

## **BETWEEN HUMAN RIGHTS AND HOPE — WHAT ISRAELIS MIGHT LEARN FROM THE TRUTH AND RECONCILIATION PROCESS IN SOUTH AFRICA**

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### **ABSTRACT**

The South African Truth and Reconciliation Commission has become a model for other societies seeking to rebuild their ethical order, to reckon with the past, and to balance peace and justice. Despite the many differences between apartheid South Africa and the Israeli military regime in the Palestinian Occupied Territories, there are enough similarities which could suggest hope for change by constructing a political context within which the testimonies of victims and their assailants could be heard. This article studies the role and limitations of human rights organizations in processes of truth and reconciliation and focuses on the tension between the individual victim and the collective victim.

'Might it not make sense for a group of respected historians and intellectuals, composed equally of Palestinians and Israelis, to hold a series of meetings to try to agree a modicum of truth about this conflict, to see whether the known sources can guide the two sides to agree on a body of facts — who took what from whom, who did what to whom, and so on — which in turn might reveal a way out of the present impasse? It is too early, perhaps, for a Truth and Reconciliation Commission, but something like a Historical Truth and Political Justice Committee would be appropriate.' (Edward Said, January 1999)

The South African Truth and Reconciliation Commission has become a model for other societies seeking to rebuild their ethical order, to reckon with the past, and to balance peace and justice. Different societies, after periods of war or tyranny, have constructed models for publicizing victims' and perpetrators' testimonies, thus facilitating processes of healing, justice, compensation and accountability. Of all these attempts, the South African model of 'transitional justice' remains the most ambitious. Although it is predicated on what happens *after* the conflict, *after* the political negotiations are over, this model is also perhaps the most relevant to the Israeli–Palestinian conflict.

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It might seem strange to contemplate transitional justice in times like these, when transition seems a remote possibility and justice is so patently absent from Israel and Palestine. Nevertheless, when hope eludes, when despite talks and international conferences there is scant hope of a comprehensive solution to the conflict, we might well consider South Africa's hope-filled process and examine whether something akin to it might be possible in the Middle East as part of a peace process, or alternatively, as something that might promote a peace process. It is worth considering how the stage might be set for a future official commission once there is a peace agreement, or alternatively, how a non-formal process might be put in motion.

I will start by discussing the legitimacy of comparing Israel and the apartheid regime, and end with the main obstacles to implementing the South African model of reconciliation between Israelis and Palestinians. The main body of this article will focus on lessons that Israeli and Palestinian human rights activists could learn from South Africa.

## **ON COMPARING ISRAEL AND APARTHEID**

Towards the end of the 1970s, as a first-year student at the Hebrew University of Jerusalem, I took a course called 'Introduction to South African History'. The lecturer drew two concentric circles on the blackboard and said: 'South Africa is like these two circles. In the inner circle, about 5 million whites live in a democracy — they hold free parliamentary elections, have a justice system and a free press. In the outer circle, there are 30 million black people, who have no rights.' I was very young, but still, it made no sense. How could the whites have democracy if the blacks did not? 'How can there be a magic line between those who have and those who do not, in a democracy?' I asked. Where exactly is the line separating the two worlds? How could the whites in the inner circle have democracy and rights and be impervious to those in the outer circle? What happens, for example, if a white woman is married to a black man? Does she have rights or not?

'It almost never happens,' was the answer I received. 'The Mixed Marriage Act of 1950 prohibits inter-racial marriage.'

'And if a white journalist wants to report on what is happening in the outer circle?' I asked. 'Is that possible?'

'South Africa has censorship. Whatever is perceived as a threat to national security is censored.'

'What about a political party that supported black rights? Would people be able to vote for it, like for any other party in the South African democracy?'

'Some parties are banned. There is legislation against Communist gatherings, for example.'

How strange it seemed to me, this whites-only democracy. The line separating those with rights from those without was one that I never managed to see or understand. I still can't conceive of it.

