

## A comparative inventory of rights

### Participants

Moderator: Driss El Yazami, General secretary of the International Federation of Human Rights and vice-president of the Human Rights League ;

Dr. Aeyal Gross, jurist, Association for Civil Rights in Israel, Tel Aviv Law School: "Human Rights and Armed Conflict" ;

Bernard Botiveau, Institute for the study and research of the Arab and Muslim world (IREMAM), researcher with the CNRS (Aix en Provence): "The Palestinian Authority and Society and the Law" ;

Hassan Jabareen, lawyer, director of Adalah, The Legal Center for Arab Minority Rights in Israel (Shfaram): "Law, History and Politics: the case of Palestinians in Israel" ;

Dr. Yossi Yonah, teacher of political philosophy, director of the Teacher Training Centre, Ben Gurion University of the Negev: "Inequalities and discriminations in Israeli society" ;

Ameer Makhoul, director of the organisation Ittijah - Union of Arab Community Based Associations (Haifa): "Palestinians in Israel: from a group to a people" ;

Ayman Rabi, engineer, Palestinian Hydrology Group (Jerusalem): "The Right to Water" (absent) ;

Khader Shkirat, Director of LAW (Jerusalem): "Is there an Israeli apartheid?".

### Introduction

Opening the session, Driss El Yazami recalled the principles which underlie the work of the "Convergences Palestine / Israel" collective. It is made up of individuals – who take intellectual responsibility for the project – journals of ideas, publishing houses, human rights organisations. Its objective is to open a forum where the facts of contention and colonisation can be shown in detail. Its aim is to show that convergences do indeed exist between Israelis and Palestinians, though they are not always visible, and seeks to create a space for in-depth discussion drawing upon hands-on knowledge of the areas of conflict. It seeks a way beyond the debate of opinion which prevails in France, and the polarisation around ethnic and religious logic.

Driss El Yazami stressed the importance of maintaining a certain distance, and striving for civility in both reflection and dialogue, for indeed the collective is less concerned with commentating on the latest developments than with gaining better insight through more in-depth information.

### Part One

## **First sequence: legal systems and the defence of human rights**

### ***Eyal Gross: the dilemma of recourse to the Supreme Court***

Eyal Gross focused his talk on the dilemma which appeals to the Supreme Court raises for civil society. Extending leave to appeal to Palestinians living in the territories occupied in 1967 raised questions, particularly in light of the court's refusal to hear a number of complaints. In resorting to legal recourse of this kind, is one not in danger of legitimating the practices of the Israeli army? The ACRI like other human rights organisations decided, however, to continue filing appeals with this court, in the hope that some of its decisions might contribute to reducing the leeway of the military and despite the fact that the only area in which the Court has made any real difference is with regard to torture.

To illustrate the dilemma of Israeli organisations, Eyal Gross gave the example of the targeted assassinations that have been standard practice since the beginning of the second Intifada. The ACRI has declared its categorical opposition to such practices, but the question was whether or not to bring the cases before the Supreme Court. Ultimately it was decided not to. An appeal in the case of certain assassinations and not others would amount to legitimating the murder of terrorists. He noted that defending Palestinians' rights is currently difficult because dominant opinion in Israel considers that the Palestinians refused the broad concessions made at Camp David and that they use terror tactics. The ACRI's action consists both of writing to the authorities – though many letters remain unanswered – and taking legal action. To illustrate the sort of action they engage in, Eyal Gross cited a handful of recent examples: the filing of an appeal against the torture of prisoners and another against prisoners being forbidden to meet with lawyers – both of which were rejected by the court; an appeal, made jointly with the Palestinian organisation LAW, to stop the impediments experienced by medical teams trying to reach victims; another, introduced together with ADALAH and LAW, against the demolition of houses. And, lastly, an ultimate recourse against the collective assassination in Jenine, regarding facts which can be considered war crimes. In conclusion, Eyal Gross contended that the Supreme Court seems to regard the current situation as if it were a classic armed struggle, often repeating that army does the best it can, never standing above the situation of occupation to evaluate the facts.

