

**Committee on Economic, Social and Cultural Rights**  
**Nineteenth Session (16 November to 4 December, 1998)**  
**Submission by the Center for Economic and Social Rights**  
**Concerning Israeli Jurisdiction in Palestinian Territories**

I. INTRODUCTION

This presentation will focus on refuting the arguments put forward in Israel's report to this Committee to the effect that Israeli jurisdiction does not extend to the West Bank and Gaza Strip and that therefore the Covenant does not apply to Israeli actions in these territories. CESR believes that it is critically important to reject the notion that the Oslo process has somehow relieved Israel of all human rights accountability for its policies and practices in occupied Palestinian lands. This misguided idea would leave Palestinians, who must already confront a double repression from Israel and their own national authority, with no legal recourse to address the source of the violations of their most fundamental rights.

II. BACKGROUND ON THE INTERIM AGREEMENT

Before examining issues relating to the applicability of the Covenant to Israeli policies and practices in the West Bank and Gaza Strip (WBGS), it is useful to discuss briefly the territorial and jurisdictional parameters established by the Interim Agreement on the West Bank and Gaza Strip (Interim Agreement).

During the five-year interim period covered by the Interim Agreement and ending in May 1999, Israel was to transfer to Palestinians full jurisdiction over all of the WBGS except for areas reserved for final status negotiations (Chapter 3, Article 17). This formula of "all/except" has been subject to different interpretations by the parties. The Palestinians interpret this to mean 90% of the WBGS, Israel's Labour Government envisioned 70%, and the current Likud Government is publicly discussing a figure of 40%.

The transfer of jurisdiction was to occur pursuant to the withdrawal of Israeli military occupation in three phased troop redeployments within 18 months after the Interim Agreement (Chapter 3, Article 17). To date Israel has completed only one redeployment granting the Palestinians full jurisdiction over 3% of the territory of the West Bank in addition to 60% of the Gaza Strip (termed A areas in the Interim Agreement), subordinate jurisdiction over 24% (B areas) and no jurisdiction over 73% (C areas and final status territories). Under the Wye Agreement, Israel agreed to begin a second troop redeployment within ten days to transfer an additional 1% to A areas and 12% to B areas. Israel also agreed to transfer 14% of the B areas to A areas at an unspecified future date. However, none of these redeployments has yet taken place.

The full implications of these territorial and jurisdictional arrangements will be discussed below. But it is worth noting that Israel retains control over most of the resources in the

WBGS. Without these resources, especially land and water, it is not possible for Palestinians to exercise their full enjoyment of economic, social and cultural rights. The rights to work, health, food and housing, for example, are fundamentally based on the freedom of people to develop their collective and individual capacities through the control and use of national resources. Yet Palestinians are not even able to use the limited resources at their disposal without constant disruption from Israeli-imposed closures that illegally prohibit the free movement of people and goods between different pockets of Palestinian territory.

### III. LEGAL ISSUES BEFORE THE COMMITTEE

The main legal issues before the Committee are whether the Covenant applies in principle to Israeli actions in the WBGS and whether in practice Israel still exercises effective jurisdiction over the WBGS.

In its report to the Committee, Israel rejected both the application of the Covenant to the WBGS and also its own exercise of effective jurisdiction over the WBGS. First, Israel argues that its human rights obligations do not extend beyond "the territory of the State of Israel" and therefore do not apply to the WBGS. Second, Israel argues that it "no longer exercises effective jurisdiction" in the WBGS by virtue of having "transferred actual authority and responsibility for over 90% of the population... to the Palestinian Council/Authority" under the Interim Agreement on the West Bank and Gaza Strip. Corollary to this second argument, Israel claims that "the Palestinian Council/Authority now enjoys exclusive responsibility in the whole of the West Bank and Gaza Strip... in respect to the vast majority of issues that fall within the scope of this Covenant."

It is astonishing that Israel can make such arguments before the Committee only weeks after having fought at Wye to hand over as little territory as possible to Palestinian jurisdiction and control. The Committee should reject these claims as a transparent attempt by Israel to circumvent its well-established human rights obligations.

### IV. ISRAEL CONTINUES TO EXERCISES EFFECTIVE JURISDICTION IN THE WBGS AND IS OBLIGATED TO IMPLEMENT THE COVENANT.

#### A. **Precedents in International Law**

Israel's argument that the Covenant does not apply beyond its borders contradicts established laws and precedents. Under international law, the creation of the state of Israel is grounded in UN General Assembly Resolution 181 (II), which Israel itself has repeatedly invoked to establish and defend its national existence. Resolution 181 (II) stipulates that "all persons within the jurisdiction of the State shall be entitled to equal protection of the laws" (Part 1, Chapter 2, Article 3). This clearly establishes that Israeli obligations under the Covenant extend to non-citizen Palestinians (and all other persons) within Israel's jurisdiction and not just within its territory. In fact, Israel's refusal to apply the Covenant to Palestinians in the WBGS is itself a violation of human rights pertaining

to discrimination insofar as Israel does not deny application of the Covenant to Jewish settlers who fall within the same jurisdiction of its occupation.

