land and separate communities. However, without a doubt the human rights community succeeded in effecting significant improvements to the Barrier route that improved the lives of Palestinians in adjacent communities. The advocacy on this issue provides an excellent illustration of the complementarity of various advocacy strategies: Israeli legal challenges, international legal opinion, international policy dialogue, leveraging domestic Israeli opposition and Palestinian popular protest.

8. Case Study: Promoting Accountability

Part 1: Ensuring criminal investigation of civilian deaths

In 2000, at the beginning of the second intifada (Palestinian uprising), the Israeli Military Advocate General (MAG) changed the policy regarding investigation of Palestinians killed by Israeli soldiers. The MAG declared that the reality in the Occupied Territories had become an “armed conflict” and there was no longer a justification for automatically opening a Military Police (i.e. a criminal) investigation in these cases. Instead, in such cases, an operational debriefing would be conducted by the unit involved. If this inquiry and other findings revealed that soldiers had seriously breached the open-fire regulations, an investigation would be opened.

This policy meant that criminal investigations into civilian deaths were a rare exception. In October 2003, the Association for Civil Rights in Israel and B’Tselem petitioned the Israeli High Court of Justice demanding that an investigation be opened into every case in which a soldier killed a Palestinian. In April 2011, the Justice Ministry announced a new policy: a Military Police investigation would be opened automatically in every case in the West Bank in which a soldier killed a Palestinian civilian who was not taking part in hostilities.

Factors leading to the policy change

B’Tselem and other organizations conducted extensive advocacy on this issue prior to the 2011 policy change: publications, press work, policy dialogue with Israeli officials and briefings for foreign diplomats and policymakers. The change in the military’s investigations policy was announced to the High Court as a response to the petition filed by ACRI and B’Tselem. However, the timing of the announcement indicates the influence of broader developments regarding Israeli accountability, most notably the Goldstone Process and the Turkel Commission.

The extensive harm to civilians in the Gaza Strip during Operation Cast Lead (December 2008-January 2009) led to heightened international scrutiny of Israeli accountability. The UN Human Rights Council established a fact-finding mission into the Gaza conflict headed by Justice Richard Goldstone. The Goldstone mission published its report in September 2009 and over the next year both the UN Human Rights Council and the UN General Assembly held periodic discussions regarding measures taken by Israel (and theoretically Hamas forces as well) to ensure accountability for wrongdoing in Cast Lead, with a constant threat to refer the issue to international jurisdiction.

The Goldstone report includes an analysis of the investigative mechanisms of the Israeli military, and an explicit criticism of the reliance on the operational debriefing in order to decide whether to open a criminal investigation.¹⁷ While European states and the USA did not vote to endorse the report in the Human Rights Council, they all closely monitored domestic Israeli investigations into Cast Lead and demanded that Israel take additional steps to ensure accountability. All of these measures generated extensive international media attention and were closely followed in the Israeli press and by the Israeli political, military and legal establishments.

Local human rights organizations conducted extensive advocacy with international actors throughout this process, with Israeli organizations providing data, case studies and analysis emphasizing the failures of the

¹⁷ Paragraphs 1815-1832, Human Rights in Palestine and Other Occupied Arab Territories, Report of the United Nations Fact-Finding Mission on the Gaza Conflict, A/HRC/12/48, 25 September 2009.

reliance on operational debriefings. Both European and U.S. policymakers used the materials from human rights organizations to raise this issue in their dialogue with Israeli counterparts.

In June 2010, the Israeli government established the Turkel Commission to investigate the Flotilla incident of 31 May 2010, in which nine Turkish activists were killed aboard a ship sailing to Gaza. The mandate of the Turkel commission was not only to examine the legality of Israel's naval blockade, and the conduct of forces during the raid itself. The letter appointing the Commission also entrusted the Commission with examining:

“whether the mechanism for examining and investigating complaints and claims raised in relation to violations of the laws of armed conflict, as conducted in Israel generally, and as implemented with regard to the present incident, conform with the obligations of the State of Israel under the rules of international law.”

