

Divided by Law;
The affects of legal inequality on youth in the West Bank.
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I

Abstract

The primary purpose of this report is to testify to the dual system of law in the Occupied Palestinian Territories and examine how this disparity in legal norms and justice disproportionately affects the political climate of youth in the area. I will argue that the effect of this dual system dampens Palestinians' civil and human rights, effectively curtailing youth engagement in community politics, while simultaneously promoting settler-youth participation in community politics and youth violence. While Israeli military law has been structured to purposefully curtail youth engagement of almost any type in the name of state security, it has in effect produced a political culture eerily reflective of Jim Crow law in the American South or the Apartheid regime in South Africa.

II

Introduction

Due to the methods implemented by the Israeli government and the Israeli Defense Force (IDF) to combat Palestinian terrorism, nationalism, and civil unrest, the state has deepened the divide amongst Palestinian youth who choose to participate outside of traditional representative democratic politics. Israel and the PA have criminalized such simple activities as the hanging of nationalist posters, youth journalism, or participating in community demonstrations, all under the guise of protecting Israeli national security. By the excessive criminalization and repression of these modest political activities, Israel and the PA are deteriorating the role of the political moderate, leading to a future where the only roles left will be that of the politically passive and the politically extreme. The plight of politicized Palestinian youth is contrasted by the tolerance of politicized youth of the Israeli settlements in the West Bank, demonstrated by the role they have played in exercising their political power and influencing state and military policy. While in the summer of 2008, Settlement Youth violence is currently reaching an all-time high, the youth have been in no way limited to violent or clandestine activity. Youth democracy is still very much intact; in that, moderate, non-violent and violent settler-youth direct actions are often tolerated, even when such activities are well across the bounds of legality.

This political inequality stems from a combination of the civil law itself, inequities in law enforcement, and the basic nature of foreign occupation. After 41 years, the occupation shows little more sign of ending than when it began, yet efforts by groups such as Yish Din, and Defense for Children International (DCI) have made recent strides in challenging the other two tiers of this inequality. In the event of a future independent Palestinian state, and unless steps have been taken to alter this course of youth political repression, the political climate of such a state will be so politically corrupt, that even

upon statehood the process may not be reversible; leading to similar patterns of repression that the state was initially created to replace.

III

History of Legal Structure of the Occupied Territories

“The defining characteristic of law in the Palestinian Occupied Territories (OPT) is a ‘separation cum discrimination regime’, which enacts two distinct sets of laws, whereby one’s nationality/ethnicity solely determines their legal rights and legal treatment”¹. Israel has effectively extended Israeli civil law to Jewish Israeli settlers, while leaving Palestinian nationals to be subject to Israeli Military Law, the whim of the High Court Justice (HCJ) decisions, and, in select districts and instances, the law and justice system of the Palestinian National Authority.

From ‘67

The legal structure of the OPT following the 1967 War is largely the result of Meir Shamgar’s (President of the Israeli Supreme Court 1983-95) legal argument concerning the applicability of the 4th Geneva Convention which regulates the roles and duties of occupying powers. Shamgar reasoned that Geneva was not applicable on the following grounds: Jordan and Egypt were themselves occupants, never truly incorporating the territories into their own sovereign domain after the 1948 Arab-Israeli war.² Furthermore, he noted that to accept Geneva as binding would be disastrous to Israel’s security interests and of maintaining “Eretz Israel”³, in that its acceptance of Geneva would deem Israel as an occupant and provide the two Arab states a legal right to recover their occupied territory.⁴ In her book Courting Conflict, Lisa Hajjar points out that Shamgar argued to respect Geneva’s “humanitarian provisions” on a de facto basis without specifying which aspects of the solely humanitarian law canon Israel was to consider as humanitarian⁵.

