Beyond Politics: Making strides for Palestinian rights in the current situation

A review of the Palestinian rights Israel is capable of upholding irrespective of security or political affairs

Many rights denied to Palestinians in the occupied territories have no relation to the current security arrangement or Israel’s military control of the West Bank and therefore, can and must be granted. This initial review by Rabbis for Human Rights compiles examples of the humanitarian and civil rights denied to Palestinians living in the occupied territories which otherwise could be redressed by the state without determining security or political outcomes. Indeed, the very laws and standards of occupation oblige Israel to ensure these rights.

Compiled by Yariv Mohar
As a rabbinical human rights organization, we believe there can be no "enlightened" or “just” occupation. Such a term goes against the fundamental definition of an occupation, wherein a people are controlled by a foreign military body and therefore inevitably excluded from representation in the institutions that govern their fates. The 19th century German Rabbi Samson Raphael Hirsch warned us against the powerful deciding for the powerless. We are not dealing with the question of finding a desirable political solution but we do believe that one way or another, under one plan or another, the state of occupation must end. Additionally, we do not intend to claim that Israel is exempt from respecting rights that could have political significance. However, we believe that even within the given state of effective Israeli control of the West Bank, and even before resolving the political issues, the violation of Palestinian rights must be minimized. Therefore in this review we wish to examine the possibility of realizing rights in the occupied territories within the given state of occupation. We argue that even within the military rule of the West Bank, there is no justification for the denial of numerous rights and at the very least those rights must be implemented right now. That implementation by no means provides a satisfactory or comprehensive response to the overall institutional violation of rights in the West Bank, but would at least be a first step in the right direction and enable the significant improvement of the lives and security of masses of Palestinians.

This review will focus mainly on the denial of humanitarian and human rights based on the spirit of Judaism, international conventions of human rights to which Israel is a signatory, and on the basis of customary international law regarding the rights of civilians during occupation. We have only reviewed the rights whose denial has a systemic impact on large segments of the civilian population, its life and daily struggles, and whose implementation is not necessarily connected to purely military or political issues. The realization of these rights is compulsory and possible even under the present situation of Israeli military rule of the West Bank – even before resolving the political differences as to the future of the area and even without changing significant security arrangements. Actually, these rights arise precisely from the responsibility inherent in Israeli military control of the area.

This review does not attempt to present new information but collects information from existing reports by a series of human rights organizations and other publications, while collecting the information relevant to the definition of rights that should be above and beyond the political discussion, and which can be implemented right now. Honest decision-makers from the whole political spectrum can support these proposals to realize the rights specified in the review. This review does not attempt to exhaust all of the rights that can be realized right now but is an initial review presenting examples of significant, far-reaching and basic rights that are presently denied from the Palestinians in the West Bank.

We wish to clarify that the reason we shall focus on the West Bank is that our organization operates in the West Bank and not the Gaza Strip. However it should be noted that the humanitarian situation in Gaza is extremely severe according to the reports of Israeli and international organizations and requires separate attention.

The goals of this review:

The main goal of this review is to promote a series of significant human rights policy changes for Palestinians right now. These rights ought to be outside of the political "deadlock," are independent of the existence of a political process, the parties' positions in negotiations or their results. As aforesaid, we by no means think that those rights are sufficient but that this is a first step in the right direction, as minimal requirements that might also set off a positive process of reducing the flames of the conflict. As our sages
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said: "You are not obligated to complete the work, but neither are you free to desist from it (Pirkei Avot 2:16)." In other words, we believe a first positive step is a necessity even if for the meantime it is limited.

From a different angle, this review seeks to expose how under the guise of intractable political disputes or security concerns Israel justifies the denial of many human rights in the West Bank that have nothing to do with security arrangements or any political issues. Therefore Israel has both the duty and the ability to realize them even under the given situation of Israeli military rule of the West Bank, or precisely because of it.

Examples of how Palestinian rights can and must be protected even under the present arrangement:

Halting the prevention of basic infrastructures such as water, sewage, and electricity from villages in Area C
* Preventing the restriction of basic health services
* Providing adequate planning in Palestinian villages in area where development has been blocked
* Freezing the administrative demolitions of hundreds of houses and structures where legal construction is impossible
* Blocking the widespread takeover of Palestinian agricultural land
* Curbing distorted declarations of private Palestinian land as "state land"
* Preventing the denial of access of farmers to their land
* Enforcement against lethal shootings of demonstrators posing no danger or threat
* Determined action against violent assaults and vandalism by extremist settlers
* Permitting freedom of speech instead of curbing it
* Ensuring workers receive rights they have been denied
* Guaranteeing minors their rights in the criminal process
* Fighting humiliation and violence by security forces against Palestinians
* Ending unjustified arrests of leaders of Palestinian protests.
Palestinian rights in the present situation:

Basic living conditions: infrastructures and health.

1. The denial of basic infrastructures: water, sewage, and electricity

Numerous Palestinian villages in Area C suffer from the absence of water, sewage and electricity infrastructures or from incomplete or defective infrastructure. These communities are located in areas where Israel is in charge of civilian services, yet it does not provide them and even obstructs Palestinian initiatives to do so (either by local councils or the Palestinian Authority). The state must take responsibility for the absence of this necessary infrastructure.

According to a B’Tselem study, tens of thousands of Palestinians living in Area C are not connected to any water system and depend either on rainwater they collect in cisterns or on purchasing water from private contractors which they than carry to water tanks. The water purchased from water tanks is much more expensive than the water available from normal faucets, resulting in a highly vulnerable and disempowered population paying the most. According to Rabbis for Human Rights, OCHA and other organizations, not only does Israel fail to provide water through pipes but it also demolishes wells and rainwater cisterns built by the farmers. According to the legal opinion of international legal expert Prof. Eyal Benvenisti, given in support of a petition by Palestinian councils, RHR and other organizations:

“Enforcing final demolition orders against structures included in the installations specified in section 54(2) of the First Protocol [attached to the Geneva Convention], including rainwater collection installations, even if they were built without building permits, and even if they were located within an area defined as a closed military area, is inconsistent with the provisions of international humanitarian law. That is if the structures are designated or serve, as specified above, for the survival of protected persons of the territories subject to belligerent occupation, and in the absence of concrete and significant reasons for the existence of necessary acts of warfare. Even if there are such reasons, they must be balanced with the need to defend the population that needs the installations and prevent exaggerated and disproportional harm. Therefore, in any case the harm is forbidden when it could leave the protected civilian population without food or water, which could cause its starvation or force it to move away.”