Thus the Turkel Commission was tasked with evaluating Israel's entire system of investigating alleged wrongdoing by Israeli forces and ensuring accountability for harm to Palestinians. Israeli human rights organizations prepared written submissions to the Commission and prepared to give testimony in April 2011.

No significant developments took place regarding the B'Tselem-ACRI petition between its filing in 2003 and 2011. One week before Israeli human rights organizations gave their testimony to the Turkel Commission, Israel's Justice Ministry announced the policy change regarding Military Police investigations. The timing clearly indicates that the broader developments discussed above played a crucial role in the policy change.

The Significance of the Policy Change

Has the policy change regarding investigating civilian deaths promoted genuine accountability? The answer is a partial affirmative. The policy change only relates to the West Bank, with no change regarding incidents in the Gaza Strip. In the West Bank, however, the policy change affects all organs of the Israeli security forces. According to the State's submission to the High Court:

According to the new policy, as a rule, every case from now on in which a civilian is killed as a result of the operation of IDF forces in Judea and Samaria [the West Bank] will lead to the immediate opening of a Military Police investigation....Parallel to this change, the State Attorney also decided – in coordination with the Israel Police – to effect a similar change in investigation policy applying to the operations of police forces in Judea and Samaria in operations subordinate to the IDF (primarily Border Police and special forces).¹⁸

Was the new policy implemented? From the date of the policy change (April 2011) until the end of 2014, Israeli security forces killed 86 Palestinians in the West Bank in 73 separate incidents. This includes incidents involving Israeli soldiers, police (including Border Police) and ISA forces. The Military Police, the Justice Ministry and the Police opened investigations into at least 51 of these incidents. In the decade prior to 2011, less than 25% of Palestinian fatalities were investigated by the Military Police.¹⁹ Thus the policy change significantly increased investigations.

¹⁸ Request to Submit Update Announcement by Respondent in HCJ 9594/03 B'Tselem v. MAG
<http://www.acri.org.il/he/wp-content/uploads/2011/04/hit9594meshiv040411.pdf>

¹⁹ See B'Tselem statistics: http://www.btselem.org/accountability/investigation_of_complaints

Does an increase in investigations necessarily lead to greater accountability? Of the 51 investigations opened since 2011 that are known to B'Tselem, only three lead to indictments filed against members of the security forces. Not every civilian killed by security forces in the West Bank necessarily indicates that a crime has taken place. However, the very low rate of indictments supports the claim that the changes in procedures are to be welcomed but are not sufficient to ensure genuine full accountability.

Part II: Palestine's Accession to the International Criminal Court

The International Criminal Court (ICC) tries individuals accused of committing or assisting in commission of the gravest international crimes (genocide, crimes against humanity and war crimes). The Court is governed by the Rome Statute, which entered into force in 2002. The Court only has jurisdiction if the accused is a national of a State which has joined the Court, the crime took place on the territory of such a State or the situation has been referred to the Court by the UN Security Council. The ICC is a court of last resort; the principle of “complementarity” dictates that the Court will only act in cases where the national judicial system is unwilling or unable to genuinely investigate or prosecute the crimes.

In January 2009, in the wake of Operation Cast Lead, the Palestinian Authority lodged a declaration accepting the jurisdiction of the ICC. This bid was unsuccessful; in April 2012, the Office of the ICC Prosecutor concluded that Palestine – an “observer entity” and not a “State” at the UN – could not sign the Rome Statute, which is only open to states.

On 29 November 2012 the General Assembly granted Palestine the status of “non-member observer State.” Two years later, in January 2015, the State of Palestine acceded to the Rome Statute, becoming a state party to the International Criminal Court.

Factors Leading to ICC Accession

In the two years following the GA decision, the Palestinian Authority threatened repeatedly to join the ICC, and Israeli officials threatened harsh retaliatory measures should they do so. Both Israel and the PA spoke of the ICC as a “doomsday weapon,” which would put an end to any negotiations between them to resolve the conflict. Throughout this period, it appeared that the PA had no real intention of joining the Court.