A similar argument was made by the Bush Administration concerning the treatment of detainees in the Iraq war, which created the legal entity- enemy combatant- who would be kept in the spirit of Geneva⁶. Like the Bush Administration, Shamgar uses the power designated in Geneva at will, citing the right of an occupying force to “legislate original military orders as well as to amend existing legislation to allow for the contingencies of security and public order.”⁷ Hajjar concludes her analysis of the Geneva conundrum by stating “the fourth Geneva Convention has been drawn upon to justify the making of law but has been rejected as a framework for the content law.”⁸

¹ B’Tselem- Land Expropriations and Settlements, July 20, 2008, <
<http://www.btselem.org/English/Settlements/>>.

² Hajjar, Courting Conflict (Berkeley: University of California Press, 2005) 54

³ “Eretz Israel” is a political term used to reference the Biblical territories of the Israelites

⁴ Hajjar, Courting Conflict (Berkeley: University of California Press, 2005)54

⁵ Ibid

⁶ Hajjar, Lisa, “International Humanitarian Law and ‘Wars on Terror’ ; A comparative analysis on Israeli and American Doctrines and Policy”, Journal on Palestine Studies, issue 141, Fall 2006.

⁷ Hajjar, Courting Conflict (Berkeley: University of California Press, 2005)59

⁸ Ibid

Oslo

What followed was 27 years of military law and military court justice. With the signing of the Oslo accords in 1993, combined with the 1995 agreements, a limited amount of the legal jurisdiction governing Palestinian civilians was transferred from Israel to the newly created Palestinian National Authority. Oslo delegated responsibility by dividing the OPT into three arenas of jurisdiction: A, B, and C. Areas belonging to arena A gave the PA complete security jurisdiction, while areas delimited with B jurisdiction left the PA “jurisdiction over Palestinian matters of internal Palestinian public order and security jurisdiction.”⁹ The remaining territory, including settlements, Israeli bypass roads, military bases, and all remaining land not claimed by A and B jurisdictions qualify as arena C and are under complete Israeli control.

PA

In order for Israel to maintain its security interests while enabling the portrayal of PA sovereignty, the 1995 agreements required the PA to both detain and transfer those which meet Israel’s requirements as a state threat.¹⁰ This stipulation allows the PA to save face and avoid political embarrassment to its people while maintaining Israel’s need for the PA to continue as subordinated governance. This pressure from the parent state has put an enormous burden on the PA, which has responded to the conflict in a similar manner to the occupation it was created to replace.¹¹

President Yaser Arafat’s first presidential decree in 1994 assured Palestine that the legal norms would revert back to pre-1967 laws. This was soon contradicted by Law 5 of 1995, which assumed for the PA all power “outlined in legislation, laws, decrees, publications, and orders that were in use in the West Bank and Gaza Strip prior to 19th of May 1994, bringing over 1000 Israeli Military Orders back in to effect.¹² Whether these laws were re-established to help the PA better serve Israeli security interest or protect the PA’s own fragile position in the OPT is of little consequence. The result of this action and the precedent set only adversely affected Palestinian freedom since they were now being ruled by two sovereigns with two different-often but not always-sets of interest.

Present

Despite the small step toward autonomy in A and B arenas, the legal system in the OPT saw little transformation. The United Nation’s OCHA Special Focus report from May 2008 clarifies exactly what area C jurisdiction has come to mean in regards to Palestinian autonomy. The report states that there are 418 Palestinian villages that have part (more than 1%) of their village under area C jurisdiction. Of that 418, 162 villages and towns have more developed area in Area C than in Area A or B. Of this 162, 130 villages are located entirely (more than 99%) under Area C jurisdiction.¹³ These numbers represent

⁹ Simpson, *Detainees Denied Justice* (The Hague: Kluwer Law International, 2001) 6

¹⁰ Simpson, *Detainees Denied Justice*(The Hague: Kluwer Law International,2001) 8

¹¹ Interim Agreement, Annex IV, Article II, paragraph. f.2,

<<http://www.israel.org/MFA/Peace+Process/Guide+to+the+Peace+Process/THE+ISRAELI-PALESTINIAN+INTERIM+AGREEMENT+-+Annex+IV.htm>>.

