HUMAN RIGHTS QUARTERLY

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

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First they ignore you, then they ridicule you,
then they fight you, and then you win.
—Mahatma Gandhi

ABSTRACT

What has been the tangible impact of Israeli and Palestinian organizations working to promote human rights in the Occupied Palestinian Territories? The research shows that these organizations have been effective, not only on the individual level but also in effecting policy changes to improve respect for Palestinians' human rights. An analysis of case studies identifies and quantifies the contribution of various advocacy tools. Despite its many achievements, the human rights community has so far been powerless to influence the broader trend of Israel's entrenched military occupation. The research concludes with questions as to whether the human rights com-

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munity can and should develop strategies aimed at addressing the root cause of human rights violations.

I. INTRODUCTION

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

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

The article begins with some general thoughts about how to measure impact in human rights advocacy, then briefly gives the broader context of human rights work in Israel-Palestine. Next I lay out the tangible achievements of the local human rights community over the past two decades. The fourth section offers a cautionary tale about how to identify achievements and failures; in some cases we may mischaracterize success as failure and vice versa. Section 5 analyzes the various components of the "human rights toolbox" and attempts to quantify the significance of each tool. Three in-depth case studies give a chronology and analysis of the factors involved in making change regarding punitive home demolitions, the Separation Barrier, and accountability for civilian deaths. Section 9 draws some lessons from an overview of the achievements. The final chapter links the specific human rights achievements to the broader context of Israel's occupation: can and should human rights organizations do more to combat the occupation itself, rather than focusing on the substantive human rights violations that inevitably result from the occupation.

II. EVALUATING IMPACT

The UN Declaration on Human Rights Defenders provides the broadest possible definition of the human rights community, to include "individuals,

groups and associations . . . contributing to . . . the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals,"[1] providing the individuals or groups are acting peacefully and do not deny the universality of human rights. Even a narrow definition of human rights defenders must include private attorneys representing victims, journalists that expose violations of rights, and academics who are researching, teaching, and writing on these issues. The backbone of the Israeli-Palestinian human rights community consists of some two dozen professional human rights NGOs (non-governmental organizations) and these are the primary focus of my research. While they are using a variety of tools to advance different objectives, I would define the goal of all of the organizations as ensuring respect for human rights, as defined by one or more of the following:

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

This is the yardstick against which I measure the achievements of the human rights community. It is a high bar. When naming their achievements, individual human rights organizations generally point to examples where they exposed violations and generated awareness among policymakers and the general public. These are certainly necessary steps toward achieving the broader goal defined above. However, for the purpose of this research I defined achievements as tangible changes to government and military policy and conduct affecting human rights.

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

The starting point of the research is my two decades of experience working at the Israeli human rights organization B'Tselem. I also conducted interviews with over a dozen leading human rights activists, as well as cur-

1. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, U.N. Doc. A/RES/53/144, *adopted* GA Res. (9 Dec. 1998), *available at* http://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx.

rent and former government and military representatives, private attorneys, and other experts. I also relied on impact assessments of several individual organizations, quantitative data primarily from B'Tselem, media reports, high court judgments and other primary source material.

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

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

While human rights priorities cannot be linked solely to questions of impact, neither should they be completely divorced from them. Once we have defined our priorities, our strategies, tactics, and tools can all be improved based upon past experience of what works. This retrospective analysis of human rights advocacy over the past two decades provides a tool to ensure that we do just that.

III. THE CONTEXT OF OUR WORK

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

1. The extensive settlement of the West Bank with Israeli civilians. More than half a million Israelis now live in the West Bank, including 200,000 in East Jerusalem. Israel exploits the natural resources in the West Bank for Israeli

benefit, first and foremost land for the settlements, but also water, tourism sites, and quarries;[2]

2. The dual and highly discriminatory legal system in the West Bank in which Palestinians are subject to military law and tried for offenses in military courts, whereas settlers, theoretically subject to the same law, enjoy the rights and privileges of Israeli citizens in all aspects of their life;

3. The fragmentation of the Palestinian territories, both as a result of the Oslo Accords and subsequent Israeli policies. Israel has completely isolated the Gaza Strip and severed East Jerusalem from the rest of the West Bank. The West Bank is divided into three types of jurisdiction (Areas A, B & C). Since the 2007 political division between the West Bank and the Gaza Strip, Palestinians are now subject to three different governing authorities—Israel, the Palestinian Authority and Hamas—all of which have a record of human rights violations.

4. Large scale Israeli military operations in the Gaza Strip in response to Palestinian rocket-fire into Israel have wreaked enormous destruction of property and infrastructure, and claimed a high price in civilian lives.

This reality imposes difficulties for human rights organizations in performing their work. Palestinian organizations face many of the same restrictions as the broader Palestinian public, preventing necessary travel between Gaza and the West Bank and limiting travel abroad. They have also been subjected to additional hardships: their offices have been raided by Israeli military forces and individual activists have been detained and banned from leaving the country.[3]

Israeli human rights organizations must contend with a hostile public climate, and the constant threat of governmental measures to restrict their work. Many Jewish Israelis perceive Palestinians as the enemy in a national conflict and this increases opposition to Palestinian human rights. In a 2011 public opinion survey, only 41 percent of the Israeli Jewish public had a favorable view of human rights organizations; when they were asked

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2. See, e.g., *By Hook and by Crook: Israeli Settlement Policy in the West Bank*, B'Tselem, July 2010; *Dispossession and Exploitation: Israel's Policy in the Jordan Valley and Northern Dead Sea*, B'Tselem, May 2011.

3. *See, e.g., Al-Haq Condemns Israeli Raids Against Palestinian Organisations in Ramallah*, Al-Haq, 11 Dec. 2012, *available at* http://www.alhaq.org/advocacy/topics/human-rights-defenders/651-al-haq-condemns-israeli-raids-against-palestinian-organisations-in-ramallah; *Yet Another Palestinian Civil Society Leader Targeted by Israel:Addameer Chairperson Abdullatif Ghaith Receives ban From Leaving the Country*, Al-Haq, 9 Aug. 2012, *available at* http://www.alhaq.org/advocacy/topics/human-rights-defenders/615-yet-another-palestinian-civil-society-leader-targeted-by-israel-addameer-chairperson-abdullatif-ghaith-receives-ban-from-leaving-the-country; *Travel ban on Human Rights Defender Mr Shawan Jabarin Continues*, Front line Defenders, 1 Dec.2011, *available at* https://www.frontlinedefenders.org/en/case/case-history-shawan-jabarin.

about Israeli organizations working for Palestinian human rights the number dropped to 21 percent.[4] Beginning in 2009, the Israeli government has proposed legislation to restrict the work of human rights organizations. Most of these proposals target the foreign governmental funding of local NGOs. To date, no restrictions on foreign funding have been legislated, though new proposals are currently before the Knesset.

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

IV. THE ACHIEVEMENTS OF THE HUMAN RIGHTS COMMUNITY

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

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

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

While achievements regarding individual cases and the public discourse are largely undeniable, identifying positive influence on policy change is more challenging. This is true both because it is difficult to isolate our influence, but also because it is not always clear what constitutes a *positive* change. A beneficial ruling of the High Court may never be implemented or

4. Dahlia Scheindlin, *In Israel, Implementing Human Rights Feels Wrong*, OpenDemocracy, 30 June 2015, *available at* https://www.opendemocracy.net/openglobalrights/dahlia-scheindlin/in-israel-implementing-human-rights-feels-wrong.

may lead to a more serious backlash. A loss in the High Court may generate public attention, positively affect the human rights discourse, and even alter the human rights situation on the ground for the better. Several examples illustrate the idea that failure may look like success—but that success may also initially look like failure.