According to a 2008 World Bank report (p. 9, section 19),

"Similarly, infrastructure projects to serve the most basic needs of the Palestinians in Area C, such as repairing roads or connecting to water supply, are frequently delayed or denied, even if donor funding is available for such investments."

Beyond politics: The right to minimal living conditions includes the right to basic infrastructures and services such as water and sanitation. Electricity is also a fundamental basic humanitarian right. All of these must be beyond any political consideration or dispute. Humanitarian rights must not be bargaining chips in the political dispute between Israel and the Palestinian Authority at the expense of the civilian population. Furthermore, as long as Israel does not allow the Palestinians to initiate development plans for basic infrastructures and services, it must take upon itself the duties that go with that control, even at the price of bearing the economic costs of their supply. Any disconnection of vital services for political reasons constitutes collective punishment which is forbidden by international law and is an incomparable wrong towards the civilians under Israel's responsibility.

For further elaboration and references:

B’Tselem report: [http://www.btselem.org/water/restrictions_in_area_c](http://www.btselem.org/water/restrictions_in_area_c)
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Prof. Eyal Benvenisti’s opinion about the illegality of demolishing structures vital for the population’s survival:

OCHA report on demolishing rainwater cisterns:

World Bank report:

2. The restriction of basic health services that can and must be provided

The January 2015 report by Physicians for Human Rights, “Divide & Conquer: Inequality in Health,” analyzes the control mechanisms by which Israel affects health in the occupied territories, "effectively preventing the Palestinian Ministry of Health from providing full health services to the residents of the occupied territories. There are several key restrictions that Israel enforces in the area of health, beyond the Palestinian Authority's own failings," including the following:

- Israeli limitations on the freedom of movement of patients, medical professionals, ambulances and medications even within the West Bank.
- Limitations on the scope of medical personnel permitted to work in East Jerusalem (which is where the six central Palestinian hospitals are located) and on the scope of medical personnel permitted to come into Israel for training.
- The pharmaceutical market in the West Bank and the Gaza Strip is bound by economic agreements with Israel which allow it to control that market and manage it according to its own interests and at the expense of the Palestinians. This control is reflected mainly in blocking the import of cheaper pharmaceuticals from Arab countries and imposing severe restrictions on the export of pharmaceuticals.
- Israeli control of the Palestinian Authority's budget, including its health budget.

According to the 1994 Paris Protocol, customs and VAT on products entering the PA are collected by Israel and transferred to the PA at regular times. According to data from the Coordinator of Government Actions in the Territories, the customs funds constitute 44% of the PA's budget and by other estimates the rate is even higher. Israel has taken advantage of its control of that tax money on a number of occasions to date. It did so recently in January 2015, after the PA appealed to international institutions and in response Israel decided to withhold the funds in order to exert pressure on the Palestinians. Likewise, in November 2012, after the PA asked the UN General Assembly to be recognized as an observer state – a request that was accepted – Israel withheld the transfer of the customs money to the PA as a punitive measure. That act necessarily also impacted the PA’s health budgets.

Beyond politics: The right to optimal health services and the prohibition on limiting them must be an issue that is beyond any political consideration or dispute.

For further elaboration and references:

Lands and Planning: Pushing the Palestinians off their land and preventing regional development has humanitarian and economic consequences:

**Background:** Under international law forbidding an occupying state to settle its citizens in occupied territory, all of the settlements are illegal. But even those who support continued Israeli control of the West Bank while acknowledging the needs of the non-Jewish population should theoretically support Palestinian rights in the areas of land and planning.

The following analysis by the researcher Dror Etkes of the Kerem Navot organization shows that Palestinians are continuously dispossessed of their land, even though the settlements already control an extensive area of jurisdiction - disproportionate to the size of their population - and only one tenth of which is actually built up. Furthermore, in 90% of the settlements, construction exceeds the area of jurisdiction.

Dror Etkes, Kerem Navot:

The settlements’ jurisdiction areas currently cover an area of 510,000 dunams, whereas the built area of the settlements is around 60,000 dunams, which is to say that only 11.7% of the settlements’ total jurisdictions are currently built up. Extreme examples thereof can be seen in the Peace Now report “Construction and development of settlements beyond the official limits of jurisdiction:”

http://peacenow.org.il/eng/content/construction-and-development-settlements-beyond-official-limits-jurisdiction, by The Peace Now Settlement Watch team (Dror Etkes and Hagit Ofran) in July 2007. The report’s authors found that precisely the settlements with relatively few residents enjoyed tremendous areas of jurisdiction that had nothing to do with the population’s needs.

In addition to those areas allocated to the settlements themselves, there are hundreds of thousands of additional dunams (the exact number is unknown) defined as "state land," transferred to the 60 Israeli regional councils in the West Bank, which Palestinians cannot use. Furthermore, information published by the Bimkom organization, based on figures provided by the Civil Administration, indicates that only 0.7% of state land has been transferred for Palestinians use since 1967.

The definition and criteria used for the term “state land” is the result of a distorted interpretation of Ottoman Law which was not used under Jordanian or British rule. Through this new interpretation of the term, the declaration of “state land” has become the most effective tool Israel uses to discriminate against the Palestinian population via access to land.