### ***Bernard Botiveau: The Palestinian society, Authority and the law***

Bernard Botiveau pointed out by way of introduction that the current process is tantamount to policy to destroy the Palestinian Authority, understood as the set of authorities and institutions representative of the society, set up between 1994 and July 2000, the date of the failure of Camp David II. Concerning the Palestinians' relationship to the law, he emphasised three principal points: 1- Palestinian society is characterised by a high degree of legal pluralism and a great familiarity with a diverse range of norms (communitarian norms, Ottoman law, the common law inherited from the time of the British mandate, Israeli, Jordanian, Egyptian laws). To cope with this development of law in successive layers, the society has a tradition of negotiated law, with a slight influence of Islamic law.

2- He then emphasised society's suspiciousness with regard to politics, which it seeks to prevent

from intervening in the regulation of social relations. This suspiciousness was reinforced on the one hand by the fact that international law was not upheld, and on the other, by the fate of Arab Israelis. Prior to 1966, the latter were subjected to martial law, which, amongst other things, authorised administrative detention without trial. From this point of view, their experience was no different than that of the Palestinians under occupation.

3- The Palestinians' pluralist legal culture was further reinforced by the situation of exile, where the PLO developed a significant normative system inside the refugee camps themselves.

Setting up institutions. In the framework of the Oslo process, and in connection with the donor countries who insisted on the rule of law, a Palestinian Legislative Council (PLC) was elected in January 1996. Its 88 members – the majority of whom were from the ranks of the Yasser Arafat's Fatah – were massively elected despite Hamas's call for a boycott. In the opinion of the numerous observers present, the election was democratic. The Council's term of office, conceived as a provisional Council for autonomy, was to have come to an end in 1999. In reality, however, it has established itself as a legislative assembly, a pluralist platform. It became very quickly evident that the PLC was not going to be merely be a mouthpiece for the Authority. Thus, a draft of a constitution was thus adopted regardless of Arafat's veto, and the Council refused that certain of its members be stripped of their parliamentary immunity; a crisis pitted the PLC against the Authority around the press act and the Council ordered an inquiry into the use of public funds and corruption. Furthermore, in December 1999, twenty members of the PLC launched a plea for the reform of the Authority's institutions after the report was published.

B. Botiveau then mentioned the two-year debate which went on both within and outside the PLC on the status of NGOs, pitting partisans of the preliminary declaration against those in favour of a simple declaration – the latter point of view eventually carrying the day. He emphasised the weakness of the Palestinian judiciary structure (80 judges for all of Gaza and the West Bank) and the existence of conflicts with the Authority following the trial of ministers, as well as the initiative of the fictive Parliament in the spring of 1999: made up of 88 people "elected" by organisations, it put together alternative law projects regarding the status of persons.

## **Second sequence: cleavages and discriminations in Israeli society**

### ***Ameer Makhoul: The Palestinians in Israel and post-Oslo consciousness***

Ameer Makhoul feels that the Oslo Agreements and the events of October 2000 constituted two essential turning points for the Palestinians inside Israel.

In Oslo, the PLO acquiesced to the fragmentation of the Palestinian problem and in some respects to the Israeli vision, which considers that the Palestinian population constitutes an internal problem for the Israeli state, whereas in fact they belong to the Palestinian people. It is in this sense that one can speak of a post-Oslo consciousness, which manifests itself amongst the Palestinians of Israel through the creation of new organisations, distinct from Israeli organisations and that set their own agenda. These organisations stand as a refutation of any integration-oriented approach. Today, there are thus two "civil societies" in Israel: the Israeli peace movement that feels the essential battle is against the occupation, and the Palestinian organisations who feel that the top priority is to support the Palestinian people's liberation struggle.

The events of October have reinforced the feeling amongst the Palestinians of Israel that they are a

community in danger.