Israeli claims notwithstanding, parallel human rights treaty bodies have already established the precedent that Israel's jurisdiction extends to the WBGS. For example, the Human Rights Committee concluded in August 1998 that Israel was responsible for human rights in the WBGS based on "the long-standing presence of Israel in these territories, Israel's ambiguous attitude towards their future status, as well as the exercise of effective jurisdiction by Israeli security forces therein" (CCPR/C79/Add.93 D10). Similarly the Committee on the Elimination of Racial Discrimination in March 1998 extended Israeli human rights obligations to "Occupied Palestinian Territory" on the principle that "Israel is accountable for implementation of the Convention in all areas over which it exercises effective control" (CERD A/52/18/Para. P/19(3)).

## **B. Practical Issues of Jurisdiction under the Interim Agreement**

In addition to these precedents, Israel's claim not to exercise effective jurisdiction in the WBGS is refuted by the terms of the Interim Agreement and the facts on the ground. To determine whether Israel still exercises effective jurisdiction in the WBGS, it is necessary to examine the definition of jurisdiction under the Interim Agreement as well as the practical exercise of that jurisdiction in the different categories of territory established under the Interim Agreement.

Chapter 3, Article 17 of the Interim Agreement defines levels of jurisdiction in the WBGS as well as the status of Areas A, B and C (discussed below) during the interim period. Jurisdiction is divided into three components: personal jurisdiction, functional jurisdiction and territorial jurisdiction. Personal jurisdiction covers defined persons, in this case Palestinians in the WBGS. Functional jurisdiction covers defined activities, in this case the transfer of certain powers to the Palestinian Council/Authority. Territorial jurisdiction covers a defined dominion; in this case the transfer of certain territories to Palestinian administration. It is evident that the exercise of effective jurisdiction requires all three components. For example, without territorial jurisdiction over a defined area, the physical ability to practice jurisdiction over defined persons or activities within that area is absent.

In addition, the Interim Agreement creates four categories of territory with different levels of Israeli and Palestinian jurisdiction. These are: 1) territories reserved for final status negotiations that remain under complete Israeli occupation, 2) other areas of Israeli occupation in which Palestinians have a theoretical but not actual claim to limited jurisdiction (C areas), 3) areas of overriding Israeli jurisdiction and subordinate Palestinian jurisdiction (B areas), and 4) areas of full Palestinian jurisdiction encircled by Israeli military control (A areas).

### *1. Final Status Territories*

Israel exercises military occupation in all final status territories including annexed Jerusalem, Jewish settlements in the WBGS, Israeli military areas in the WBGS, and border areas. Israeli de facto jurisdiction in these territories encompasses personal, functional and territorial jurisdiction, whereas Palestinians do not exercise any jurisdiction. (All Israeli jurisdiction over the WBGS is de facto not de jure since these territories are illegally occupied under international law.)

Unlike areas A, B and C (described below), final status territories are excluded from all negotiations during the interim period. Until final status negotiations commence (scheduled for May 1999), these territories will remain under Israel's exclusive jurisdiction without even the possibility of transfer to Palestinian jurisdiction. It is very important to note that Israel has refused to define the extent of military areas and border areas, so it is not possible to calculate the territory or population included within final status territories.

## 2. *C Areas*

Israel also exercises military occupation and full personal, functional and territorial jurisdiction over C areas. The Palestinian Council/Authority has merely the claim of theoretical personal jurisdiction over Palestinians in these areas without the functional control or territorial presence necessary to exercise effective jurisdiction, which is possible only upon the withdrawal of Israeli troops and military government. Even Palestinian claims to theoretical jurisdiction in C areas during the interim period are weak because Israel has refused to define the territorial extent of C areas or separate them from undefined military and border areas (described above). This has the effect of merging C areas into the category of final status territories and thereby removing C areas from the potential domain of Palestinian jurisdiction during the interim period. Together these areas constitute more than 73% of land in the WBGS inhabited by 10% of the Palestinian population.

As an occupying power with full jurisdiction, Israel is responsible for implementation of the Covenant in final status areas and C areas.