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

Likewise several petitions to remove settlement outposts have ostensibly been successful, obtaining a positive judgment that recognizes Palestinian property rights and requires the state to remove the outposts. In terms of the public discourse, the petitions have succeeded in generating extensive public attention but they have created a distinction between "illegal" outposts and all the other, ostensibly legal settlements, although all settlements are illegal under international law. And when these judgments are actually implemented, they invariably result in the *expansion* of settlements. Each time the government is compelled to remove a few homes in an outpost, they have compensated the settler lobby with much larger settlement construction elsewhere in the West Bank. So it is hard to categorize these cases as a net gain for human rights.

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

HaMoked lost the case. Their petition was rejected and two Palestinians were forcibly relocated to the Gaza Strip. However, *Ajuri* must be seen as a trial balloon by the military for a wider policy of mass forcible transfer from the West Bank to Gaza and this policy was prevented. The legal chal-

lenge—both the military appeal and the High Court petition—made the process of assigned residence lengthy and costly for the state. Furthermore, by the final judgment of the High Court, the rationale for the transfers had been fundamentally altered. It was no longer a measure against innocent people solely due to their familial relationship (i.e. a collective punishment). The High Court authorized the transfer of Intissar and Kipah Ajuri because it was found that they themselves took part in the suicide bombing (sewing the explosive belt and acting as a lookout). The Court rejected the transfer of Abed al-Nassar Asida, whom the Military Appeals Board found gave his car to his brother without knowing what it would be used for.

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

> An order of assigned residence can be made against a person only if there is a reasonable possibility that the person himself presents a real danger to the security of the area. If he does not, considerations of deterring others are insufficient for making an order of assigned residence.[5]

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

The *Ajuri* case was also part of a broader policy of Israel to separate Gaza from the West Bank. Yet the legal process had the exact opposite effect. Ironically, in order to argue that the order constituted an illegal deportation from one territory to another, HaMoked had to argue that the West Bank and the Gaza Strip were separate territories. In order to prove the legality of the order, the state had to argue the reverse: that the West Bank and Gaza Strip constituted a single legal territory. The High Court accepted the state's position and held that the West Bank and the Gaza Strip "are effectively one territory subject to one belligerent occupation by one occupying power."[6]

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

My research identified fourteen instances in which the human rights community effected positive changes regarding human rights over the past two decades. This does not purport to be an exhaustive list; there are undoubtedly other similar achievements. Of the cases described above, I include the Route 443 advocacy and the *Ajuri* case among the achievements but not the outpost cases, though of course these decisions are debatable. The fourteen policy achievements, in chronological order, are as follows:

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5. Ajuri v. IDF Commander, HCJ 7015/02, at 2 (Israel) (3 Sept. 2002), *available at* http://www.hamoked.org/files/2010/110_eng.pdf.
6. *Id.*

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

2. Preventing forcible transfer of Palestinians from the West Bank to the Gaza Strip as a result of the *Ajuri* case discussed above.

3. Exposing Israel's Secret Prison and Ending its Use—In 2003, HaMoked: Center for the Defense of the Individual discovered the existence of Prison 1391. It was a secret facility in an unknown location, with no oversight on its condition and operation, used to hold Palestinians as well as prisoners from Lebanon and elsewhere. A High Court petition alongside extensive media and diplomatic attention ended use of this facility. It appears no prisoners have been held there since 2006.

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

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

6. Prohibiting use of Palestinians as human shields—In October 2005, Israel's High Court categorically prohibited the Israeli military from using Palestinian civilians to perform military functions. The ruling was in response to a petition based on dozens of documented cases during Operation Defensive Shield in 2002, where soldiers compelled Palestinians to enter buildings to check if they were booby-trapped or "wanted" persons were hiding inside; to remove suspicious objects from roads; and to walk in front of soldiers to shield them from gunfire. The High Court decision resulted in a significant reduction in such cases in the West Bank.

7. Family unification: obtaining legal status for foreign spouses of Palestinians in the West Bank—A decade ago, tens of thousands of foreign spouses of Palestinians lived in the West Bank with no legal status. In 2007, after the filing of dozens of individual petitions as well as a principled petition on this issue, the state announced that it would grant family unification to this population as a "political gesture" to the Palestinian Authority. While there

has never been recognition of Palestinians' *right* to live with their spouses and children, Israel granted 32,000 family unification applications in the West Bank as part of this "political gesture."[7]

8. Delaying forced displacement of West Bank Bedouin communities—In late 2011, the Israeli military announced its intention to relocate some 20 Palestinian Bedouin communities, comprising some 2,300 people, from the area around Ma'ale Adumim settlement. Humanitarian and human rights organizations succeeded in putting this issue prominently on the agenda of international diplomats and policymakers. Attention focused particularly on the community of Khan al-Ahmar, which had built a school that served the neighboring Bedouin communities. This attention forced the Israeli military to abandon, or at least freeze its plans to forcibly relocate these communities.[8]
9. Mass release of administrative detainees—In the first intifada (1987 to 1993), Israel held tens of thousands of Palestinians in administrative detention. These numbers declined to several hundred, though some detainees were held for periods of several years without charge or trial. A 1997 public campaign in Israel succeeded in releasing all detainees held for over two years. In 2012, a hunger strike of Palestinian prisoners and detainees resulted in release of over 150 administrative detainees.[9]
10. Limiting the prohibition on Palestinians using Route 443, as discussed above.
11. Promoting accountability for harm to civilians—In 2011, the Israeli military reversed its policy of the previous decade and announced that it would automatically open a criminal investigation into every case where soldiers killed unarmed Palestinian civilians in the West Bank. Domestic efforts to promote accountability dovetailed with international efforts, most significantly Palestine's accession to the International Criminal Court in January 2015 (see case study).
12. Preventing displacement of communities in South Mount Hebron—In 1999 the Israeli military expelled the approximately 700 Palestinian residents of a dozen small villages in the southeastern Hebron Hills. The expulsion orders were given on the grounds of "illegal residence in a live-fire zone," Firing Zone 918. As a result of a petition to the High Court, strengthened by a high profile public campaign inside Israel, the residents were allowed to return to their homes and cultivate their fields pending a ruling in the case. Fifteen

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7. See *Family Unification in the OPT,* HaMoked, http://www.hamoked.org/topic.aspx?tid=sub_46.
8. See e.g. *Bedouins around Ma'ale Adumim,* B'Tselem, http://www.btselem.org/area_c/maale_adumim_bedouins; B'Tselem 2012 Activity Report, http://www.btselem.org/sites/default/files2/2012_activity_report.pdf.
9. *Oslo Before and After: the Status of Human Rights in the Occupied Territories*, B'Tselem, May 1999, pp. 17–18, http://www.btselem.org/sites/default/files/oslo_befor_and_after.pdf; *Palestinian prisoners end hunger strike*, The Guardian, 14 May, 2012,https://www.theguardian.com/world/2012/may/14/palestinian-prisoners-end-hunger-strike

years later, the state agreed to mediation in order to reach an agreement acceptable to both the residents and the state.