“Our political agenda is as follows,” concluded Ameer Makhoul. “To internationalise our situation by demanding protection and reinforcing the co-ordination between Palestinian NGOs on both sides of the green line. The long-term solution resides in a bi-national state based on power-sharing.

### ***Hassan Jabareen: Building a national identity***

Hassan Jabareen examined the political meaning of the struggle of Palestinians in Israel. Transformed by force into a minority, they were faced with a choice: should they fight for civil rights, the way American Blacks or European immigrants have done, or should they wage a national liberation struggle?

He identified two steps. In 1948, the founding of the state of Israel culminated, on the one hand, in the creation of the refugee problem, and on the other, in the creation of a minority group of Israeli citizens – the Palestinians – who did not choose this identity and who find themselves citizens of a state that defines itself as Jewish. Israel controlled the refugee problem by establishing the right of return, and its Palestinian minority through martial law, which remained in effect until 1966.

The 1967 war created a third category: the Palestinians under occupation. Since that time, there have been three types of Palestinian demands: the Palestinians in Gaza and the West Bank seek the end of the occupation; the refugees seek the right to return; and those inside Israel seek the right to remain there. But the demands of the last two groups are most often undervalued and sidelined. The right to remain means, above all, resistance against the confiscation of lands (70% have already been confiscated), fighting for the rights of uprooted villages (200 000 people) and unrecognised villages (70 000 people). Hence the central theme of land since 1 March 1976, date of the first successful general strike.

### ***Yossi Yonah: The structural deficiencies of democracy***

Yossi Yonah developed the point of view that Israel is a democracy that has structural deficiencies. Any democracy, he contended, inherently functions by inclusion and exclusion; it is for this reason that immigrants – as non citizens – are excluded from the democratic life of Western countries. In the Israeli context, the factors of exclusion are direct and obvious. This has not always been the case. Moreover, mechanisms of inclusion and exclusion become more rigid and oppressive when democracy encounters nationalism.

Four factors determine the meaning of Israeli identity and belonging: Judaism, European affiliation, masculinity and republicanism. One might add a fifth factor, that being the relationship to the Shoah, but the allotted time made it impossible, argued Yossi Yonah, to develop this point. It is these factors which are at the origin of the structural deficiencies of Israeli democracy.

Though the first factor is self-evident, the three others are less so. European affiliation is manifest through the pervasiveness of an ideal political model (a democracy of European culture); the implicit discriminations that affect Arabic Jews (only 5% of students are of Sephardic origin) are one of the consequences. The masculine culture which manifests itself through male domination of the political arena is the consequence of the essential position of the army in the life of the country. It is the army, for instance, that determines the career track of men and women. Israeli republicanism is bound up with the place that Israeli democracy assigns to the founding fathers and groups; in the final analysis, it only really admits those who played a role in the creation of the state.

## Part Two

### Third sequence: Is there an Israeli apartheid?

#### *Khader Skhirat: The Palestinian question and international law*

Khader Skhirat came back to the position put forth at the conference against racism in Durban, which assimilated the politics of the state of Israel to a form of apartheid.

Drawing upon the international instruments for the protection of human rights (United Nations Charter, International Convention for the elimination of all forms of racism, and so on), he argued that the Palestinians are discriminated against because of their national and ethnic origin, whatever their place of residence, be it in Israel, in the autonomous or still occupied territories, or even in the diaspora. The policies of segregation and domination to which they are subjected bear strong resemblance to those of apartheid, for the principle of non-discrimination is the very basis of human rights; it is the principle of equality which makes it possible to enjoy these rights. Colonisation and the denial of the right to self-determination are contrary to the principles laid down in the United Nations Charter.

Khader Skhirat argued that, since 1948, there has existed a policy of systematic negation of Palestinians' rights, manifested by the displacement of populations and their expulsion, the expropriation of land, the establishment of legislative arsenal, to the detriment of Palestinians and to the exclusive benefit of Jewish citizens (the right of return...). In this sense, he argues that one can speak of an ongoing Naqba.

*Summary by Driss El Yazami*

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## Notes

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