¹² Simpson, *Detainees Denied Justice*(The Hague: Kluwer Law International, 2001) 7

¹³ OCHA Special Focus, “Occupied Palestinian Territory,” May 2008, 3.

roughly 228,600 Palestinians residing specifically under Area C. What this statistic does not reflect is the number of Palestinians affected by Area C jurisdiction. Considering that there are Palestinians who own land yet do not reside in Area C, the numbers of Palestinians living adjacent to Area C, and the fact that “Area C holds the most significant land reserves available for Palestinian development, the entirety of the West Bank population is affected” by the occupation regardless of their Area.¹⁴

Whether an individual resides in area A, B, or C jurisdiction, Israel also reserves the right to invoke military jurisdiction and military law in instances involving “Palestinians suspected by Israel of involvement of threats or accomplished acts of violence against Israelis or Israel,” in any jurisdiction.¹⁵ Who qualifies as threats to state security has often been vague and far-reaching. Suspected terrorists, children, political leaders, bystanders, and activists can be determined as threats which then permit arrests, detainments, or assassinations (termed “targeted killings, liquidations, and preemptive strikes”).¹⁶

This is possible because in relation to the state of Israel, Palestinians have absolutely no guarantee of civil rights. In fact, with supposed inapplicability of Geneva, they have no guarantee of *human* rights. No constitution, bill of rights, nor canon of legal norms exists in the OPT. Instead, what *does* exist is the discretion of individual IDF soldiers and orders received from superiors that are arbitrary and subjective. Access to legal representation, habeas corpus, and other minimum legal norms are waved continually by Military Courts, the only institution set up to check and balance IDF power, and this, upon the IDF’s insistence.

The Extension of Israeli Civil Law

The military occupational legal system described above claims no jurisdictional rights on Israeli settlers or Israeli civilians while inside the territory. Israel’s extension of its own civil law can be seen as a sort of legal colonization. It is being effectively used to establish an undeclared annexation of interests in the territories.¹⁷ Unlike East Jerusalem, Israel has not officially annexed the West Bank and the Gaza Strip. Instead, since 1967 Israel has chosen to aid Jewish Israelis in erecting permanent settlements in the OPT. This process takes place regardless of its clear violation of Article 49 of the 4th Geneva Convention, which prohibits an occupying power from the “transfer (of) parts of its own civilian population into the territory it occupies.”¹⁸ Israel’s system of legal segregation reinforces its “ethnocratic” nature in that “ethnicity and not citizenship, is the main logic around which state resources are allocated and the interest of the dominant ethnic group shape most public policy.”¹⁹

¹⁴ *ibid*

¹⁵ Simpson, *Detainees Denied Justice* (The Hague: Kluwer Law International, 2001) 9

¹⁶ Hajjar, *Courting Conflict* (Berkeley: University of California Press, 2005) 238

¹⁷ Geneva 4th, Article 49, <<http://www.unhcr.ch/html/menu3/b/91.htm>>.

¹⁸ Hajjar, *Courting Conflict* (Berkeley: University of California Press, 2005) 59

¹⁹ *ibid*

The extended laws of interest are detailed in Israeli Basic Law, notably Basic Law; Human Dignity and Liberty. This law includes protection for violations against the body, property, right to privacy, and against unlawful arrest or imprisonment. While Israeli common law does not specifically include other essential human political rights such as the rights of freedom of speech, freedom of press, nor freedom of protest, it is commonly assumed that these are included in the “right to dignity”, via the arguments of Aharon Barak, President of the Israeli Supreme court proceeding Shamgar from 1995-2006.