Immediately after the General Assembly granted observer state status to Palestine, PCHR launched its campaign Palestine to the ICC, calling on Palestine to sign the Rome Statute. The campaign included both policy dialogue and grassroots efforts: extensive work with the local and international press, spots on Gaza radio stations and an annual International Criminal Law Moot Court to train Gaza law students in the functioning of the ICC. PCHR was joined in these efforts by all of the leading Palestinian human rights organizations, as well as the newly formed umbrella body, the Palestinian Human Rights Organizations Council (PHROC).

The policy dialogue targeted the PA, as well as international actors, particularly European officials, UN bodies and the Court itself. It also targeted Hamas leadership, as their opposition was identified as a major obstacle to joining the Court. In August 2014, Hamas declared its support for joining the Court.²⁰

By mid-2014, the U.S. efforts to restart the peace process through direct Israeli-Palestinian negotiations collapsed. This removed an obstacle to joining the Court, as the Palestinian Authority had offered to put on hold international recognition as a state by applying to international organizations during the course of the negotiations. In May 2014, seventeen Palestinian and international organizations signed a joint letter to

²⁰ Hamas declares support for Palestinian bid to join international criminal court, The Guardian, 23 August 2014. <http://www.theguardian.com/world/2014/aug/23/hamas-back-palestinian-bid-international-criminal-court>.

President Mahmoud Abbas demanding Palestine's accession to the Rome Statute.²¹ The Gaza war in the summer of 2014 increased popular pressure on the Palestinian leadership to pursue all measures to hold Israel accountable, including the ICC. The human rights organizations stepped up their public efforts and policy dialogue regarding the ICC throughout the fall of 2014.

Given this chronology, it seems clear that Palestinian human rights organizations played a decisive role in pushing Palestine to join the court.

The Significance of ICC Accession

Immediately upon Palestine's declaration accepting the jurisdiction of the Court, the ICC Prosecutor announced the opening of a preliminary examination into the situation in Palestine "in order to establish whether the Rome Statute criteria for opening an investigation are met." This examination "must consider issues of jurisdiction, admissibility and the interests of justice" in order to determine "whether there is a reasonable basis to proceed with an investigation pursuant to the criteria established by the Rome Statute."²² There is no timeline for the preliminary examination; the preliminary investigation regarding Colombia, for example, has been ongoing since 2005.

While it is premature to render a definitive assessment, we can point to three ways the Court may be influencing human rights in Israel-Palestine:

²¹ Joint Letter to President Abbas on the International Criminal Court, 08 May 2014, <http://www.alhaq.org/advocacy/targets/accountability/81-general/803-joint-letter-to-president-abbas-on-the-international-criminal-court>.

²² "The Prosecutor of the International Criminal Court, Fatou Bensouda, opens a preliminary examination of the situation in Palestine," ICC Press Release 16/01/2015, http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/pr1083.aspx.

- **Strengthening domestic accountability** – as discussed above, the ICC only prosecutes crimes if the national judicial system fails to do so. The principle of complementarity serves as an incentive to strengthen the criminal justice system at home. If the Israeli military and the government want to avoid ICC involvement (as they certainly do), the most effective way to do so is to show that Israel's domestic judicial system genuinely prosecutes any crimes that have been committed.

It appears this incentive has already had an impact. In several of his presentations regarding the Turkel Commission, Former Military Judge Advocate General Avihai Mandleblitt referred to the Turkel Commission as “a firewall against international prosecution.” This rationale explains the framing of the Turkel recommendations: the wording is careful to state that Israel currently fulfills its obligations to investigate allegations of IHL violations, while at the same time recommending changes regarding Israel's investigative mechanisms to ensure that Israel's case against ICC involvement will be water-tight.

To the extent that fear of the ICC leads Israel to implement the Turkel recommendations and take other measures to ensure genuine accountability, the ICC will have succeeded in its mission without ever opening an investigation.