**Following are the rights concerning planning and land:**

3. Adequate planning and development instead of limiting development:

The military planning system governing the Palestinian villages in Area C does not include representation of the residents. This system is primarily used to block any new Palestinian development, even on Palestinian-owned land. This planning system also demolishes hundreds of homes every year, brings numerous families to the point of crisis and causes severe damage to the Palestinian economy. Therefore, when we talk about rights that can be provided to the Palestinians in the occupied territories at the present, one measure that would have tremendous impact would be returning planning powers to Palestinians in their villages and on their land in the areas under full Israeli control (Area C). Such a move would allow Palestinians to plan for themselves and build on their land. Between 1967-71, even under Israeli rule of the West Bank, the local Palestinian planning committees continued to function until they were canceled by a military order. In this sense, the demand to restore planning powers is not actually an
innovation but a return to the initial status of Israeli control of the West Bank. Israel is also presently challenged by a petition to the HCJ submitted by Palestinian councils, Rabbis for Human Rights and other organizations demanding planning powers be returned to Palestinians in Area C. Although Israel is currently responding to this challenge by refusing to acquiesce to the Palestinians’ right to adequate planning, it is nevertheless difficult to imagine any Israeli interest in planning for the Palestinian villages, especially when it comes to building on privately owned Palestinian land. This suffocating planning system only results in the Israeli taxpayer spending large amounts of money on a military planning system, legal procedures and demolitions. Additionally, the situation certainly increases Palestinian rage and hatred of Israel.

Area C constitutes most of the area of the West Bank. Less than 1% of it is devoted to Palestinian development, compared to 26% designated for settlement development. 70% of Area C falls in the jurisdictions of the settlements and is therefore forbidden for Palestinian development. This is to say that 29% of Area C is not allocated to the settlements or other Israeli interests but is nevertheless forbidden to Palestinian development. The result is a severe building shortage and massive demolitions of homes and other structures.

Meanwhile, Palestinian villages must also be given adequate jurisdictions and planning areas. Today the Palestinian villages do not have defined jurisdictions nor do most of them have defined planning areas. For the small minority of the villages given planning areas, that space is extremely limited in relation to their needs as well as in comparison with communities of a similar size in the settlements or in Israel.

When determining the area earmarked for development of the Palestinian villages, the military planning system once assumed that the future population density in the villages would be 70% higher than the population density in some of the biggest and most populated villages in Israel and the Western world — higher than in central London and New York. Only in response to public pressure did it somewhat withdraw from that position [Bimkom report, “The Prohibited Zone,” about planning in Area C, pp. 103-104].

**Beyond politics:** Every legitimate political stream, committed at least to basic rights, must recognize a population’s right to build on its land on the basis of proper and equal planning parameters and procedures, with representation of the residents. Local committees on the municipal level do not decide major political issues. Furthermore, according to Regulation 43 of the Hague Regulations, which Israel recognizes, the occupying force in the territory under “belligerent occupation” must allow and enable a normal fabric of civilian life that respects the laws that were enforced before the occupation (unless there is an absolute preclusion to do so). In this case, Jordanian Planning Law that was in force in the West Bank before the occupation defined local and district committees with resident representation. Respecting customary international law is not a political matter.

**For further elaboration and references:**


Petition by Palestinian councils, Rabbis for Human Rights and other organizations, demanding to return planning powers to the Palestinians in Area C: [http://rhr.org.il/eng/area-c-planning-appeal/](http://rhr.org.il/eng/area-c-planning-appeal/)

4. Stopping the administrative demolitions of hundreds of houses and structures every year, when there is no possibility to build legally:

Directly related to the planning issue is the need to stop the practice, exceptional in the democratic world, of systematically declining building permits and demolishing hundreds of buildings and structures every year for administrative reasons, in the Palestinian villages in Area C. The Palestinians have been suffering from this phenomenon for decades and it causes tremendous damages to many families whose homes and much of their wealth go down the drain. Today more than 94% of Palestinian applications for building permits are denied [source: OCHA report] and discrimination against the Palestinians in planning is clear and blatant. In the past the situation was the other way around: the military government approved most applications and the Palestinians trusted and submitted applications for building permits. For example, in 1972 97% of Palestinian requests for building permits were approved. Only after the rate of approval of building permits dropped dramatically in the 1980s did the Palestinians give up on applying to the military planning system (see Bimkom report “The Prohibited Zone”, p. 10).

The result of failure to grant building permits is the massive demolition of houses and structures built on Palestinian land, and the number of demolitions is on the rise: 1,626 Palestinian structures were demolished in the eight years from 2000-2007 on the grounds of failure to grant building permits, according to the Bimkom report, whereas in the five years from 2009-2013, 2,224 structures were demolished according to OCHA. Only 12% of the Palestinian families whose homes were demolished on grounds of failure to grant building permits reported they were allowed to empty out their houses before they were demolished by the military administration, according to OCHA. The demolitions include structures vital to the population’s survival, such as rainwater cisterns in rural areas where there is no water system (see B’Tselem report, “Acting the Landlord: Israel's Policy in Area C,” June 2013 as well as section in this report about water).

A dramatic rise in demolitions between 2009-2013, OCHA figures

<table>
<thead>
<tr>
<th>Demolitions</th>
<th>Total</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
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<td>Of them residential</td>
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<td>56</td>
<td>113</td>
<td>215</td>
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<td>208</td>
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<td>Forcibly displaced residents</td>
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<td>478</td>
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<td>572</td>
<td>13861</td>
<td>3940</td>
<td>3691</td>
<td>1413</td>
</tr>
<tr>
<td>Of them children</td>
<td>13451</td>
<td>499</td>
<td>8025</td>
<td>2183</td>
<td>1623</td>
<td>1121</td>
</tr>
</tbody>
</table>

Home demolitions have a unique impact on children:

As part of the study “Broken Homes: Addressing the Impact of House Demolitions on Palestinian Children & Families,” in a report by Save the Children - UK, a comparison was made between mental health questionnaires given to children whose homes were demolished and a control group. The comparison found that the mental health of children whose homes were demolished was relatively worse than the control group even six months after the demolition.

Children whose homes were demolished also experienced more difficulty concentrating than the control group. Their motivation at school was lower and they were easily confused, lost their concentration and daydreamed.

Children whose homes were demolished suffered from anxiety and depression more than the control group. They cried more, were afraid to go to school, felt unloved or that others were mean to them, felt guilty, nervous and very tense.
Beyond politics: Even under a regime of occupation, the occupying force is obligated to allow the occupied to maintain a normal fabric of civilian life and this is inconsistent with widespread demolitions of the homes of protected persons. Furthermore, given the practice of the retroactive legalization of illegal construction in the Jewish outposts – whose illegality stems not only from planning but also propriety aspects of their being built on the private land of others – the numerous demolitions of Palestinian homes also constitute illegal discrimination.