V

Youth in Society

In order to continue to examine the way in which these laws effect youth in the West Bank, it may be helpful to define the role that Palestinian youth and Israel settlement youth play in their perspective societies. For purposes of this report, youth will be defined as those 18 years and under. Any references to studies or reports which reference youth as 18-21 years will be clearly identified.

Palestinians

It is important to note that the political and legal system regarding Palestinians outlined above applies to adults and juveniles alike. Defense of Children International details this suspension of the rights of the child in its 2004 annual report. “There are no juvenile courts, no specially trained judges, no probation officers and no special police officers to deal with the interrogation and detention of children.”²⁰ It goes on to outline:

*“The Israeli Security agency (Shabak) frequently prevents children from meeting with their lawyers for the duration of their interrogation, which can last up to three weeks. Israeli interrogators and guards subject child detainees to intense physical and mental abuse-often amounting to torture- in order to obtain confessions or as a form of punishment and humiliation. Practices included beating, threats, sleep deprivation, and preventing detainees from going to the toilet during the interrogation.”*²¹

Palestinian youth play little role in the labor market until their graduation from school at age 17. While bread winners do exist in the 17 and under age group, the majority of children work outside of school hours if poverty so demands, resulting in a literacy rate of 92.4%.²² The Palestinian educational system is divided into two educational cycles; basic education (ages 6-15, grades 1-10) and secondary (ages 16-17, grades 11-12). While enrolment rates are experiencing a slight decline, especially at the secondary level, most students continue on towards graduation. In a report based on the 2004/5 school year by Defense of Children International, out of roughly 685,576 school-aged children in the West Bank, approximately 15,000 children did not start the 2005/6 school year (let it be clear that these numbers do not reflect the education crisis present in East Jerusalem amongst Arab youth which experience a much lower enrolment rate of 64,536/79,000).²³

²⁰ DCI 2004 Annual Report pg 17

²¹ Ibid.

²² CIA World Fact book-West Bank, July 20. 2008,< <https://www.cia.gov/library/publications/the-world-factbook/geos/we.html>>.

²³ “Sustained Occupation, Suspended Dreams” DCI 2005, 54.

Still these 15,000 children are not said to make up a significant block in the Palestinian labor force according to director of Legal Aid Unit of DCI, Khaled Quzmar.

While youth do not play a major role in the Palestinian economy, they are gaining grounds in Palestinian politics. According to Israeli and PA law, eligibility to vote is based on holding a West Bank ID card which is issued based on one's 16th year of birth, not on one's specific birth date. This means, for example, that in 2008, ID cards were issued to Palestinians born in 1992 allotting suffrage to some youth as young as 15 years old. Attention paid to youth by prospective PA candidates is also on the rise. According to Khaled Quzmar, greater attention was paid to youth in the 2005 campaign in comparison to 1996, and with the surprise election of Hamas this trend of targeting youth voters looks to be cemented in PA politics from this point forward.

Settlement Youth

It may now be helpful to provide a quick explanation of the three different types of settlements in the West Bank which often correspond to the different mentalities of settlers. This explanation is due to information gathered by the Israeli political group, Peace Now, and personal observations, interviews and field research. Peace Now divides the settlers into these three groups:

- Ideological settlers-mainly use religious and nationalist arguments to justify the settlement's existence and their own presence in the West Bank, and who generally live deep in the heart of the West Bank
- "Quality-of-life settlers"-primarily motivated to move to the West Bank though not necessarily exclusively) for economic reasons, and who generally live in settlements located closer to then Green Line; and
- Ultra-orthodox settlers-essentially a subset of the quality-of-life settlers, in that their presence in the West Bank is a function, almost exclusively, of the construction of cheap, segregated (i.e., ultra-Orthodox-only) housing close to the Green Line, at a time when the existing ultra-Orthodox housing inside Israel is expensive and over-crowded.