- **Prosecuting crimes for which there is no accountability** – much of the public discussion of the ICC concerns last summer's hostilities in the Gaza Strip, and other instances of lethal force by the Israeli military. It may well be that the Court will conclude that domestic accountability is insufficient and these cases warrant ICC investigation. However, the Rome Statute definition of war crimes is much broader and also includes, for example, “the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies.”²³ Thus the Court could also exercise jurisdiction regarding Israeli settlement policies. Unlike the conduct of hostilities, there is a complete absence of any domestic mechanisms for investigating and prosecuting this crime, as settlements are not defined as a crime in the Israeli system.
- **Deterring future crimes** – Israeli officials have been conscious and concerned about the ICC for almost a decade, and this concern has only increased with Palestine's accession. Both the Justice Ministry and the MAG corps have devoted great efforts to following and analyzing developments and formulating contingency strategies regarding the Court. To date, however, it is hard to discern any deterrent effect of the ICC on Israeli behavior. Settlement construction continues as before, as do other practices that could fall under the Court's jurisdiction. Some have speculated that the ICC is one factor to explain why the military has not carried out any punitive home demolitions since January 1, 2015. If this is the case, concerns about the ICC have not deterred other forms of home demolitions, which have continued this year.

Conclusions regarding promoting accountability

Domestic and international efforts to promote accountability are two halves of a single whole. Ideally, the involvement of the ICC will encourage Israel to ensure greater domestic accountability. Indeed, it appears this is already the case, at least with regard to improving the formal mechanisms of investigation.

²³ Rome Statute, Article 8 (2)b viii

As the discussion above demonstrates, domestic policy dialogue and litigation were strengthened by international policy dialogue and the possibility of international litigation, all of which contributed to policy changes to advance accountability. The efforts to promote accountability are still a work in progress. The monitoring, analysis and engagement of the human rights community is crucial in order to ensure that procedural changes result in genuine accountability.

Backlash

Analysis of the efforts to promote international accountability must also include attention to its repercussions for the Israeli human rights organizations. The “Goldstone Process” (the fact-finding mission into Operation Cast Lead and the international mechanisms that followed) resulted in a severe domestic backlash against the Israeli human rights community, which was “blamed” for providing the information that fueled this process. Foreign Minister Avigdor Lieberman set the tone in the inflammatory language regarding human rights groups, calling them “accomplices to terrorism.” Nationalist organizations closely aligned with rightwing parties identified foreign government funding as the “Achilles heel” of these organizations. The ultra-nationalist group Im Tirtzu succeeded in branding European government funding as a source of suspicion in the eyes of large sectors of the Israeli public, calling into question the loyalty of human rights organizations who receive such funding. Demonization of the human rights organizations was followed by measures in the Israeli Knesset. Members of the governing coalition attempted to hold an investigatory hearing into the work of human rights organizations, and proposed several bills to limit the funding of human rights organizations. Most of these measures were unsuccessful. The legislation that ultimately passed merely imposed a more cumbersome reporting process, without limiting foreign government funding.

Some human rights activists I interviewed argued that “the Goldstone effect” constituted a net loss for human rights, that any gains in promoting accountability are outweighed by the harm done to our effectiveness as a result of the backlash. The Israeli public climate certainly became more hostile as a result of the ultra-nationalist response to the Goldstone process. Human rights groups have been discredited in the eyes of larger sectors of the Israeli public, making education, dialogue and outreach activities with the Israeli public more difficult.

However, the bulk of the work of the Israeli human rights community was not affected by this backlash. Policy dialogue with the military continued as before. Litigation was not affected. There have been many setbacks over the past few years in all of the domestic Israeli tools to promote human rights, but none of these phenomena can really be attributed to the Goldstone process. The composition of the High Court has changed and may be growing less willing to intervene regarding Palestinian human rights. The possibilities for policy dialogue with the Israeli Knesset and government ministers have become more limited, and the new Knesset is again proposing legislation against human rights organizations. Public hostility to human rights organizations only intensified during the most recent Gaza war. All of these are manifestations of broader trends regarding the Israeli polity. While they require careful analysis and a strategic response by the human rights community, they are not grounds to desist from the work of promoting human rights and ensuring accountability.