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

14. Decreasing pretrial detention periods—As a result of petitions to the High Court of Justice, the Israeli military decreased the pretrial detention periods for Palestinians in the military justice system. Detention before seeing a judge was reduced from eight days to forty-eight to ninety-six hours. Initial detention for interrogation was reduced from thirty days to twenty days. Detention periods during the criminal process were reduced as well. Detention periods for Palestinians are still twice as long as for Israelis (including settlers) and legal advocacy continues.

Many will find this list unsatisfying: Even after the High Court ruling, there were cases of torture by the ISA, as well as by soldiers and Border Police. Some sections of the Barrier were rerouted, yet most of the Barrier was built and remains inside the West Bank on Palestinian lands. Punitive demolitions were halted, yet other demolitions continued, and a decade later even punitive demolitions were renewed. Virtually every achievement on the list is partial. Gains are often reversed. Human rights work around the world is inherently a Sisyphean endeavor and Israel-Palestine is no exception. The following sections will analyze the achievements listed above in order to understand what can be learned from them.

V. THE HUMAN RIGHTS TOOLBOX

In analyzing the various factors that led to each achievement, certain advocacy strategies proved significant in case after case. We can speak of a toolbox that human rights organizations employ to address a variety of human rights problems. Obviously some tools are more relevant or useful than others for a particular problem. In an attempt to quantify this impact, I assigned a numerical value to represent the significance of each tool in each of the achievements: 0 indicates the tool played no role and 3 indicates an essential, decisive contribution. These numbers were derived both from my subjective assessment and from the assessment of experts on each case. As there is no mathematical formula to give a precise calculation, the values should be treated as indicative rather than definitive. I have not included some of the newer advocacy strategies (universal jurisdiction and video) in the matrix.

TABLE 1.
Matrix of Tools and their Significance

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

A. Documentation and Reporting

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

In this small territory with great international attention, ostensibly the media will seek out and cover all issues. Indeed Israel-Palestine probably has a larger corps of foreign journalists than any other conflict zone on earth. Yet some human rights violations continue under the radar until they are exposed by human rights organizations. No one knew of the existence of Israel's secret prison, facility 1391, until HaMoked tried to locate a prisoner held there. While everyone saw the Separation Barrier under construction, it was not understood to be a human rights issue until B'Tselem published the intended route and the expected human rights implications.[10] Even those issues prominently on the public agenda require the proper framing and analysis to be addressed as human rights issues. In other cases, the phenomenon is known in general terms with no statistics to quantify its scope.

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

As the torture example illustrates, documentation begins with gathering the raw facts, but also includes defining the scope of the problem, placing the violation in a broader context, legal analysis and engaging with

10. Yehezkel Lein, B'Tselem, The Separation Barrier: Position Paper (Maya Johnston & Rachel Greenspahn eds., Zvi Shulman, trans., 2002), *available at* http://www.btselem.org/sites/default/files/200209_separation_barrier_eng.pdf.

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

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

B. Domestic Israeli Litigation

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

While the accessibility of the Court is indeed a unique phenomenon, the rulings of the High Court engender much criticism from the human rights community. On matters of principle and petitions challenging policy, the Court rarely sides with human rights organizations against government or military policy. Nonetheless, the Court has played a central role in virtually every human rights achievement. In the matrix of tools, it received the highest score. Regarding the High Court, I might paraphrase Winston Churchill's famous statement on democracy: the High Court is the worst tool to advance human rights—except for all the others.

The High Court positively influences human rights in four different ways. On rare occasions, the High Court issues a ruling requiring the state to amend its policies and practices to bring them in line with human rights obligations. In these cases, the role of the High Court is definitive: the High Court judgment is what actually brought about the change. Examples include the 1999 prohibition on torture, the 2005 prohibition on the use of Palestinians as human shields, and several rulings requiring rerouting of portions of the Separation Barrier.

In many other cases, High Court petitions are successfully resolved through out-of-court settlements. In its twenty-five years of operation,

HaMoked has filed over 1,100 petitions to the High Court in cases where a Palestinian was denied a permit to travel abroad. In over 96 percent of these cases, the mere filing of the petition caused the denial to be reversed and the person to be granted the travel permit. One academic study of High Court petitions from 1989 to 1995 found that 69 percent of all ACRI petitions and 89 percent of all HaMoked petitions were resolved successfully as a result of such out-of-court settlements.[11]

A third form of influence is erosion of military and government resistance through multiple petitions to the High Court. In this strategy, dozens of individual petitions are filed until either the court issues a ruling on the broader policy or the military adopts a policy change. The principled petition against torture was filed in 1994 yet the High Court avoided issuing a ruling. Over the next five years, organizations and attorneys filed over 100 individual petitions on behalf of Palestinians under interrogation until the court finally ruled in 1999.[12]

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

The fourth form of influence is that of deterrence. Representatives from the Ministry of Justice and from the Military Advocate General's (MAG) corps report that the knowledge that human rights organizations are likely to petition the High Court prevents policymakers from adopting certain policies and practices that violate human rights.[13]

C. Domestic Israeli Policy Dialogue

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

11. Yoav Dotan & Menacham Hofnung, *Interest Groups in the Israeli High Court of Justice: Measuring Success in Litigation and in Out-of-Court Settlements,* 23 Law & Pol'y 1, 18 (2001).
12. See Torture background page on HaMoked website: http://www.hamoked.org/topic.aspx?tid=Topics1001
13. Internal ACRI evaluation (on file with author).

the Executive Branch and the Judiciary, with Palestinian suspects tried before military courts.

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

- Individual advocacy—demanding permits necessary for daily life; demanding the opening of criminal investigations when Palestinians are harmed by soldiers; defending Palestinians indicted and tried in military courts;
- Dialogue With the Military Legal System on issues like the definition of the age of criminal responsibility; investigation policies; lengths of pre-trial detention; treatment of minors who throw stones; or what constitutes a legitimate military target;
- Policy Dialogue either with the operational commanders regarding military operations; or with the Civil Administration; for example on issues related to planning and destruction of Palestinian communities.

While legally the sovereign in the West Bank, the military is an organ of the Israeli state, subordinate to the Defense Ministry. In fact, civilian leadership influences all aspects of military policy in the occupied territories, making the Knesset and government ministries potential levers of influence. The Knesset Law Committee was instrumental in pushing the military to re-evaluate punitive home demolitions, for example, leading to the 2005 moratorium (see the case study).

In fact, the moratorium on punitive home demolitions is the exception to the rule. Domestic policy dialogue has rarely played a significant role in the achievements of the human rights community, as reflected in the low score it received in the matrix of various tools. This is due to two interrelated factors: Palestinian organizations rarely engage in dialogue with Israeli officials and most Israeli organizations only do so intermittently; and this policy dialogue—both with the military and in the Knesset—is often not effective, which serves as a disincentive to invest additional resources in this strategy.

D. Mobilizing Domestic Israeli Opposition

This strategy received the lowest score in the matrix. In fact, Israeli public opinion often serves as a negative factor: public *hostility* to Palestinian rights, or demands for more aggressive security measures to protect Israelis increase pressure on politicians to violate rights. Yet Israeli public opinion has played a role in policy change. The 1999 legal advocacy against forced displacement of Palestinian communities in South Mount Hebron was strengthened by a public campaign in which high profile Israeli personalities visited these communities and spoke out against their displacement. A moving opinion piece by Israeli author David Grossman is credited with encouraging the judges to issue an interim injunction which has prevented displacement of these communities to this day.