These three subsets produce three fairly distinct types of settlement youths with three different sets of political interests, political power, and relation to physical conflict. The combination of proximity to ethnic conflict and extreme political views found in the ideological settlements has produced a more politicized and confrontational youth. It is this group of young adults which will be more closely studied from here on out due to their more frequent involvement with the law, law enforcement, the court system and the IDF.

Despite the amount of attention Ideological Settlement Youth receive in Israeli media, it is very difficult to gather information on Settlement youth as there has been very little documented research on their communities. The following information is the result of personal testimonies and references made by other reports, which rely on an assumed literacy of Settlement ideology and practices.

Like in Israel, Settlement youth are eligible to vote at age 18 in national elections, and 17 for municipal elections. Ideological Settlement youth are often highly educated through religious school systems. Both males and females are encouraged to seriously engage in

Torah studies, as well as other pillars of classical education. The nature of settlement micro-economies, which are often agriculture or artisan-related, allows the youth to easily aid in family or communal enterprise. With the recent rise in Israeli and foreign consumption of organic food commodities, which has brought up the production rate to five percent as of 2007, many settlers have been able to find for themselves a niche market in the Israeli agricultural market, matching both their small scale economies and their belief systems²⁴.

VI Test Cases

Treatment of activists occupying outposts

Make-shift dwellings have become a recent tool for political struggle on both sides of the conflict. Palestinians use outposts to squat on state-confiscated land, while Israeli settlers build and occupy outpost on both state and Palestinian land in hopes of establishing new settlements or connecting pre-existing settlements into larger land blocks. The case of the detainment of seven 14- and 15-year-old settler girls has come to attention lately in the Israeli press after the girls were forcibly removed from an outpost in the Samaritan Hills in southern West Bank, just outside of Hebron. To their communities, the girls have become teenage heroines for the outpost movement through their endurance of an unusually long detention. It is crucial in examining the disparity in Palestinian-Israeli rights to understand that the extended detainment was not standard IDF treatment of such an incident.²⁵ The prolonged detainment of the girls is due to their non-cooperation with the IDF police force. In a June 10, 2008 article in the Jerusalem Post, the girls' Ulpana School Director explains that usually "settlers cooperate and are released right away... but they (the girls) don't recognize the court's jurisdiction because it doesn't pass judgment according to the laws of the Torah."²⁶ In the past, the Samaritan Hills outpost had been vigorously defended, involving physical assaults upon IDF troops and police. Exchanges have grown increasing violent, "we sit down and link arms and if the border policemen or the Yasamim [Special Patrol Unit policemen, who tend to be big guys] hit us, we hit them back with whatever we've got. We're not going to be their whipping boys."²⁷

The relatively lax manner in which the girls and other settlers are treated is contrasted by the excessive use of force that the IDF and vigilante settler groups have focused upon similar Palestinian outpost projects. During the fall and winter season of 2005, community members of Bi'lin (located 15km north-west of Ramallah) began an outpost

²⁴ Cohen, Amiriam, "Organic farming hits billion-shekel mark", Haaretz, April 3, 2008, Aug 20, 2006, <<http://www.haaretz.com/hasen/spages/970797.html>>.

²⁵ Derfner, Larry, "Child Warriors in West Bank Outposts," Jerusalem Post: Online Edition Jan. 10, 2008, July 28, 2008, <<http://www.jpost.com/servlet/Satellite?cid=1198517344782&pagename=JPost%2FJP%2FPrinter>>

²⁶ Ibid

²⁷ Ibid

project upon their communal farmland, which happens to lie on the Israeli side of the security fence despite being 6km behind the Green Line²⁸²⁹. The outpost project began with the installment of two caravan trailer which the IDF promptly cut open with power cutters, forcibly removed and arrested the occupants, and then demolished. They were told that even though they were on their own land, that the establishment of temporary units was impossible. Also important to note is that the resistance to the IDF removal was completely nonviolent—a sharp contrast to the Samarian Hills outpost. This reflects both the non-violent nature of two responsible coordinating groups: the Bi'lin Popular Committee and the Friends of Freedom and Justice-Bilin. After the removal of the caravans, activists reacted to the unintentional advice of the IDF and returned in the night to construct a humble single-room dwelling out of cinder blocks which met the IDF requirements. When demolition was scheduled for the new outpost, the IDF did so under the pretext that it was built without a permit from Israeli authorities. Using this same reasoning, the Bi'lin peoples' legal team argued that the Modi'in Illit settlement just adjacent to their outpost also lacked an Israeli permit, thus making the ten year old, 40,000 occupant settlement community also illegal.