9. How we make change

Some patterns and lessons emerge from an analysis of the achievements of the human rights community:

Timing is everything - All of the tangible achievements cited in this study occurred when the situation was relatively quiet. The High Court could not have issued its precedent-setting ruling outlawing torture the following year, after the outbreak of the second intifada and the extremely difficult security situation. Likewise, in explaining the decision to halt punitive home demolitions in 2005 following the intifada, the Military Advocate General explicitly cited the security calm as the context enabling the change.

The human rights community faces immense challenges during periods of crisis, whether the outbreak of the intifada (Palestinian popular uprising), the launch of a major military operation, rockets falling inside Israel or bombs exploding in buses and coffee shops: the Israeli media will focus even less than usual on Palestinian suffering, Israeli politicians are eager to show they are tough on terrorism and judges are reluctant to restrain activities intended to bring security. These situations invariably result in deterioration of human rights. This is not to negate the valuable role of the human rights community during these crises. While I do not have a way to evaluate whether the situation would be even worse without the work of human rights organizations, it is likely their documentation, litigation and reporting during times of crisis act as a deterrent to even harsher human rights violations.

Gains made during a quiet period are not necessarily reversed even when violence increases. The High Court judgment on torture remains in effect. While there have been an increasing number of Palestinians tortured in interrogations, even at the height of the intifada with bus bombings and other horrific attacks against Israeli civilians, the ISA did not return to the systematic torture of Palestinians in interrogation prior to 1999. The fate of the moratorium on punitive house demolitions remains unclear. While the military demolished four houses in the summer of 2014, it has not resumed the automatic demolition following every attack as they did prior to 2005.

No single strategy can successfully make change in isolation. Every success requires a combination of strategies. In almost all cases both domestic advocacy and international advocacy were instrumental to policy change. In no case has international advocacy alone succeeded in changing Israeli policy. Israeli advocacy components, such as a petition to the High Court of Justice, provide the actual mechanism of change. The opposite is also true: without an international advocacy component, domestic advocacy has rarely succeeded.

Not every organization has to engage in every strategy. In fact, it may be more effective for organizations to work within a system's approach in which each develops a "relative advantage," rather than all organizations engaging in all the strategies. Currently there is some duplication of efforts among organizations which may waste resources and decrease their potential effectiveness.

This is not merely an issue of efficient allocation of resources. Different, even contradictory approaches may strengthen the impact of the sector as a whole. In some cases, a "Good Cop/Bad Cop" division between organizations is likely to increase impact. This seems to be the case regarding accountability. There are clear benefits to different organizations pursuing domestic as opposed to international accountability, rather than a single organization attempting to pursue both. International accountability (engaging foreign courts or promoting ICC involvement) is viewed extremely negatively among Israeli decision-makers. It is hard to imagine an organization could have an effective conversation regarding

domestic accountability - or policy dialogue with the military on almost any topic - if they were simultaneously pursuing criminal indictments for Israeli military personnel abroad. However, the threat of international accountability increases the likelihood of domestic accountability.

The same may be true regarding boycott and other economic sanctions. While this may be an effective tool to promote policy changes regarding human rights, an Israeli organization calling for such measures would be less able to effectively engage in domestic policy dialogue.

Disconnect between Israeli and Palestinian activists - Israeli and Palestinian human rights organizations are operating largely in isolation from each other. Despite working on the same issues, they are often not aware of the strategies of the other side. Joint projects are rare. This is not surprising given the obstacles to cooperation, both physical and psychological. Palestinians are prevented from entering Israel and East Jerusalem without special permits. Israelis cannot enter the Gaza Strip and should obtain permits before entering Area A of the West Bank. Polarization of Israeli and Palestinian societies is exacerbated by the physical separation.