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

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

E. Leveraging Palestinian Popular Protest

Both the Palestinian Authority (PA) and Palestinian popular organizing are important factors in the environment in which the human rights community operates. The Palestinian Authority often does not prioritize human rights in its dialogue with Israel and the international community; in some cases it even constitutes an obstacle to advancing rights. Family unification claims, for example, are stymied as the PA accedes to the instructions of their Israeli counterparts and refuses to submit family unification requests.[14] Occasionally, however, the PA has played a crucial role in promoting human rights, such as its role in referring the Separation Barrier to the International Court of Justice for an advisory opinion. Another example is Palestine's accession to the International Criminal Court, which constitutes a potentially significant new tool to promote accountability. In both these examples, Palestinian human rights organizations leveraged Palestinian popular organizing to push the PA to engage with these international bodies.

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

14. Interview with Dalia Kerstein, Executive Director of HaMoked, Jerusalem (12 Mar. 2015).

- Litigation against the route of the Separation Barrier in Bil'in successfully leveraged the weekly demonstrations in the village (see case study);
- The 2012 hunger strike of prisoners and administrative detainees succeeded in releasing more than 150 detainees and in renewing prison visits from families in Gaza. Organizations like Addameer provided the context and analysis that engaged European policymakers to speak out regarding the hunger strike.

Palestinian protest received a relatively low score in the matrix of tools; as many of the achievements I examined were not priority issues for wide sectors of the Palestinian public, they were not the focus of Palestinian protest. However, it is clear this strategy has much untapped potential.[15]

F. Mobilizing International Popular Opposition

Palestinian civil society served as the catalyst for a global movement to apply economic pressure on Israel. This BDS (Boycott, Divestment, Sanctions) movement has garnered extensive attention in Israel, with Prime Minister Netanyahu including it in 2015 alongside the Iranian nuclear threat as Israel's top security concerns.[16] The movement took center stage in global political discourse when both US President Barack Obama and Secretary of State John Kerry used the movement as a "bogey-man" to warn Israelis that failure to negotiate a successful peace deal with Palestinians will lead to increased isolation and boycotts.[17]

The BDS movement advances political goals that extend beyond a human rights agenda. However, Palestinian human rights organizations have tailored the logic of BDS to advance a narrower human rights agenda. While these efforts have gained some traction, with universities, banks, charities, and trade unions around the world deciding to divest from companies doing business in Israeli settlements or otherwise support Israeli occupation, only on rare occasions have these boycotts had tangible impact on the ground. Palestinian organizations point with satisfaction to the decision of Sodastream to relocate its plant from a settlement industrial zone[18] and the decision of

15. For more on this topic, see Jacob Høigilt, *Nonviolent Mobilization Between a Rock and a Hard Place: Popular Resistance and Double Repression in the West Bank*, 52 J. Peace Res. 636 (2015).
16. *Netanyahu Tells Jpost Conference: Iran, BDS Emerging as Threats to Israel on World Stage,* Jerusalem Post, 6 July 2015, *available at* http://www.jpost.com/Breaking-News/Netanyahu-tells-Jpost-Conference-Iran-BDS-emerging-as-threats-to-Israel-on-world-stage-405319.
17. *Kerry Slams Israel's West Bank Policies, Warns of 3rd Intifada*, The Times of Israel, 7 Nov.2013, *available at* http://www.timesofisrael.com/kerry-warns-of-3rd-intifada-isolation-of-israel-if-talks-fail/.
18. David Wainer, *SodaStream Closing West Bank Factory After Boycotts*, Bloomberg Bus., 29 Oct. 2014, *available at* http://www.bloomberg.com/news/articles/2014-10-29/sodastream-to-close-factory-at-center-of-israel-palestinian-spat.

G4S, which was the target of a concerted Addameer campaign, to end all its contracts with Israeli prisons within three years.[19]

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

G. International Advocacy

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

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

In most cases, international bodies have no formal role and use public statements and behind the scenes pressure to influence Israeli policies. In the torture case, pressure from the international legal community, including respected jurists and high court judges from around the world, played a positive role in pushing the Court to finally issue a judgment. The outspoken objections of European governments and the US administration have prevented construction of the E-1 settlement.

H. Universal Jurisdiction and the International Criminal Court

For more than a decade, Palestinian organizations have worked with international partners to pursue international accountability—criminal charges and compensation suits—for Israeli crimes. To date, these suits have only

19. Gill Plimmer, *G4S to end Israeli Jail Contracts Within Three Years*, Financial Times, 5 June 2014, *available at* http://www.ft.com/cms/s/0/06e06252-ecc9-11e3-8963-00144feabdc0.html#axzz4ECinoB5f.

been possible in states whose legal system includes universal jurisdiction provisions, i.e. those whose courts exercise jurisdiction over internationally condemned crimes regardless of where they were committed, and often without the state having a connection to the perpetrator or the victim. Two high-profile cases illustrate the potential and limitations of this strategy:

- In 2005, a UK judge issued an arrest warrant against Major General Doron Almog, former head of the Israeli Southern Command on suspicion of committing a grave breach of the Fourth Geneva Convention (which is a criminal offence in the UK). The warrant came in response to a complaint submitted by the Palestinian Centre for Human Rights (PCHR) and UK solicitors Hickman & Rose regarding the demolition of fifty-nine houses in Rafah refugee camp in January 2002. Intervention by the UK Foreign and Commonwealth office prevented the UK police from executing the warrant. Almog returned to Israel under the glare of the media spotlight and had to answer uncomfortable questions in the international media. Following issuance of a similar arrest warrant against former Israeli Foreign Minister Tzipi Livni in 2009, the UK government passed legislation specifically designed to protect senior Israeli officials while visiting the UK.[20]
- PCHR together with the US organization Center for Constitutional Rights brought a class-action lawsuit against former Director of the ISA Avi Dichter for his participation in the aerial bombing of a building in Gaza that targeted Saleh Shehadeh and killed fourteen other Palestinian civilians. The suit sought financial compensation under the US Alien Tort Statute. A district court dismissed the case in 2007 and the plaintiffs' appeal was denied in 2009.