Moreover, the demolition of rainwater cisterns considered vital structures for the survival of the population is forbidden by international humanitarian law - see opinion by Prof. Eyal Benvenisti attached to the Area C planning petition.

For further elaboration and references:

OCHA report: [http://www.ochaopt.org/documents/ocha_opt_special_focus_demolition_area_c.pdf](http://www.ochaopt.org/documents/ocha_opt_special_focus_demolition_area_c.pdf)


“I dream frequently that the army comes into our house and wants to beat us up;” The impact of house demolitions on Palestinian children and families: [http://rhr.org.il/eng/2014/04/childrenanddemolitions/](http://rhr.org.il/eng/2014/04/childrenanddemolitions/)


5. Preventing the widespread takeover of Palestinian agricultural land:

The state and bodies it supports must stop directly and indirectly abetting the widespread and deliberate phenomenon of settlers taking over Palestinian agricultural land in the West Bank, including 27,000 dunams. It must also correct the failures that enable that theft. The desired policy should be first of all not helping and secondly taking active and determined state action against those takeovers. According to the Kerem Navot report “Israeli settler agriculture as a means of land takeover in the West Bank” (August 2013), from 1997-2012 the amount of private Palestinian land taken over by settlers for agriculture rose from 17,533 dunams to 27,433 dunams, a 56% increase (p. 73). The report adds that 69% of the agricultural land cultivated by the settlers which was added since 1997 was added outside of the settlement jurisdictions and presumably originated in land takeovers [10-11].

The pieces of the puzzle come together: According to Rabbis for Human Rights’ legal department, in all of the dozens of land cases it is following, the settlers never presented purchase or ownership documents for
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the land but claimed possession by virtue of cultivation according to a still-valid Ottoman law (cultivating land for 10 years may grant the cultivator possession). In that case it is very likely that most of the agricultural land that was added and is currently cultivated by the settlers actually originated in the takeover of private land. The settlers involved do not recognize the Palestinians' property rights, trespass on Palestinian private land and claim they have been present and cultivating the land for more than 10 years, and that the burden is on the Palestinian side to prove that this is not the case. Sometimes the settlers invade Palestinian land to which the security forces have blocked access for a variety of reasons. Sometimes they forcefully chase out the Palestinians and sometimes it is a combination of both elements.

One example is the case of Mr. Fawzi Mohammed, whose access to his land was prevented following the establishment of the outpost of Esh Kodesh. As soon as the outpost was built, violent settlers began attacking him and his family and destroying their crops. Under the atmosphere of lawlessness in the area, a settler named Zvi Strook trespassed on Fawzi’s land and planted a vineyard in it. After a petition by Rabbis for Human Rights on the matter, the head of the Civil Administration - after a hearing and site visit - decided that Strook's use of the land was a "disruptive use," and on August 30, 2012 signed a disruptive use order. Subsequently, Strook appealed to the military appeals committee, which recently rejected his appeal.

The most serious problem is that this is not an individual phenomenon but an institutional phenomenon that is supported by state bodies, which heavily fund them and also help by providing security and fencing off settler-controlled agricultural lands, which constitute takeovers of Palestinian land. Furthermore, quasi-official bodies such as the JNF and the WZO Settlement Division (most of whose budgets come from the state) also provide them with assistance for those takeovers. Settler organizations that do not recognize Palestinian property rights also help with the agricultural work of the plots in question.

This phenomenon of taking over agricultural land follows a series of distortions and failures by the state which help the trespassers and which can be corrected forthwith. 1. The fact that Israel has not settled land status in the West Bank, and therefore there is no accurate registration of the different plots. 2. The fact that under the present legal system the person whose land was taken over has to prove it is his and does not belong to the trespasser who took over the land, without the victim having the tools to do so (after all, there is no central registration of ownership; any person can take over land, cultivate it, claim he has been there for 10 years and then the land owner must prove this is not the case). 3. The fact that Israel blocks Palestinian access to wide swathes of their land and/or arms extremist settlers and gives them the power to expel Palestinians from their land so that they can take it over themselves. 4. The fact that the offense of trespassing is rarely enforced in the West Bank when a settler trespasses on the land of a Palestinian subject, nor are any other measures hardly ever taken against the trespassers. 5. The fact that the Palestinians – as opposed to settlers – need to deposit collateral of tens of thousands of shekels to even recourse to the Israeli court and they do not always have the money. 6. The fact that even if the Palestinian manages to prove the land is his against all odds, the trespassing settler is not criminally or civilly punished. At the very most he is evicted (if anything), so trespassing pays off. 7. And worst of all: the fact that government ministries help by funding and other means to underwrite agriculture that originates in land takeover. All of these aspects encourage crime and some of them can be corrected immediately.

Beyond politics: Even under an occupation regime – actually, especially under such a regime – the government (in this case the occupying force) must prevent the widespread phenomenon of theft of the occupied population's land, which is the source of many families' livelihood. The state enables and even directly and indirectly encourages this phenomenon through the Settlement Division, the Interior Ministry, the Tourism Ministry and more, so that the land takeovers benefit from direct government budgets and direct establishment connections. Furthermore, the state is guilty of the failure of
non-enforcement and freezing the legal status. All of these can be stopped right now, regardless of the political stalemate.

For further elaboration and references:


The takeover of the land of Fawzi Ibrahim of Jalud: http://rhr.org.il/eng/2013/01/last-week-was-one-of-the-good-ones-a-modicum-of-justice-for-fawzi-ibrahim-rabbi-arih-asherman/#more-6798

A settler from Kfar Tapuah was documented by B’Tselem volunteers telling Palestinian farmers that their whole field was his for religious reasons but he was willing to let them cultivate half of it, an offer that he presented as generosity: https://www.youtube.com/watch?v=tEgKT0cIOZk

6. Stopping the distorted declarations of Palestinian land as "state land"

Ending the distorted interpretation of previous regimes’ implementation of Ottoman law to declare Palestinian lands as “state lands.” By distorting the interpretation of Ottoman land laws used by the regimes preceding the Israeli occupation, Israel is able to take a great deal of land from Palestinians, in contrast to the local practice in the Ottoman, British, and Jordanian periods – therefore not in line with the principle of judicial continuity to which Israel is committed. At the very least, the state should refrain from using such interpretation in order to take more Palestinian lands for Israel’s use, in particular since these lands are almost never allocated to Palestinians after being declared “state lands.”