The effectiveness of the human rights community would be improved through greater coordination and strategizing between Israeli and Palestinian organizations. The donor community is well positioned to facilitate strategic dialogue through meetings of Israeli and Palestinian human rights leaders in conferences and workshops abroad.

Some progress provokes backlash. Achievements may provoke a backlash, generating new obstacles for the human rights community. As discussed above, the promotion of accountability after Operation Cast Lead (the Goldstone process) resulted in greater hostility from large sections of the Israeli public and Israeli policymakers, and ongoing efforts to legislate restrictions on Israeli human rights organizations. Another form of backlash is manifest when anti-human rights groups adopt the strategies that have proven effective for human rights advocacy. Following High Court petitions to dismantle illegal settlement outposts, the nationalist Regavim organization began to employ a similar method regarding Palestinian communities, filing High Court petitions requiring the state to demolish Palestinian homes built without permits. The potential for such a backlash must not deter human rights organizations, but should be part of contingency planning and requires a strategic response.

Human rights organizations are part of a complex system. Very rarely is an achievement solely the result of the local human rights organizations. A diverse range of actors operate in the Israeli-Palestinian context, driven by a variety of motives. The work of humanitarian and development organizations overlap with that of the human rights community. Political actors are interested in many of the same issues, albeit from the perspective of the relationship of these issues to the Israeli-Palestinian conflict and diplomatic efforts to resolve it. Human rights organizations operate at their best when they understand their role within this system and direct their efforts to fuel and amplify other efforts. In some cases, organizations have a clear advocacy strategy to frame issues in a way that will mobilize specific influential actors. In other cases, human rights organizations do not identify a particular target audience but rather provide documentation and analysis to a wide group of journalists, attorneys, activists, politicians and other actors, domestic and international, any of whom may – and do – use it to effect positive change.

Some issues lend themselves more to success. Human rights violations solely within the purview of the military, as opposed to the government, and those off the radar of the Israeli public are more like to see a positive outcome. Achievements are also more common regarding classic civil rights issues and those

where there is no security justification for the violation. The Association for Civil Rights in Israel conducted an analysis of its litigation regarding human rights in the OPT from 1985-2004. Of the 77 cases, the success rate of cases concerning deprivation of liberty and due process was significantly higher than all other cases. This includes both success regarding an individual case and regarding policy change. Although the victims are Palestinians from the OPT, many of these rights violations take place in detention centers inside Israel. In this sense they create a greater tension between Israel's democratic identity and violations of basic rights.

On some issues, no tangible achievement is possible. Human rights violations that stem from the heart of the political conflict are the most intractable. We can point to very few concrete achievements regarding human rights violations stemming from the issue of settlements. Given lack of broad public support, our achievements may necessarily be concentrated in areas off the public radar and less central to the public debate.

10. *The Cause vs. the Symptoms*

Beginning in October 2000, the Israeli military imposed extremely harsh restrictions on the movement of Palestinians inside the West Bank. A closure was imposed on each city, with checkpoints controlling all movement in and out. The conditions at these checkpoints were horrible, with people waiting hours in the hot sun with no amenities in order to move from one town to the next. Forty-eight Palestinians died after being delayed access to medical care, including newborn infants whose mothers gave birth to them at the checkpoints.

For several years, freedom of movement inside the West Bank was a central advocacy issue for the human rights community: the harsh conditions at the checkpoints, the blanket prohibition on young men from leaving the city of Nablus, the lack of regulations for free movement of people with medical emergencies. Today most of the internal West Bank checkpoints have been lifted. Those that remain include shaded waiting areas and drinking fountains.

The “drinking fountain at the checkpoint” is the metaphor invoked by human rights activists to call into question the nature of our achievements. Rather than remove the illegal checkpoints, cynics argue, we have merely succeeded in ameliorating the suffering there, and in doing so, perhaps entrenched the checkpoints further. While in fact we have succeeded in doing both – removing some checkpoints and improving conditions at others - several human rights activists I spoke with argued that none of the achievements cited in this research constitute any kind of success. “The occupation is stronger than ever,” they argued.