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

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

I. VIDEO DOCUMENTATION

Video is one of the newer strategies in the human rights toolbox. Pioneered by B'Tselem, many organizations now use video to capture real-time evidence of human rights violations, as a research tool and to produce visual

20. Police Reform and Social Responsibility Act 2011 (United Kingdom).

representations of human rights problems for public education purposes. Video strategies have already had some impact on the ground:

1) Video has assisted in promoting accountability. When violence is captured on video, it significantly increases chances of a criminal investigation being opened;[21]
2) Video has defended Palestinians against false claims from Israeli settlers and soldiers, getting Palestinians released from arbitrary detention.[22]
3) Video has acted as a deterrent to violence. In the H-2 section of Hebron and in South Mt. Hebron, where B'Tselem has distributed fifty- five video cameras to Palestinian volunteers, Palestinians report that the presence of the cameras has reduced incidents of settler violence.
4) Video documentation has generated extensive public attention to neglected human rights issues. Hundreds of thousands of people have watched short video clips regarding restrictions on movement, detention of minors and settler violence, a much larger audience than will read reports on those same issues.[23]

VI. CASE STUDY: HALTING PUNITIVE HOME DEMOLITIONS

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

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

In November 2004 the Israeli military established a committee, chaired by Major General Ehud Shani, to re-evaluate the policy of punitive house de-

21. *See, e.g.,* Press Release, B'Tselem, Video: Officer Fires Tear Gas Canister at B'Tselem Videographer, Causing Injures, (2 Dec. 2013), *available at* http://www.btselem.org/press_releases/20131201_beit_omar.
22. *See* Press Release, B'Tselem, Video: Detention of Palestinians who Complained of Trespassing Settlers (1 May 2013), *available at* http://www.btselem.org/press_releases/20130430_arrest_of_a_zaro_family.
23. See viewing data on B'Tselem's YouTube channel, *available at* https://www.youtube.com/user/btselem.

molitions. In February 2005, then Minister of Defense, Shaul Mofaz, adopted the committee's recommendations to halt punitive house demolitions and for the next decade there were no punitive demolitions in the West Bank.[24]

A. The Factors Leading to the Policy Change

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

Punitive home demolitions were a priority issue for the human rights community for decades. Some claim that legal and public advocacy succeeded in reducing home demolitions as early as the first intifada.[25] In July 1989, Israel's High Court of Justice accepted a petition of ACRI and ruled that property owners had the right to appeal demolitions. While these appeals rarely, if ever, stopped a demolition, it did cause delays. The fact that demolitions could no longer be carried out immediately may have led to a subsequent decline in the use of punitive demolitions. Punitive demolitions decreased and even halted between June 1992 and 1996, likely the result of the election of the leftwing Labor-Meretz government in June 2002. No punitive demolitions took place between 1998 and the outbreak of the second intifada in September 2001.

With the outbreak of the second intifada, Israel resumed punitive home demolitions with a vengeance and the human rights community mobilized to respond. HaMoked filed sixty-seven petitions against individual demolitions between 2002 and 2004. B'Tselem released a comprehensive report in 2004 and campaigned on the issue, both inside Israel and internationally. B'Tselem's campaign served as the trigger for a discussion in the Knesset Law Committee in November 2004 in which the Military Advocate General was called to justify the policy. Then-Chair of the Committee, MK Michael Eitan also summoned the MAG for a private conversation with Member of Knesset (MK) Zahava Galon (Meretz) and Law Professor David Kretzmer in which both forcefully challenged the legality and morality of punitive demolitions.

In December 2004 an unusual hearing took place at the High Court of Justice. HaMoked petitioned against the demolition of the home of Mahmoud Ali Nasser, whose son was charged with recruiting the suicide bomber that killed seven people and wounded many others in the Hillel Cafe in Jerusa-

24. With the exception of the demolition of one home and the sealing of two others in East Jerusalem in 2009.
25. Efrat Zilber, The Demolition and Sealing of Houses as a Means of Punishment in the Areas of Judea and Samaria During the Intifada up to the Oslo Agreement, M.A. Thesis, Bar Ilan University, Israel, 1997 (Hebrew); internal ACRI evaluation (on file with author).

lem on 9 August 2003. At the hearing, Justices Hayut, Cheshin, and "Chief Justice Barak" posed hard questions to the state's representative regarding the legality and morality of punitive home demolitions. According to attorneys who had filed dozens of similar petitions, such a challenge to the policy was unprecedented.

The hearing concluded with the Court declaring a ninety-day postponement "in order for the sides to consider a proposal in which only one room on the second floor [of the Nasser home] would be demolished or sealed."[26] It was in this ninety day period that the Shani Committee recommended the halt to all punitive home demolitions.

The proceedings and conclusions of the Shani Committee remain classified. However, in the course of legal challenges to a demolition order in East Jerusalem in 2008, HaMoked received a PowerPoint presentation prepared by the military regarding the Committee's work.[27] The presentation includes three different sets of arguments for halting punitive home demolitions:

- Legality and Morality—The legal critique is phrased cautiously: "the action is legal but is liable to not stand the test of legitimacy"; "house demolitions is viewed as collective punishment." This is to be expected given that this is a military committee reviewing a policy that has been conducted for decades with the approval of the High Court of Justice. However, it is clear that legal and moral concerns played a crucial role in the Committee's deliberations. The final slide in the presentations consists of the following sentence: "The IDF, in a Jewish and democratic state, cannot function on the edge of legality and even more so, on the edge of legitimacy!!!" [exclamation points in the original]
- International Criticism—among the reasons warranting a re-examination of the policy, the presentation includes "Israel's standing with the international community, including the appearance of international legal authority that challenges the authority of the High Court of Justice."[28]
- Effectiveness—the official justification for recommending to halt demolitions is that the policy is no longer effective as a deterrent, and may even serve as an incentive to terrorism.
    - *The activity harms individuals—but in large numbers*
    - *The activity damages personal property—but in large numbers*
    - *Fanning hatred*
    - *Strengthening collective public identity*
    - → *Encourages terrorism*

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26. HCJ 7733/04 Mahmud 'Ali Nasser and HaMoked v. Commander of IDF Forces in the West Bank. Decision 13 Dec. 2004.
27. My translation from Hebrew original. The Hebrew presentation can be found on the HaMoked website, *available at* http://www.hamoked.org.il/TimelineFramesPage.aspx?returnID=timelinehousedemolitions&pageurl=http://www.hamoked.org.il/Document.aspx?dID=110467%22.
28. *Id.*

The presentation refers to the "price of the demolition," meaning both international condemnation, as well as the resentment created among Palestinians and concludes that: "The 'price of the demolition' in its broadest sense has intensified compared to its usefulness."[29]

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

B. The Significance of the Policy Change

Some human rights activists dismiss the significance of the 2005 policy change, raising three arguments:

- Demolitions continued for other reasons: punitive house demolitions is only one of the legal frameworks under which the Israeli military demolishes Palestinian homes in the Occupied Palestinian Territory (OPT). In the decade of the moratorium on punitive demolitions, Israeli forces carried out more than 1,300 "administrative demolitions" of homes built without permits in the West Bank and East Jerusalem. In Gaza, thousands of homes were destroyed in the course of military operations.
- The halt to punitive demolitions was the result of an assessment that the policy was not effective, not recognition that the policy was illegal or immoral.
- The moratorium was only temporary: In the summer of 2014, following the abduction and murder of three Israeli teenagers in the West Bank, the security establishment announced the resumption of punitive house demolitions. Throughout the past two years, thirty Palestinian homes have been demolished as a punitive measure.

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

The renewal of punitive demolitions shows the arc of human rights work: while this is clearly a setback, it does not entirely erase the gains, both in terms of building the rhetorical case against this policy and in stemming the pace of demolitions: two steps forward, one step back.

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29. *Id.*

Finally, the rhetorical significance of the policy change deserves mention. For years the Israeli military argued that house demolitions, while they do harm families, are "an effective method that can deter terrorists."[30] This argument fits into the broader understanding that Israeli security and Palestinians' human rights constitute a "zero sum game" in which promoting one necessarily harms the other. In 2005, the Shani Committee said the opposite: by harming Palestinians the military in fact *endangers* Israeli security. The positive link between respect for human rights and ensuring securing extends far beyond punitive home demolitions. This is a central message of any human rights advocacy: that the best way to ensure security is to respect human rights. The fact that now the Israeli military has voiced this same message makes it all the more persuasive.