This legal reasoning put the IDF at bay as far as demolition is concerned, yet their role in the Bi'lin outpost movement was not finished. Unable to lawfully expel the outpost occupants without providing legal justification for expelling the entire settlement of Modi'in Illit, the IDF's interests in disrupting the Bi'lin outpost was then assumed by vigilante settlers. While the outpost still stands, it has been fire-bombed, robbed of supplies and generators, and had its occupants forcibly removed and beaten, all with the IDF's awareness. To claim outright that the IDF orchestrates or approves of these attacks cannot be confirmed and thus is inadmissible as evidence; but, at minimum, the IDF can be held as negligent of their duties in that all attacks have taken place in the immediate vicinity of IDF troops.

The question arises: if Palestinians in either the Hebron or Ramallah regions attempted to confront squatters, would the IDF react in the same cordial manner it has with the settlers?

Difference in Rights to Peaceful Demonstration within a Closed Military Area

On July 18th, roughly 200 people in buses chartered by the Israeli political group, *Peace Now*, traveled with police escort towards Hebron from the Jerusalem and Tel Aviv area. Upon nearing the Hebron area, the group was stopped by an IDF blockade informing them that the spot had been deemed a closed military area because of a settler attack on a tour group earlier that morning led by the IDF veterans' group, *Breaking the Silence*. Despite the fact that the military order to prevent the *Peace Now* group from entering was signed *before* the first purported attack, the settler violence still was said to be the main cause of the closure.

A group of five settlement youth, led by notorious Hill Top Youth activist, 32-year old Itmar Ben-Gvir, met the *Peace Now* group at the military blockade, where they exhibited aggressive behavior intensified by verbal assault. The youth attempted to instigate a

²⁸Iyad Burnat of FFJB, PHRMG Interview, Sep 08.

²⁹ Some of the Bi'lin activist were older than 18.

confrontation by calling the peace groups traitors and claiming that the group was a celebration party for the recently released Hezbollah combatant, Samir Kuntar. The incident, which lasted well over an hour, took place within plain sight of the IDF and within the supposed closed military area. Having witnessed several closed military area orders firsthand, I can attest to the fact that the IDF usually administers a policy of immediate cease and desist. In this case, the settlers were able to present their statements for more than an hour, far exceeding standard IDF policy, before they were escorted back to their cars.

It is difficult to determine whether the IDF's failure to immediately remove the settlers from the military area was due to lax standards of policing or due to a clear understanding of the settlers' legal rights and political power. What *is* clear is that this incident follows a pattern of settler's capability to use violent and unlawful direct action to deter peacemaking groups from entering settlements and the surrounding areas. In a similar incident, settlers were able to drive activists from nearing the settlement areas of Shiloh and Bet El, despite their possession of a military order granting the activists' permission of passage.³⁰

The incident outside of Hebron is juxtaposed with a similar case involving a Palestinian protest and a young man who was arrested by the IDF for journalism without a permit, resulting in a sentence of 2 months imprisonment by the military courts. Like the settlers' youth in Hebron, the young man identified in this account as *Yossi* (not his real name) came to observe and photograph a pre-existing civil demonstration. During the course of the demonstration, he was unfortunate enough to find himself too close to the IDF and subsequently was detained.³¹ His lawyer, Kahled Quzmar, noted that his case mirrors many others in that initial detainment rests solely on the discretion of 18-21-year-old IDF soldiers. He explained that in the court's eyes, Yossi was guilty from the moment he was taken into IDF hands; he proposed that common military court *de facto* policy requires that no one leaves the courtroom without some type of sentence. This failure of the military system to provide sufficient oversight of IDF arrests shows that the IDF has been granted the right to interfere with a youth's civil rights in terms of both judicial immunity and support. This places tremendous power in the hands of 18-21-year-old soldiers who more often than not have only a vague understanding of law and civil liberties.