Israeli violations against Palestinians’ human rights will continue so long as Israel’s occupation continues. An end of the occupation by no means guarantees respect for rights - the Palestinian Authority and the Hamas government in Gaza both have poor human rights records *vis a vis* their own citizens. However, the reverse is also true: human rights violations are inherent to a prolonged military occupation and an end to occupation is a necessary condition to ensure full respect for rights.

Ending the occupation is a political project, requiring a diplomatic agreement. The modalities of negotiations and agreements necessary to achieve such an end are outside the scope of human rights organizations. Does this mean that human rights organizations play no role in promoting an end to the occupation? Human rights activists struggle with this question: how can we remain true to our human rights DNA while meaningfully addressing the root causes of human rights violations?

There is much self-criticism about the broader implications of the work of human rights organizations:

- The High Court serves as a fig leaf: if Israel’s independent, well-respected High Court has enabled a certain policy to continue, it must be legitimate;
- We ourselves serve as a fig leaf: the fact that Israel has such a vital, feisty human rights community is proof of the health of the Israeli democracy, silencing what would otherwise be harsh criticism for the prolonged occupation;
- Worse, perhaps we are, in fact, another organ of the occupation: the human rights community ameliorates hardship and suffering without addressing the root causes of that suffering. We essentially make an unbearable situation just bearable. In this sense, the human rights community may actually contribute to prolonging the occupation.

A re-assessment of our strategies regarding High Court petitions encapsulates a broader dilemma for the human rights community. As this paper has shown, High Court litigation often succeeds in ameliorating suffering and realizing individuals' rights. At the same time, the High Court may well serve as one of the mechanisms that enable the occupation to continue in its current form. How then to balance our obligation to use the tools available to promote human rights while working for a long-term systemic change to prevent violations of rights?

This dilemma is not limited to High Court litigation. It is also manifest in discussions about the best way to allocate limited resources. There is always a need to prioritize between the various human rights issues, giving attention to the severity and scope of the violations, as well as our ability to make change. The question is whether and how promoting an end to the occupation should be incorporated into this calculus.

There are arguments to be made for limiting the human rights mandate to the concrete policies and practices that violate human rights, rather than addressing occupation as such:

- Human rights organizations cannot instrumentalize human rights. If we use human rights as a tool to promote political change, rather than as the goal in itself, we cease to be human rights organizations.
- The most effective tools to end the occupation are not the tools of human rights organizations, but rather political tools. If the human rights sector expands into this area, we sap resources and further shrink the space for the political organizing most necessary to end the occupation.
- Beyond the ideological concerns, tactical questions remain: does the human rights community have the strategies and tools to effectively address the occupation?

There are real dilemmas in developing effective human rights strategies to tackle occupation. As the case of the "illegal outposts" makes clear (see page 16), whether a particular advocacy strategy contributes to undermining or entrenching occupation is not always clear. In addressing these dilemmas it is helpful to distinguish between the human rights community's role in documentation and framing of the discourse as opposed to our advocacy to achieve specific policy change. The human rights community has not succeeded in promoting policy changes regarding the structural issues at the heart of the occupation. However, one of the central achievements of the human rights movement is in framing the public conversation, setting the tone, and providing both the information and the analysis regarding the reality in the Occupied Territories. In this area, the human rights community can and must draw the link between the specific violations and the broader structures that enable these violations to continue, first and foremost the occupation itself.

Conclusions

Israeli and Palestinian human rights organizations have been effective in making change for the better. They have provided tangible assistance to tens of thousands of people and successfully changed policies to benefit many more. Israeli government and military officials acknowledge that human rights organizations also act as a deterrent to policies that would further violate human rights. In addition, the reporting and analysis of human rights organizations have made a real impact on the public and policy conversations both in Israel and internationally.