## 3. *B Areas*

In B areas, Israel exercises overriding security jurisdiction (encompassing personal, functional and territorial jurisdiction) enforced through military orders and occupation. The Palestinian Council/Authority exercises only partial jurisdiction, subordinate and secondary to Israeli security jurisdiction (Article 13, para. 2, sec. 8 of the Interim Agreement). These areas constitute about 24% of land in the West Bank inhabited by approximately 20% of the Palestinian population.

This means that while Palestinians administer civil services like police, schools and mail, Israeli troops patrol the areas, surround scattered Palestinian populations with military checkpoints, and exercise total authority over anything that Israel deems as a security risk. The practical effect of overriding Israeli jurisdiction and subordinate Palestinian

jurisdiction is amply demonstrated by the fact that, in B areas, Israel has acted unilaterally to expand Jewish settlements, shut down educational facilities, restrict free movement of people and goods through closure, and carry out most of the house demolitions.

As an occupying power with overriding jurisdiction, Israel is responsible for implementation of the Covenant in B areas.

#### 4. *A Areas*

The Palestinian Authority exercises full de facto and de jure jurisdiction (personal, functional and territorial) over A areas, from which Israeli troops and military government have withdrawn completely. Israel does not and cannot exercise any jurisdiction within these areas except through re-occupation or with Palestinian consent, neither of which has occurred to date. These non-contiguous areas constitute about 3% of land in the West Bank inhabited by 70% of the Palestinian population

However, A areas are encircled by the Israeli military and subject to Israeli siege from surrounding troop deployments and checkpoints. Israel imposes frequent closures that confine Palestinians within specific pockets of A areas and prevent them from accessing homes, property, markets, water, land and other resources outside of these isolated pockets of land. While Israel has no jurisdiction within A areas, closures are imposed from occupied Palestinian territory over which Israel exercises full or overriding jurisdiction. The major effect is that Palestinians in A areas are cut off from their own land and resources, resulting in widespread violations of their economic, social and cultural rights. Israel's military confinement of Palestinians in isolated enclaves within their overall territory is legally and factually analogous to the bantustan system established under apartheid South Africa and universally condemned by the international community.

With respect to the impacts of closure, Israel is fully responsible for implementation of the Covenant in A areas. It is also worth noting that under the Interim Agreement Israel is obligated to allow people and goods to move freely between the West Bank and Gaza Strip via four "safe passages" specifically identified by name and route. In the event of a security threat three of the four routes could be closed, but Israel agreed to leave one safe passage open for people and goods under all circumstances. Israel's blatant violation of this provision has not drawn international attention, let alone condemnation, despite the devastating impacts of closure on Palestinian enjoyment of human rights.

## V. CONCLUSION

Israel retains effective jurisdiction over 97% of the territory of the West Bank and 40% of the Gaza Strip and 30% of the overall population. In these areas, Israel engages in numerous policies and practices that violate economic, social and cultural rights. Moreover, from these areas Israel imposes closures that violate economic, social and cultural rights of people in Areas A, thereby affecting the remaining 70% of the population. In conclusion, the Committee has clear and convincing legal and factual grounds to apply the Covenant to numerous Israeli policies and practices that violate the economic, social and cultural rights of Palestinians in the WBGS.

There are two additional points that the Committee should consider in assessing Israeli compliance with the Covenant.

First is that Israel has used the threat of violating the economic, social and cultural rights of Palestinians as a means of blackmailing the Palestinian Council/Authority into violating the civil and political rights of Palestinians. A few examples might clarify this point. Israel already agreed under the Interim Agreement to take a number of actions that would have advanced Palestinian economic development. These include, among others, redeploying the military from most of the WBGS, respecting the "territorial integrity and unity of the West Bank and Gaza Strip," permitting the safe passage of people and goods between the West Bank and Gaza Strip, and allowing Palestinians to open a seaport and airport for access to the outside world and to foreign markets. However, Israel has refused to honor these commitments until the Palestinian Council/Authority cracks down on the "infrastructure of terror." In actual practice this has meant torturing and abusing prisoners, jailing anyone who fits the generic "description" of an Islamist, setting up security courts without due process, and repressing all opposition including free speech by journalists and political dissent by human rights activists.

The second point is that Israeli violations of economic, social and cultural rights in the WBGS continue to occur within the parameters of the Oslo process. Despite lip service to human rights in Article 19, the Interim Agreement has been implemented in a manner that is extremely damaging to human rights. We are aware that the Committee is not charged with correcting the many flaws of the Oslo process. However, it is squarely within the Committee's mandate to criticize Israeli policies and practices that have an adverse effect on economic, social and cultural rights. It is also well within the Committee's mandate to note with grave concern the extent to which these policies and practices are linked to the Oslo process, as well as the unfortunate compatibility of the Oslo process with widespread violations of Palestinians' economic, social and cultural rights.