In August 2014 alone, Israel declared some 3,800 dunams of the West Bank “state lands” by military order.

Background from the B’Tselem website:

The bulk of the West Bank state land declaration project began in 1979, after the HCJ limited the possibility of constructing settlements on Palestinian land taken by military order. After the ruling, Israel undertook to only build settlements on “state land,” but the supply of lands meeting this definition under Jordan was limited. Israeli governments began making efforts to expand the supply using legal acrobatics, and by 2002 Israel had declared nearly a million dunams of the West Bank as state land. Today Area C, under full Israeli control, includes some 1.2 million dunams of state lands – 36.5% of Area C and 22% of the entire West Bank, compared to 9% under Jordan. Israel has succeeded in expanding the land defined as state land more than twofold in comparison with the Jordanian regime.

Beyond politics: Israel’s obligation as an occupying power is to respect the local legislation in effect on the West Bank right before Israeli occupation, with an obligation to the legal protections in international humanitarian law as well as additional protections Israel has undertaken, especially in the area of human rights. This obligation on the part of the occupying power to respect the legislation in effect before the occupation is anchored in Article 43 of the Regulations accompanying the 1907 Hague Convention respecting the Laws and Customs of War on Land. Israel implements local law selectively, departing completely both from its commonly accepted interpretations and from Israel’s obligations to the human and humanitarian rights of the residents of the occupied territory, so that the law is used as a tool to
misappropriate private Palestinian land. Nor can reasonable security considerations be found to justify the continuation of these declarations; If a piece of land is required for security reasons, there are orders allowing the IDF to hold it temporarily and only for necessary, immediate, and proportionate military needs and without affecting possessory status.

For further elaboration and references:
B'Tselem report: Under the Guise of Legality: Declarations of State Lands on the West Bank:
Synopsis and abstract:
http://www.btselem.org/publications/summaries/201203_under_the_guise_of_legality
See also: Explanation page on B'Tselem website: http://www.btselem.org/area_c/state_lands

7. Denying Palestinians access to their lands:
Ceasing to deny Palestinians access to broad swathes of their land – Access is prevented at times by the military, other times by the creation of settlements, outposts or unofficial perimeters around them into which Palestinians are effectively barred from entering. In other cases yet, violent settlers terrorize Palestinian farmers and sometimes the army even helps the settlers, or security forces take no serious action against the violence.

Settlements and outposts blocking access:
Due to forceful enforcement preventing Palestinians’ access to their lands around settlements, effective SSAs (“Special Security Areas” around a settlement) are created, even when no such perimeter is officially declared by the army. This is how the phenomenon is described in the B'Tselem report, “Access Denied: Israeli Measures to Deny Palestinians Access to Land Around Settlements”, (September 2008, p. 23-24):

"... the harassment and attacks have a threatening and deterrent effect over time. Many witnesses testified about settler attacks that left their mark, in individual and collective memory, and deterred many from approaching the “danger zones” near the settlements. In many areas, Palestinian do not dare stay on such land, or even cross it, and the few who risk their lives are the most daring of the farmers, whose land is the source of their and their family’s livelihood. In other areas, Palestinians cross the land only when they are accompanied by Israeli or foreign human rights activists, or when the army is prepared to escort them.

In recent years, B’Tselem has documented numerous attempts of settlers to forcibly expel Palestinians from land next to settlements. The cases involve shooting, threats to shoot and kill, beatings, stone throwing, unleashing attack dogs, striking with rifle butts and clubs, attempts to run over Palestinians with a vehicle, destruction of farm equipment and crops, theft of crops, killing of livestock and theft of animals used for farming, unauthorized demands to see identity cards, and theft of documents. The scope of means used to expel Palestinians is broad, though its extent cannot be precisely determined.”

The land Palestinians are prevented from using is then used by residents of the settlements and outposts for a number of purposes. First, the lands are used to expand the settlements and create new outposts by erecting structures and trailers. Second, the trespassers use the land to do things the owners are prevented from doing – shepherding, working the agricultural lands, and planting and sowing. Under local
laws, farming operations constitute taking possession of the land, carrying fateful implications for the land’s future and the balance or rights.

The manner in which the outposts affect access for Palestinians living near them was also described in the *Yesh Din* report, “Under the Radar” (p. 22-26).

**Prevention of access by the military:**

According to the ruling on the Morar HCJ (9593/04, Rashed Morar and others v. IDF Commander and others, ruling of June 26, 2006, filed by the Head of Yanun village, Rabbis for Human Rights, and others,) security forces are not allowed to prevent agricultural work except in very limited situations in which they close the area off in advance in an orderly fashion. It is customary for every such order to undergo Attorney General review. As the judges ruled:

“...except in cases of a concrete need, which arises from reliable information or real warnings in the field, the military commander should, as a rule, refrain from closing areas in a manner that prevents the Palestinian inhabitants from having access to their land for their own protection, since the use of this measure in these circumstances is disproportionate. Adopting the measure of closing areas, which should be restricted to the absolute minimum, may be proportionate only when it is done in order to protect the Israeli inhabitants, subject to the restrictions and the conditions that we discussed.”

Much to our dismay, ever since the HCJ ruling on the Morar case, we at Rabbis for Human rights have been busy at work handling cases with the various brigades where forces on the ground obstruct or remove farmers from their lands, saying they had made arrangements in advanced, although there is no such requirement whatsoever. There are many other cases where the farmers do not even reach their lands because the security forces had already convinced them to coordinate their arrival in places which require no coordination.

Despite the clear HCJ ruling to the effect that there is no coordination requirement without a military order, attempts to prevent agricultural work without pre-arrangement in areas where there is no such requirement continue to take place, due to illegal conduct on the part of soldiers and officers on the ground.