Often human rights organizations are too busy to take note of their achievements, or too quick to dismiss achievements given the many human rights violations that continue. For this reason it is important to state categorically that human rights organizations have positively impacted human rights. To acknowledge this in no way belittles the work still left to be done. The human rights reality in the West Bank and Gaza Strip remains poor, with Palestinians suffering systemic violations of their rights. Acknowledging the achievements of the human rights community enables us to better address this grim reality.

An analysis of the achievements show that human rights organizations' strategies have been effective: first class research, strategic policy dialogue, litigation and mobilizing popular protest – together these tools have made positive changes in a long list of areas. Outreach to the Israeli public has played a role to a lesser extent, whether due to the limited resources invested in this area and to the many obstacles to human rights organizations being effective in this realm.

Despite the impressive achievements, overall the human rights situation has not improved over the past twenty years. Human rights organizations have prevented further deterioration – and this is not insignificant – but they have been powerless to influence the broader trend of entrenched occupation, settlement expansion and more bloody military operations. Is this the job of the human rights community? If so how can we tackle it? This is a crucial conversation to have. While individual organizations struggle with these questions, this conversation is not taking place across organizations, neither within the Israeli and Palestinian human rights communities and certainly not between them. This is an area that must be explored further.

The donor community has a crucial role to play in strengthening the impact of the human rights community. The research validates investment in human rights organizations. Financial support is crucial but it is not sufficient. Policy dialogue between Israeli officials and their European counterparts constitutes a central component of successful human rights advocacy and contributes significantly to the impact of the human rights community. Many of the donor countries are important actors in such policy dialogue, and should evaluate whether this role could be strengthened. Finally the research identified the need for greater dialogue and coordination among human rights organizations, to maximize resources and address strategic dilemmas at the heart of our work. The donor community is well positioned to serve as the convener of such dialogue, thereby overcoming many of the obstacles to meetings between Israeli and Palestinian organizations locally.

Interviews

Human Rights Practitioners

Tamar Feldman, Director of Department for Human Rights in the Occupied Territories, Association for Civil Rights in Israel

Sahar Francis, Executive Director, Addameer

Hassan Jabareen, Founder and General Director, Adalah: Center for Arab Minority Rights in Israel

Shawan Jabarin, Executive Director, al-Haq

Dalia Kerstein, Executive Director, HaMoked: Center for the Defense of the Individual

Daragh Murray, Formerly International Advocacy Officer, Palestinian Center for Human Rights

Andre Rosenthal, Attorney

Michael Sfard, Legal Advisor to Yesh Din and Peace Now

Hamdi Shaqqura, Deputy Director for Program Affairs, Palestinian Center for Human Rights

Raja Shehadeh, Attorney

Dan Yakir, Legal Advisor, Association for Civil Rights in Israel

Tamar Peleg-Sryck, Attorney

Randa Siniora, Executive Director, Palestinian Independent Commission for Human Rights; Former Director, al-Haq

Governmental and military authorities

Ambassador Arthur Lenk, Former Director of the Department of International Law in the Office of the Legal Adviser of Israel's Ministry of Foreign Affairs

Col. Liron Liebman, Former Head of International Law Department, Israeli military

Col. Pnina Sharvit Baruch, Former Head of International Law Department, Israeli military

Other experts

Zahava Galon, Member of Knesset

David Kretzmer, Professor of Law

Yehezkel Lein, UN OCHA

Khalil Shikaki, Palestine Center for Research and Studies

Col. Ron Shatzberg, ECF and ICRC

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Learning From What Works: Strategic Analysis of the Achievements of the Israel-Palestine Human Rights Community

Far too often human rights organizations are too busy to take note of their achievements, or too quick to dismiss achievements given the many human rights violations that persist. For this reason it is important to state categorically that human rights organizations have positively impacted human rights. To acknowledge this in no way belittles the work still left to be done. The human rights reality in the West Bank and Gaza Strip remains poor, with Palestinians suffering systemic violations of their rights. Acknowledging and learning from our achievements enables the human rights community to better address this reality.

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