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

VII. CASE STUDY: REROUTING THE SEPARATION BARRIER[31]

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

The Barrier has imposed new restrictions on movement for Palestinians living near its route. Israel established dozens of checkpoints and gates along the completed sections of the Barrier that allow permit holders to pass. However, not all those who request permits receive them, nor are the Barrier gates open at all times. Palestinians living in those villages entirely

30. *See*, e.g., the response of the IDF Spokesperson's Office, published in the back of *Through No Fault of Their Own: Israel's Punitive House Demolitions in the al-Aqsa Intifada*, B'Tselem (Nov. 2004).

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

encircled by the Barrier particularly suffer. They require a permit to continue living in their village and must cross through checkpoints to leave their village. In addition, tens of thousands of Palestinians have difficulty reaching their farmlands and marketing their produce to other areas of the West Bank. The Barrier also impedes Palestinians' access to jobs, hospitals, and educational institutions.

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

A. Factors in the Amendments to the Barrier's Route

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

Based on the documentation of B'Tselem, the Negotiations Support Unit of the Palestine Liberation Organization (PLO) drafted a series of resolutions which the UN General Assembly passed in December 2003, demanding that Israel halt construction of the Barrier and requesting an urgent advisory opinion of the International Court of Justice regarding "the legal consequences arising from the construction of the wall being built by Israel."[32] This process generated extensive media coverage, both around the world but also in Israel. The PLO's presentation to the ICJ broadcasted live on Israeli television was perhaps the first time that most Israelis saw the route of the Barrier and heard the criticism of its consequences.

The Israeli High Court issued its decision in the Beit Surik case on 30 June 2004, just ten days before the ICJ was to give its opinion. The two decisions are substantively different. The ICJ opined that any construction of the Barrier inside the West Bank was illegal. Israel's High Court ruled

32. Illegal Israeli Actions in Occupied East Jerusalem and the Rest of the Occupied Palestinian Territory, GA Res. U.N. Doc. A/ RES/ES-10/14 (12 Dec. 2003), *available at* http://www.un.org/documents/ga/res/10emsp/a10emr02.htm.

that the Barrier was legal but that the route chosen caused disproportionate harm to Palestinians and must be moved. It is extremely rare for the Court to reject a policy which the state argues is necessary for security. The ICJ and international advocacy certainly influenced the Court. Domestic Israeli opposition to the route also played a role. The Council for Peace and Security, an Israeli NGO comprised of retired military officers, joined the Beit Surik petition and proposed an alternate route which would achieve Israel's security objectives while lessening the harm to Palestinians. High profile residents of Mevasseret, an Israeli town adjacent to Beit Surik also joined the petition.

Villages harmed by the Barrier initiated grassroots protests in 2003, with several villages organizing weekly demonstrations in which residents of the village, together with Israeli, Palestinian, and international supporters protested every Friday. Bil'in began its weekly protest in February 2005. At the same time, the villagers petitioned Israel's High Court of Justice against the proposed route, which would leave about half of the village lands—1,900 dunams—west of the barrier. The route of the barrier in this area was designed to facilitate the future expansion of the Modi'in Illit settlement.[33]

On 4 September 2007, the High Court of Justice accepted the position of the village's residents, declaring that the route does not satisfy the standards of proportionality. The court instructed the state to consider an alternate, less injurious route. Bil'in's attorney Michael Sfard sees a clear link between the weekly protests and the High Court ruling. He recalls one hearing in which the Justices specifically asked him, "Mr. Sfard, what is unique about Bil'in that they are demonstrating there every week?"[34] In fact, Bil'in was not uniquely harmed by the Barrier. What is unique about Bil'in is that their protest succeeding in putting the village "on the map" for the Israeli public and the international community, and also for the High Court justices.

B. The Significance of the Amendments to the Barrier's Route

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

The current route of the Barrier encircles or isolates 11.9 percent of the West Bank—some 280,000 dunams of West Bank land were "saved"

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33. *See* Yehezkel Lein & Alon Cohen-Lifshitz, B'Tselem, Bimkom, Under the Guise of Security: Routing the Separation Barrier to Enable the Expansion of Israeli Settlements in the West Bank (Zvi Shulman trans., 2005).
34. Interview with Atty Michael Sfard, Tel Aviv (25 Dec. 2014).

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

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

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

VII. CASE STUDY: PROMOTING ACCOUNTABILITY

A. Part I: Ensuring Criminal Investigation of Civilian Deaths

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

This policy meant that criminal investigations into civilian deaths were a rare exception. In October 2003, the Association for Civil Rights in Israel and B'Tselem petitioned the Israeli High Court of Justice demanding

that an investigation be opened into every case in which a soldier killed a Palestinian. In April 2011, the Justice Ministry announced a new policy: a Military Police investigation would be opened automatically in every case in the West Bank in which a soldier killed a Palestinian civilian who was not taking part in hostilities.

1. Factors Leading to the Policy Change

B'Tselem and other organizations conducted extensive advocacy on this issue prior to the 2011 policy change: publications, press work, policy dialogue with Israeli officials, and briefings for foreign diplomats and policymakers. The change in the military's investigations policy was announced to the High Court as a response to the petition filed by the ACRI and B'Tselem, but was clearly influenced by broader developments regarding Israeli accountability.

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

The Goldstone Report includes an analysis of the investigative mechanisms of the Israeli military, and an explicit criticism of the reliance on the operational debriefing in order to decide whether to open a criminal investigation.[35] While European states and the US did not vote to endorse the report in the Human Rights Council, they all closely monitored domestic Israeli investigations into Cast Lead and demanded that Israel take additional steps to ensure accountability. All of these measures generated extensive international media attention and were closely followed in the Israeli press, political, military, and legal establishments.

Local human rights organizations conducted extensive advocacy with international actors throughout this process, with Israeli organizations providing data, case studies, and analysis emphasizing the failures of the reliance on operational debriefings. Both European and US policymakers used the materials from human rights organizations to raise this issue in their dialogue with Israeli counterparts.

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35. Human Rights in Palestine and Other Occupied Arab Territories, *Report of the United Nations Fact-Finding Mission on the Gaza Conflict*, U.N. Doc. A/HRC/12/48 (25 Sept. 2009), ¶ ¶ 1815–32.

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

> [W]hether the mechanism for examining and investigating complaints and claims raised in relation to violations of the laws of armed conflict, as conducted in Israel generally, and as implemented with regard to the present incident [of the flotilla], conforms with the obligations of the State of Israel under the rules of international law.[36]

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

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

2. The Significance of the Policy Change

Has the policy change regarding investigating civilian deaths promoted genuine accountability? The answer is a partial affirmative. The policy change only relates to the West Bank, with no change regarding incidents in the Gaza Strip. In the West Bank, from the date of the policy change (April 2011) until the end of 2014, Israeli security forces killed eighty-six Palestinians in seventy- three separate incidents. The Military Police, the Justice Ministry, and the Police opened investigations into at least fifty-one of these incidents. In the decade prior to 2011, less than 25 percent of Palestinian fatalities were investigated by the Military Police.[37] Thus the policy change significantly increased investigations.