Difference in IDF treatment of Youth Activists Engaging in Property Destruction

On the 29th of July, 2008, in the city of Ni'ilin, demonstrators set out for their weekly demonstration against the security barrier currently being constructed on their land which separates their town and the settlement of Hasmona'im. The summer of 2008 has proven to be a violent one as demonstrators have been refused the right to protest at the wall's construction site. Merely reaching the wall has become a protest in itself; this protest takes place across the terraced orchards of Ni'ilin's olive groves. On the 29th, Israeli, Palestinian, and international protestors had been driven back from the construction site,

³⁰ Peace Now, "Peace Now Tour Blocked at Entrance to Hebron,"
<<http://www.peacenow.org.il/site/en/peace.asp?pi=554&docid=3336&pos=11>>

³¹ Kahled Quzmar of DCI Palestine, PHRMG Interview, Aug 2008.

back through the orchard, and returned to the town center. At the end of this traditional skirmish, a young group of Palestinian boys, including 10-year-old Ahmed Mousa, circumvented the protest intent upon removing links from a recently constructed razor-wire fence built by the IDF to aid efforts in managing demonstrators.

After the small group had been working on the fence for a minute or two, an IDF vehicle arrived on the scene immediately firing a number of “less-then-lethal” rubber bullets along with at least one live round of M16 ammunition. This round entered Ahmed Mousa’s head, killing him almost instantly. What is known in this case is that the boys were unarmed and posed no immediate threat to the IDF soldiers; thereby, no grounds existed for the assault under the stated precondition for use of lethal force.³²

Seeing how Mousa, a ten-year-old non-violent demonstrator, was dealt with by the IDF in Ni’ilin, a case comes to mind from the Hebron area also involving youth and property destruction. The case took place during the 2005 olive harvest in the farming community of Sinjil. At around 3pm on the 14th of November, near the end of a long work day, a Ford transit vehicle filled with ten girls pulled up to the site where the harvested olives were stored. The girls tried to load the bagged olives into the vehicle.³³ When the young girls were unable to load the olives, they used razor knives to cut the bags open, spilling the collected olives onto the road. They then proceeded to stomp on the olives, effectively ruining the harvest, then moved on to destroying the workers tools and farming supplies such as plastic mulching tarps, food boxes and thermo flasks.

The girls then turned upon the farmers who had gathered together to protect themselves. The girls proceeded then to throw stones and strike the Arab harvesters with sticks, all the while continuing to brandish knives. The incident lasted from 3:15-4:30, and throughout the duration of the attack 15 IDF soldiers were present and did nothing to prevent the attack except for removing a stick from an elderly Palestinian woman’s hands telling her to “leave the girls, because they were young”.³⁴ It was not until a police woman from the SJ district arrived well over an hour after the initial violence broke out that the girls were removed from the scene. A token apology was offered for the IDF’s inaction.³⁵³⁶

The IDF’s role in handling both of these cases is understandably different since the property being destroyed was in the Ni’ilin case, state property, and in the Hebron case, personal property. Taking this important factor into account, the extreme differences in IDF action are still extraordinary. In Ni’ilin, attempting to tamper with an illegal fence set up to protect another illegal fence was punished by lethal force, whereas the destruction of a community’s sole source of annual income was dealt with by a slap on the wrist. If these were isolated incidents, one could make the argument that this inequality is due to the actions of individual soldiers acting irresponsibly. Yet, both cases follow similar