**Beyond politics:** Farmers’ access to their lands, which they depend on for sustenance, must be beyond any political disagreement, and should not depend on one agenda or another. Insofar as there is a security necessity, security forces can issue an order, escort the farmers, and ensure there is no security risk posed by the farmers or any risk to them from others. Instead, coordination is mostly poor, preventing farmers from reasonable agricultural work, and even when extremist settler attacks occur on occasions when security forces are escorting Palestinian farmers, the soldiers or policemen have been known to stand idly by, failing to do their duty to protect the farmers and stop the assailants, and sometimes even indirectly or directly helping the attackers. No significant disciplinary measures are taken against these soldiers and policemen, and the the implicit message from their commanders is that protecting Palestinians is not a duty of Israeli security forces at all, or at most a task they begrudgingly take on, at the very lowest priority (this specifically is true of the military, much less so of the police.)

**For further elaboration and references:**

Security forces prevent Palestinian farmers access to their lands: the story of the farmers of Jaloud and the South Hebron Hills:

The future of the lands of Qaryut: http://rhr.org.il/heb/2011/07/2127/[Hebrew]

Assorted violence against Palestinians and property damage, bodily harm, and psychological damage:

8. Enforcement against unjustified, exaggerated, and deadly gunfire upon protesters who pose no danger to security forces:

In many cases, security forces have been documented or reported to make deadly use of riot-control measures and to fire live ammunition when their own lives are not in danger. Education, enforcement, and harsh punishment are needed against this phenomenon. Such unjustified or improper gunfire has killed and wounded many Palestinians, and raises suspicions of illegal gunfire intended to hit civilian targets while dispersing demonstrations and during other operational activities. One clear example is the gas cannister fired directly at Bassem Abu Rahmah of Bil’in, killing him (according to army regulations, these cannisters are only to be fired indirectly); this is while documentation of the case shows Abu Rahmah was peacefully protesting and did not pose any kind of threat to the soldiers. Nonetheless, the MAG ordered the investigation closed even in this clear-cut case, and almost without explanation.

From Amnesty International’s report, “Trigger-Happy”: According to UN data, more West Bank Palestinians were killed in 2013 than all those killed in 2011 and 2012 together. Forty-five were killed in the last three years. At least 261 Palestinians, 67 of whom were children, were shot and seriously injured by live ammunition fired by Israeli soldiers in the West Bank between January 2011 and December 2013.

Since January 2011, [...] over 8,000 Palestinians, including 1,500 children, were injured by other means, including rubber-coated metal bullets and careless use of tear gas. [...]After more than a year, the findings of Israeli authorities’ investigations have yet to be revealed as to the number of killings suspected of being illegal.

http://www.amnesty.org.il/_Uploads/dbsAttachedFiles/TriggerHappyPR.pdf

Beyond politics: No reasonable security considerations can be found to justify unjustified, excessive, and deadly fire on protesters while security forces are not in mortal danger, in particular with regard to peaceful demonstrators, as in the case of Abu Rahmah. Therefore such cases should be outside the legitimate political spectrum and a policy must urgently be promoted to strive towards an end to this practice and prosecution of suspected perpetrators.

For further elaboration and references:

B’Tselem investigation + video documenting the killing of Abu Rahmah although he did not use any kind of violence. The investigation also details the security apparatus’s disavowal of investigating the case and prosecuting those responsible:

http://www.btselem.org/press_releases/20130910_bassem_abu_rahmeh_killing_file_closed
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B'Tselem and Yesh Din’s Sisyphean attempts to bring about the prosecution of Bassem Abu Rahmah’s shooter:

http://www.yesh-din.org/hottopview.asp?postid=27

Only 7 soldiers have been convicted of killing Palestinians (and one foreign national) from 2000 through 2013, and they too mostly received negligible sentences, according to a Yesh Din report:


9. Fighting against humiliation and violence by security forces against Palestinians:

Developing procedures and strict enforcement against the very common phenomenon of random humiliation, abuse and/or violence against Palestinians at checkpoints and friction points with the security forces, which have nothing to do with Israel’s security. Senior IDF officials even think these behaviors contribute to hostility and terror. Today the procedures are inadequate and the enforcement is negligible and not deterring.

Some of these abusive and humiliating behaviors do not constitute improper behavior by a renegade soldier but are institutional policy. For instance, understaffing of checkpoint inspections leads hundreds of Palestinian workers to be crammed into a long and crowded line in a narrow “sleeve” of fences, for hours, and to have to get up for work in the middle of the night. In late 2014 this led to a strike by Palestinian workers against the worsening of their working conditions at the Shaar Ephraim checkpoint.

Beyond politics: No legitimate political agenda can accept humiliation, abuse, difficult conditions at the border crossings, demeaning language, arbitrary punishments or random violence against Palestinians when they come into contact with the Israeli security forces. Orders and regulations against such acts are meaningless if they are not accompanied by enforcement and punishment that deters soldiers and police from acting that way, and if they are not supported by educational efforts to instill the understanding that it is forbidden to use the excessive power of the armed against the disenfranchised subjects of a military government.

For further elaboration and references:

Example of a soldier’s testimony on the Breaking the Silence website: Checkpoints mean humiliation:
http://www.shovrimshtika.org/testimonies/database/54149

From the Machsomwatch website: Comments by Ilan Paz, former head of the Civil Administration, and commander of the Binyamin and Menashe battalions. In interview with Razi Barkai on Army Radio, April 30, 2007:

"The internal checkpoints in the West Bank must be lifted. We must stop the humiliation that the checkpoints create. There will always be humiliation at checkpoints, terrible things will always happen there. It encourages terror and does not add to security. We must lift the internal checkpoints.”


"The situation at checkpoints is deteriorating": Ynet report based on Machsomwatch observation:
http://www.ynet.co.il/articles/0,7340,L-3097079,00.html [Hebrew]

Palestinian workers go on strike: "6,000 Palestinians strike over ‘daily humiliation’ at crossing”: Ynet report about the worsening of conditions at the Shaar Ephraim Checkpoint:

http://www.ynetnews.com/articles/0,7340,L-4606329,00.html
10. Determined action against assaults by violent settlers:
There is a widespread phenomenon by violent elements among the settlers who organize in groups, usually armed, and violently attack Palestinians in the fully Israeli-controlled Area C, or vandalize Palestinian property and crops. These assaults often take place right in front of the eyes of soldiers and police who often ignore or even help them. These assaults are often abetted by the civilian security coordinators (the settlement security officers – the Yesh Din report These violent assaults serve the purpose of preventing Palestinian farmers' access to their land, taking over the Palestinians' land or just letting out rage, "revenge" (not necessarily against those who hurt them but randomly), and racist hatred.