Does an increase in investigations necessarily lead to greater accountability? Of the fifty-one investigations opened since 2011 that are known

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36. *Appointment of an Independent Public Commission, Headed by Former Supreme Court Justice, Jacob Turkel, to Examine the Maritime Incident of 31 May 2010*, available at http://www.turkel-committee.gov.il/content-169-c.html.
37. *See The Occupation's Fig Leaf: Israel's Military Law Enforcement System as a Whitewash Mechanism*, B'Tselem 2 (May 2016), *available at* http://www.btselem.org/accountability/investigation_of_complaints.

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

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

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

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

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

1. Factors Leading to ICC Accession

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

Immediately after the General Assembly granted observer state status to Palestine, PCHR launched its campaign calling on Palestine to sign the Rome Statute. The campaign included both policy dialogue and grassroots efforts: extensive work with the local and international press, spots on Gaza radio stations, and an annual International Criminal Law Moot Court to

train Gaza law students in the functioning of the ICC. PCHR was joined in these efforts by all of the leading Palestinian human rights organizations, as well as the newly formed umbrella body, the Palestinian Human Rights Organizations Council (PHROC).

The policy dialogue targeted the PA, as well as international actors, particularly European officials, UN bodies, and the Court itself. It also targeted Hamas leadership, as their opposition was identified as a major obstacle to joining the Court. In August 2014, Hamas declared its support for joining the Court.[38]

By mid-2014, the US efforts to restart the peace process through direct Israeli-Palestinian negotiations collapsed. This removed an obstacle to joining the Court, as the Palestinian Authority had offered to put on hold international recognition as a state by applying to international organizations during the course of the negotiations. In May 2014, seventeen Palestinian and international organizations signed a joint letter to President Mahmoud Abbas demanding Palestine's accession to the Rome Statute.[39] The Gaza War in the summer of 2014 increased popular pressure on the Palestinian leadership to pursue all measures to hold Israel accountable, including the ICC. The human rights organizations stepped up their public efforts and policy dialogue regarding the ICC throughout the fall of 2014.

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

2. The Significance of ICC Accession

Immediately upon Palestine's declaration accepting the jurisdiction of the Court, the ICC Prosecutor announced the opening of a preliminary examination into the situation in Palestine "in order to establish whether the Rome Statute criteria for opening an investigation are met."[40] This examination "must consider issues of jurisdiction, admissibility and the interests of justice" in order to determine "whether there is a reasonable basis to proceed with an investigation pursuant to the criteria established by the Rome Statute."[41] There is no timeline for the preliminary examination; the preliminary investigation regarding Colombia, for example, has been ongoing since 2005.

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38. *Hamas Declares Support for Palestinian bid to Join International Criminal Court*, Guardian, 23 Aug. 2014, *available at* http://www.theguardian.com/world/2014/aug/23/hamas-back-palestinian-bid-international-criminal-court.
39. *Joint Letter to President Abbas on the International Criminal Court*, Al-Haq, (8 May 2014), *available at* http://www.alhaq.org/advocacy/targets/accountability/81-general/803-joint-letter-to-president-abbas-on-the-international-criminal-court.
40 Press Release, International Criminal Court (ICC), The Prosecutor of the International Criminal Court, Fatou Bensouda, Opens a Preliminary Examination of the Situation in Palestine (16 Jan. 2015), *available at* http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/pr1083.aspx.
41. *Id.*

While it is premature to render a definitive assessment, we can point to three ways the Court may be influencing human rights in Israel-Palestine. The first is strengthening domestic accountability. As discussed above, the ICC only prosecutes crimes if the national judicial system fails to do so. The principle of complementarity serves as an incentive to strengthen the criminal justice system at home. If the Israeli military and the government want to avoid ICC involvement (as they certainly do), the most effective way to do so is to show that Israel's domestic judicial system genuinely prosecutes any crimes that have been committed.

It appears this incentive has already had an impact. In several of his presentations regarding the Turkel Commission, Former Military Judge Advocate General Avihai Mandleblitt referred to the Turkel Commission as "a firewall against international prosecution."[42] This rationale explains the framing of the Turkel recommendations: the wording is careful to state that Israel currently fulfills its obligations to investigate allegations of IHL violations, while at the same time recommending changes regarding Israel's investigative mechanisms to ensure that Israel's case against ICC involvement will be water-tight.

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

The second contribution of the ICC could be prosecuting crimes for which there is no domestic accountability. Much of the public discussion of the ICC concerns last summer's hostilities in the Gaza Strip, and other instances of lethal force by the Israeli military. It may well be that the Court will conclude that domestic accountability is insufficient and these cases warrant ICC investigation. However, the Rome Statute definition of war crimes is much broader and also includes, for example, "the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies."[43] Thus the Court could also exercise jurisdiction regarding Israeli settlement policies. Unlike the conduct of hostilities, there is a complete absence of any domestic mechanisms for investigating and prosecuting this crime, as settlements are not defined as a crime in the Israeli system.

The third potential contribution of the ICC would be to deter future crimes. To date, however, despite the high profile of the issue and the resources invested by Israel's civil and military justice systems to analyze

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42. Jessica Montell, SIDA, Learning From What Works: Strategic Analysis of the Achievements of the Israel- Palestine Human Rights Community (2015). available at, http://www.sida.se/contentassets/b5bb339961384c698a53f204fba5a839/f00295a5-9e40-44c4-a44d-45a42ea46235.pdf.
43. Rome Statute of the International Criminal Court, *adopted* 17 July 1998, art. 8(2)b viii, U.N. Doc. A/CONF.183/9 (1998), 2187 U.N.T.S. 90 (*entered into force* 1 July 2002).

developments and formulate contingency strategies, it is hard to discern any deterrent effect of the ICC on Israeli behavior.

C. Conclusions Regarding Promoting Accountability

As the discussion above demonstrates, domestic policy dialogue and litigation were strengthened by international policy dialogue and the possibility of international litigation, all of which contributed to policy changes to advance accountability. Domestic and international accountability are two halves of a single whole. Ideally, the involvement of the ICC will encourage Israel to ensure greater domestic accountability. Indeed, it appears this is already the case, at least with regard to improving the formal mechanisms of investigation. The efforts to promote accountability are still a work in progress. The monitoring, analysis, and engagement of the human rights community is crucial in order to ensure that procedural changes result in genuine accountability.

D. Backlash

Analysis of the efforts to promote international accountability must also include attention to its repercussions for the Israeli human rights organizations. The Goldstone process (the fact-finding mission into Operation Cast Lead and the international mechanisms that followed) resulted in a severe domestic backlash against the Israeli human rights community, which was "blamed" for providing the information that fueled this process. Foreign Minister Avigdor Lieberman set the tone in the inflammatory language regarding human rights groups, calling them "accomplices to terrorism."[44] Nationalist organizations closely aligned with rightwing parties identified foreign government funding as the "Achilles heel" of these organizations. The ultra-nationalist group Im Tirtzu succeeded in branding European government funding as a source of suspicion in the eyes of large sectors of the Israeli public, calling into question the loyalty of human rights organizations who receive such funding. Demonization of the human rights organizations was followed by measures in the Israeli Knesset. Members of the governing coalition attempted to hold an investigatory hearing into the work of human rights organizations, and proposed several bills to limit the funding of human rights organizations. Most of these measures were unsuccessful.

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44. *"Liberman on Leftist Organizations: 'Accomplices to Terrorism,'"* ynet 10 Jan. 2011 (Hebrew), available at http://www.ynet.co.il/articles/0,7340,L-4011576,00.html.