³² Sources Wish to Remain Anonymous, PHRMG interviews, July and August 2008

³³ Yesh Din, “A Semblance of Law”, 2007. 62, <<http://www.yesh-din.org/site/index.php?lang=en&page=report>>

³⁴ Ibid

³⁵ Ibid

³⁶ While the girls in this case were stated as quite young, similar cases involving youth property destruction and violence involve youth being aided by more senior members of settler society.

patterns set in their respective communities. In Ni'ilin, two days after the fence incident, 17-year-old Youssef Amireh, received a mortal head wound while protesting the disruption of Mousa's funeral by the IDF. Similarly, in Hebron community, just three days after the aforementioned incident, settlers and settler youth attacked the olive harvesters once again in full view of the IDF. When a Palestinian man asked the soldiers why they had done nothing he was told,

“...that I should go away from here. I asked him where, and he said, ‘to Jordan.’ I replied that I had always lived here. Then he told me that if we were alone, he would have put a bullet in my head.”³⁷

What is needed is more than the recording of IDF responses, but how the patterns of these responses shape the future...

VII

Conclusion and Recommendations

The intention of this report was not to prove that the youth of certain settlements are violent and unlawful, or that certain IDF soldiers act inhumanely. These stories have been included in the report for the purpose of further demonstrating that legal and policing inequalities are systematic, and that these systems have ramifications. The patterns of political repression have led to an understandable sense of oppression amongst Palestinian youth. This oppression has given rise to those so inclined to manipulate youth into committing acts of supposedly justified retribution, whether through martyrdom or similar actions.

It is also important to acknowledge that a byproduct of this inequality has produced a sense of lawlessness amongst some of the settlement youth. By day in and day out observation or participation in incidents such as the olive harvesting attack the youth of ideological settlements are instilled with a very real sense of ethnic and religious supremacy. The *de jure* supremacy manifested by the inequality in the law, *de facto* supremacy manifested by patterns in policing, and their comparably lenient treatment in the court system, has produced one of the most dangerous actors in the conflict, which needs to be more seriously acknowledged by the International community and by Israel.

The simplest way to break down this supremacy would be to attack its legal foundation, either by extending Israeli civil law to all residents or by applying Military Law and the Military court system to govern all residents. While legal equality may seem far-fetched now, perhaps the first step towards such a goal would be the creation of child specific rights.

Perhaps at first, little will change in the way of IDF field policy, yet child rights' conditions should improve almost immediately in Israeli Military Court jurisprudence, providing a strong basis for NGOs to challenge IDF policy in the future. Without the fear of grossly disproportionate or unjust jail time, or the cause for communal punishment, the

³⁷ Yesh Din file 1127/05 (From the testimony of Ahmad Hussein Hasan Darawsha, born 1968, a resident of Awarta. The testimony was recorded on December 27, 2005, by Menucha Moravitz and Azmi Bdeir in the village of Awarta).

political conditions of Palestinian youth should improve, leading to a healthier, more democratic future in Palestine.

Naturally, an improvement in children's law and justice will not eradicate youth violence throughout all of Palestinian society. As in Settler communities, a certain percentage of youth violence and crime will continue as a natural result of poverty or poor individual decisions. Yet it is not this subset of Palestinian youth that is of the most concern. Underneath the current system of law and law enforcement, both jail and prison time is viewed as a badge of honor amongst Palestinian youth and to a degree, by the Palestinian society as a whole. This is the result of the over-criminalization of youth political participation as a whole. If improvements to the current system are made to widen the gap between inconvenient or unwanted political behavior and legitimately dangerous and threatening political behavior, fewer Palestinians would be criminalized at a young age. Criminal recidivism has an international correlation with youth incarceration, and by preventing Palestinians from entering the penal system at a young age, one could expect fewer repeat offenders and fewer extreme cases from developing.