Beyond politics: Violent assaults, especially motivated by racism, and especially by one group armed by the government against another group of disenfranchised subjects, has to be outside of the boundaries of legitimate politics. Ignoring this phenomenon or negligible or soft enforcement against it, amounts to indirect support for the assailants.

For further elaboration and references:
Extremist settlers attack the Palestinian village of Urif in front of the eyes of indifferent soldiers. Documented by B'Tselem: https://www.youtube.com/watch?v=7WBRO3Q_YGE#t=34

Documentation by Yesh Din and Rabbis for Human Rights: violent settlers from Yitzhar attack Palestinians and Jewish human rights workers, injuring a 70-year-old man and an 18-year-old girl with clubs: http://rhr.org.il/eng/2013/10/attack-near-yitzhar/

Yesh Din documentation of settlers attacking the village of Burin with the help of IDF soldiers: http://blog.yesh-din.org/en/?p=596

Complaints submitted by Palestinians to the police of assaults, and soldiers standing by, are closed even when there is clear documentation of the assailants: http://blog.yesh-din.org/en/?p=642

IDF officers says on camera that he is unwilling to protect attacked Palestinians, and calls Israeli activists traitors who deserve the death penalty. Documentation by B'Tselem: https://www.youtube.com/watch?v=PsoC9EAkba8&feature=player_embedded

Another story of an attack by extremist settlers in front of the eyes of IDF soldiers near Huwarah on the Yesh Din blog: http://blog.yesh-din.org/en/?p=743

Violent assaults by civilian security coordinators (the settlement security officers) – the Yesh Din report: http://www.yesh-din.org/infoitem.asp?infocatid=632

Freedom of speech and protest:

11. Allowing freedom of speech instead of curbing it
Canceling the order that severely limits freedom of speech such as demonstrations and the distribution of political materials. The generally worded Order 101 prohibits almost all political expression. The widespread harassment by soldiers on the ground is also a practice of curbing Palestinian freedom of speech. For instance, the demand to remove Palestinian flags from houses in Hebron, even though it is currently legal even under the Israeli military regime's laws, but the change in the legal status was not integrated on the ground level.
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B’Tselem: “Order 101 forbids any gathering, vigil, march or publication about a ‘political subject or one that can be construed as political.’ The order does not contain an exact definition of what would be considered such content and that vague and sweeping wording is open to interpretation and can therefore serve for the restriction of a wide range of subjects on which people wish to express their opinions. Such restriction is inconsistent with freedom of speech.”

The order defines as “incitement” not only incitement for violence, terror or violent demonstrations, but can also be understood as forbidding any demonstrations and the distribution of any political materials or any resistance to the occupation. The order thereby violates the freedom of speech of Palestinians in all areas of the West Bank in Area C, without any security justification.

Order 101 defining the limits on Palestinian freedom of speech in the West Bank:

**Organizing Assemblies, Processions and Rallies**

3. A. No procession, gathering or rally may be held without a permit issued by a military commander.

B. The commander of IDF forces in the region is entitled to determine the conditions for submitting a request to receive a permit as stated in subsection (A) through an announcement to the public.

**Closing Places**

4. A military commander is entitled to order any owner of a cafe, club or other public gathering place to close the said establishment for a period of time as determined by the commander. In the case of such an order—any presence is regarded as a violation of the order.

**Flying Flags**

5. No flags or political symbols may be held, flown, displayed or placed, except with permission from the military commander.

**Political Material**

6. No announcement, placards, pictures, booklets or other documenta containing material of political intent may be published in the region, without prior permission from the military commander of the intended place of the printing or publication.

Beyond politics: Freedom of speech and protest, as long as it does not amount to incitement for violence, should be beyond any political debate and is a basic right that must not be denied even under a military administration that claims to be temporary.

For further elaboration and references:


A detailed analysis of Order 101 and its limits on basic freedom of speech on the B’Tselem website: [http://www.btselem.org/demonstrations/military_order_10](http://www.btselem.org/demonstrations/military_order_10)
12. Canceling unjustified arrests of human rights activists

Clarifying the criteria and transparency concerning administrative detentions and other procedures that cause Palestinians to be arrested as "security prisoners and detainees," so that those instruments are not used to arrest people for reasons that are not connected to terrorism, violence or incitement to violence. In practice it appears that these instruments are often used against the participation or organization of civil demonstrations, expressions of resistance to the occupation, membership in an “unlawful association” whose ideology the authorities do not like and other legitimate political activities.

Beyond politics: The right to a fair trial and the right to protection against arbitrary arrests/detentions must be beyond any political dispute and are actually the basis for the very ability to maintain a political debate.

For further elaboration and references:

For example from a B'Tselem report: “The indictment against Mohammed Khatib [one of the heads of the Bil'in Popular Committee, that organizes the civil demonstrations against the separation barrier on village land] also included a charge of throwing stones. That item turned out to be spurious, after his lawyers proved that on the day the picture the indictment was based upon was taken, he was abroad.”

http://www.btselem.org/separation_barrier/20090818_night_arrests_in_bilin

See also the use of the excuse of collecting the remnants of IDF riot control means (empty shells) as an excuse for arresting demonstration activists on grounds of “collecting matériel”:


Such is also the extensive use of the concept of "incitement" to turn a broad range of political expressions and activities into "security" offenses, subject to imprisonment on "security" grounds: according to Order 101, “incitement” applies to anyone who tries, verbally or otherwise, to influence public opinion in the area in any way that could harm public peace or public order. Under that definition, even organizing a demonstration can and does serve to charge Palestinians with the offense of incitement:

http://nolegalfrontiers.org/military-orders/mil06?lang=en

Disempowered populations in Palestinian society:

13. Guaranteeing workers’ rights:

Providing protections and workers rights to Palestinians under Israeli employers and the effective enforcement of those protections. Today, even though they do have rights "on paper," the Palestinians experience widespread shameless exploitation, including working for much lower wages than minimum wage, suppression of unionizing, failure to provide basic working conditions, work that jeopardizes the workers’ health and lives, threats and abuse by Israeli employers etc. Many Palestinians are forced to work for Israeli employers under terrible conditions also because the occupation strangles many aspects of the Palestinian economy that could have provided independent sources of employment.