The legislation that ultimately passed merely imposed a more cumbersome reporting process, without limiting foreign government funding.

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

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

IX. HOW WE MAKE CHANGE

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

ists, politicians, and other actors, domestic and international, any of whom may—and do—use this material to effect positive change.

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

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

Gains made during a quiet period may be eroded but not necessarily reversed completely when violence increases. The High Court judgment on torture remains in effect. While there have been an increasing number of Palestinians tortured in interrogations, even at the height of the intifada with frequent bus bombings and other horrific attacks against Israeli civilians, the ISA did not return to the systematic torture of Palestinians in interrogation prior to 1999. Punitive home demolitions resumed after a ten-year moratorium; advocacy against this policy now builds on the insights of the last round of this advocacy.

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

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

among organizations which may waste resources and decrease their potential effectiveness.

This is not merely an issue of efficient allocation of resources. Different, even contradictory approaches may strengthen the impact of the sector as a whole. In some cases, a "Good Cop/Bad Cop" division between organizations is likely to increase impact. This seems to be the case regarding accountability. There are clear benefits to different organizations pursuing domestic as opposed to international accountability, rather than a single organization attempting to pursue both. International accountability (engaging foreign courts or promoting ICC involvement) is viewed extremely negatively among Israeli decision makers. It is hard to imagine an organization that could have an effective conversation regarding domestic accountability—or policy dialogue with the military on almost any topic—if they were simultaneously pursuing criminal indictments for Israeli military personnel abroad. However, the threat of international accountability increases the likelihood of domestic accountability.

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

The effectiveness of the human rights community would be improved through greater coordination and strategizing between Israeli and Palestinian organizations. Israeli and Palestinian human rights organizations are operating largely in isolation from each other. Despite working on the same issues, they are often not aware of the strategies of the other side. Joint projects are rare. This is not surprising given the obstacles to cooperation, both physical and psychological. Palestinians are prevented from entering Israel and East Jerusalem without special permits. Israelis cannot enter the Gaza Strip and should obtain permits before entering Area A of the West Bank. Polarization of Israeli and Palestinian societies is exacerbated by the physical separation. The Palestinian public climate emphasizing independence and highly critical of "normalization" (i.e. relations with Israeli institutions) further discourages cooperation between the two sides.

Finally it is important to consider that achievements often provoke a backlash, generating new obstacles for the human rights community. As discussed above, the promotion of accountability after Operation Cast Lead (the Goldstone process) resulted in greater hostility from large sections of the Israeli public and Israeli policymakers, and ongoing efforts to legislate restrictions on Israeli human rights organizations. Another form of backlash is manifest when anti-human rights groups adopt the strategies that have proven effective for human rights advocacy. Following High Court petitions to dismantle illegal settlement outposts, the nationalist Regavim organization

began to employ a similar method regarding Palestinian communities, filing High Court petitions requiring the state to demolish Palestinian homes built without permits.[45] The potential for such a backlash must not deter human rights organizations, but should be part of contingency planning which requires a strategic response.

Some issues lend themselves more to success. Human rights violations solely within the purview of the military, as opposed to the government, and those off the radar of the Israeli public are more likely to see a positive outcome. Achievements are also more common regarding classic civil rights issues and those where there is no security justification for the violation. The Association for Civil Rights in Israel conducted an analysis of its litigation regarding human rights in the OPT from 1985 to 2004. Of the seventy-seven cases, the success rate of cases concerning deprivation of liberty and due process was significantly higher than all other cases. This includes both success regarding an individual case and regarding policy change. Although the victims are Palestinians from the Occupied Territories, many of these rights violations take place in detention centers inside Israel. In this sense they create a greater tension with Israel's democratic identity.

On the other hand, we can point to very few concrete achievements regarding violations resulting from Israeli settlements. Human rights violations that stem from the heart of the political conflict are the most intractable, and it may be that human rights organizations do not have the tools to address these issues without addressing the political conflict itself.

X. THE CAUSE VS. THE SYMPTOMS

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

For several years, freedom of movement inside the West Bank was a central advocacy issue for the human rights community: the harsh conditions at the checkpoints, the blanket prohibition on young men from leaving the city of Nablus, the lack of regulations for free movement of people with medical

45. *See*, e.g., Rona Moran & Miryam Wijler, *One Rightist Group's Creeping State Influence, on Both Sides of Green Line*, +972 Blog, 4 Sept 2012, *available at* http://972mag.com/rightist-groups-creeping-state-influence-on-both-sides-of-green-line/55149/.

emergencies. Today most of the internal West Bank checkpoints have been lifted. Those that remain include shaded waiting areas and drinking fountains.

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

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

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

An analysis of our strategies regarding Israel's High Court encapsulates a broader dilemma for the human rights community about symptoms vs. root causes. The High Court has consistently either refused to rule or has ruled in favor of virtually all elements fundamental to the occupation itself: settlements, Palestinian home demolitions, and exploitation of resources for Israeli benefit. Both in its role as some form of pressure valve in individual cases and in the mantle of legality it affords to immoral and unjust policies, the Court may well serve as one of the mechanisms that enable the occupation to continue in its current form. However, as this paper has shown, High Court litigation often succeeds in realizing individuals' rights. It seems to me that a human rights organization that advocates on behalf of individual cases *must* make strategic use of the High Court, while an organization advancing a strategy to end the occupation would be wise to refrain from engagement with the Court. Can these two approaches be reconciled?

There are arguments to be made for limiting the human rights mandate to the concrete policies and practices that violate human rights, rather than addressing occupation as such. Human rights organizations cannot instru-

mentalize human rights. If we use human rights as a tool to promote political change, rather than as the goal in itself, we cease to be human rights organizations. Beyond the ideological concerns, tactical questions remain: does the human rights community have the strategies and tools to effectively address the occupation? The most effective tools to end the occupation are not the tools of human rights organizations, but rather political organizing and constituency-building based on messages well-beyond the human rights framework. If the human rights sector expands into this area, we risk sapping resources and further shrinking the space for the political organizing most necessary to end the occupation. In fact, it already appears that donors prefer funding human rights organizations as opposed to political groups: while the human rights sector boasts a dozen organizations all with large staffs, the overtly political groups working to end occupation operate with small budgets and few paid staff.

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

XI. CONCLUSIONS

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

Often human rights organizations are too busy to take note of their achievements, or too quick to dismiss achievements given the many human rights violations that continue. For this reason it is important to state categori-

cally that human rights organizations have positively impacted human rights. To acknowledge this in no way belittles the work still left to be done. The human rights reality in the West Bank and Gaza Strip remains poor, with Palestinians suffering systemic violations of their rights. Acknowledging the achievements of the human rights community enables us to better address this grim reality.

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

Despite the impressive achievements, on the macro level the human rights situation has not improved over the past twenty years. Human rights organizations have prevented further deterioration—and this is not insignificant—but they have been powerless to influence the broader trend of entrenched occupation, settlement expansion and more bloody military operations. Is this the job of the human rights community? If so how can we tackle it? I have suggested here that human rights organizations have a crucial role in making manifest the violation of rights inherent to prolonged occupation—and that in their efforts directed against the occupation, they must avoid instrumentalizing human rights or sapping resources from the related but ultimately distinct realm of political organizing against the occupation. This is a complicated route to navigate, but a necessary one if we are to advance the goal of systemic change that will advance human rights.