Theoretically, the Palestinians have workers’ rights and there are several plans to further anchor those rights. That is a welcome but insufficient step: without significant enforcement on the ground, which is absent in the case of Palestinian rights in the West Bank – anchoring Palestinian rights in law or expansion orders will remain only on paper and not actually be realized, as we can already see now. Without
meaningful enforcement, the power relations between the Palestinian subjects without citizenship and their Israeli employers make it possible to employ them in violation of all the rules without paying a price.

**Beyond politics:** There is no legitimate political agenda that justifies the phenomenon of exploiting Palestinian workers and failing to enforce proper labor laws and rules, turning them into a dead letter.

**For further elaboration and references:**
A review of the status of Palestinian workers' rights on the Workers’ Hotline website:  

**14. Minors’ rights:**
Defending Palestinian minors suspected of criminal or security offenses so that they receive representation and visits within a reasonable time. The shameless treatment of Palestinian minors in detention can cause them severe trauma for life, while they are suspected of offenses they may not have committed. Minor settlers suspected of similar offenses – such as stone throwing – are treated differently (see pp. 40-48 of report by the Association for Civil Rights in Israel: “One Rule, Two Legal Systems.” According to DCI-Palestine, every month in 2014 more than 100 Palestinian minors were under military detention, and for five months of that year the number of detained minors exceeded 200. In 2008 some minors were even under administrative detention: They were not entitled to a lawyer, did not undergo a legal process and they and their families did not know when they would be released.

From B’Tselem report “No Minor Matter:” “Palestinian minors charged with criminal offenses are tried under the military legislation applying in the West Bank, which grants them very few of the special rights relating to persons their age. These protections, such as separation from adults during detention and imprisonment, are not always maintained. The same is true regarding protections prescribed in the military legislation for all suspects that are especially important in the case of minors, such as the right to consult with an attorney. The military legislation dealing with minors does not conform to international and Israeli law, which acknowledge that the minor’s age affects his criminal responsibility and the manner in which he experiences arrest, interrogation, and imprisonment, and which assume that these experiences might harm the minor’s development.”

The report also illustrates the complete absence of rehabilitation mechanisms for minors who committed crimes, as exists in normal regimes: "Arrest consists the first measure of the military court system to punish minors, instead of being the last resort."

The organization DCI-Palestine in 2012 issued the report  “Bound, Blindfolded and Convicted: Children held in military detention.” The report says that 90% of Palestinian minors who were arrested reported they were held blindfolded, 75% reported physical violence, 60% were arrested between midnight and 5 a.m., 54% reported threats and or humiliation, 33% reported they were strip-searched, 29% were made to sign documents in Hebrew without understanding what they said, and 12% reported they were held in isolation, in solitary confinement. Most of the boys who were arrested live in villages next to settlements that are friction points, and their arrest is often connected to friction with violent settlers, who are rarely detained or held criminally accountable for their actions.

**Beyond politics:** The protection of Palestinians from abuse in investigations and detention, and from unacceptable conditions of detention, even if they are suspected of criminal or security offenses (often minor ones), should be beyond any political dispute. Legal representation and visits for minors, under
appropriate supervision, will not obstruct the possibility of arresting and bringing to trial those who pose a danger to the public.

For further elaboration and references:

B’Tselem report: “No Minor Matter.”


DCI-Palestine arrest statistics: http://www.dci-palestine.org/content/child-detainees

DCI-Palestine report:

Conclusion:

The rights reviewed herein are only some of the rights whose violation can be stopped within the existing framework. Other critical rights, the discussion of which is more complicated, are not reviewed here. For instance, torture and the economic exploitation of natural resources, and they require separate discussion. But the picture that emerges from this review is of a wide array of rights, with extensive impacts, which is currently denied from the Palestinian population and which can be implemented regardless of the political level, regardless of political disputes and without changing significant security arrangements.

Epilogue by Rabbi Yehiel Grenimann:

In an article by Rabbi Abraham J. Heschel half a century ago (Anniversary of the Emancipation Declaration”, The United Synagogue Review, Winter 1964”) about the duty and responsibility of every religious Jew to be sensitive to the suffering of others, he said:

"A person cannot be religious and indifferent to other human beings’ plight and suffering. In fact the tragedy of man is that so much of our history is a history of indifference, dominated by the famous statement, Am I my brother’s keeper?...The essence of a Jew is his involvement in the plight of other people, as God is involved. This is the secret of our legacy, that God is implied in the human situation and man must be involved in it."

The main message is that the essence of Judaism according to Heschel is human responsibility for the condition and suffering of every human being (including, of course, non-Jews under our rule), because, as it says in Genesis: Man was created in God’s image. Therefore, the Jewish answer to the question “am I my brother’s keeper?” (asked about every person as a person, not only about Jews), is “yes, you are.”

Jewish law throughout the generations maintained those values in many rulings that bind and educate the Jews to be responsible for the dignity and needs of the non-Jew with whom he lives, in the sense of "visiting their sick, burying their dead and providing for their poor together with the poor of Israel." (See for example Maimonides’ “Laws on Gifts for the Poor,” Mishneh Torah 7:6).

The midrash characterizes man’s mission in his life: “R. Hama son of R. Hanina further said: What means the text: Ye shall walk after the Lord your God ... to walk after the attributes of the Holy One... As He
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clothes the naked... so do thou also clothe the naked. The Holy One, blessed be He, visited the sick... so do thou also visit the sick. etc. R. Simlai expounded: Torah begins with an act of benevolence and ends with an act of benevolence...etc.” (Babylonian Talmud, Tractate Sotah, 14a)

And of course many verses discuss the demand for justice for all residents of the earth (including gentiles living in Israel) and the vision of the prophets is that “Zion shall be redeemed with justice,” and its justice shall be seen by all of the world as the water of a mighty river.

"אשר שומרי משפט ורשו צדקה בכל-תת
תהלים קח: י (180)"

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