Thirty years later, I am teaching at the Hebrew University and those invisible dividing lines — unseen yet palpable — separate the campus from its surroundings in the heart of Arab East Jerusalem. The magic line that could not be legitimized in South Africa, between those who have rights and those who do not, runs through the heart of Jerusalem, separating Jews and Palestinians. Israel is perceived as a democratic state, while the Occupied Territories (or administered territories as they are officially called in Israel) are under military rule — just for now, until we find a political solution that Israel can live with. Meanwhile, Palestinians have been living in occupied territory for over forty years, with no rights, and Israel, which existed for only 19 years before it conquered the Palestinian Territories and instituted military rule, is still considered a democracy.

For most Israelis, the comparison of Israel with apartheid South Africa is unacceptable. It angers and threatens Israelis in general, and liberal Israelis in particular; because it challenges the basic belief that the Israeli–Palestinian conflict was imposed upon Israel, and is so unique that it cannot be compared with any other conflict in the world.<sup>1</sup>

Yet, even among Israelis, the comparison that was virtually taboo during the eighties and nineties is being heard more and more. An editorial in *Ha'aretz* iterated it incisively in 2007:

The occupied territories and the Palestinians living there are slowly becoming virtual realities, distant from the eye and the heart. Palestinian workers have disappeared from our streets. Israelis no longer enter Palestinian towns for shopping. There is a new generation on each side that does not know the other. Even the settlers no longer meet Palestinians because of the different road systems that separate the two populations; one is free and mobile, the other stuck at the roadblocks.

Today, because of its constancy, the *de facto* separation between Palestinians and Israelis resembles political apartheid more than it does an occupation. One side — determined by national, not geographic association — includes people who have the right to choose and the freedom to move, and a growing economy. On the other side are people cut off by the walls surrounding their communities, who have no right to vote, lack freedom of movement, and are not free to plan their future. The economic gap is only getting wider, with the Palestinians watching wistfully as Israel imports laborers from China and Romania. Fear of terrorist attacks has transformed the Palestinian laborer into an undesirable.

This editorial, which elicited outraged responses from readers, reflects the emergent discussion regarding the comparison between Israel and South Africa. My own comparison of Israel and apartheid South Africa is not

intended as a condemnation of Israel, but as a reaching for hope. If South Africa could embark on a process of transitional justice and reconciliation, perhaps such a process is possible here too.

There are, of course, a great many differences between Israel and apartheid South Africa. I will address four, which I regard as central.

Firstly, in South Africa, a small minority controlled the nation's resources and power and denied the majority its rights. In Israel–Palestine, the number of Jews is slightly bigger than the number of Arabs and thus it is the majority denying the minority equal rights. The State of Israel and its legal system distinguish between four groups of Palestinians living under Israeli control: Palestinians in the West Bank (about 2.4 million individuals), some 1.5 million Palestinians in Gaza which is classified as a 'hostile entity', some quarter million Palestinians who live in Jerusalem (as residents of Israel, but not citizens) and Palestinian citizens of Israel who number about a million and constitute 20% of Israeli citizens. The latter enjoy almost full rights but are nevertheless discriminated against in many ways (Jabareen, 2008). This distinction into separate categories of people with different rights, Jews being the most entitled, enables Israel to present itself as a Jewish democracy.

The white rulers of apartheid South Africa also claimed that there was a white majority. Ran Greenstein explains that 'the basic idea behind the Bantustan policy was to define the civil rights of the native black population on a tribal basis, in such a manner as to ensure that the whites would be considered the majority. This objective required two moves. First, the black majority was dismantled into several minority groups by being classified as different ethnic groups, each one of which had a language, a culture, and political aspirations of its own (Greenstein, 2006). These could be realized in its 'own' territory. In this way, the black majority ceased to exist and everyone became part of a minority group. Second, South Africa rejected the claims of black Africans, who it defined as members of different national groups, to political rights in the country. As members of 'other nations' and citizens of 'other states,' they were not part of the South African nation, and needless to say, were not entitled to rights and privileges in South Africa, which was ostensibly a foreign country to them.

Nevertheless, the enormous numeric advantage of blacks over whites in South Africa made it difficult to maintain the inequality for the long term. In Israel, there is no such clear-cut demographic divide. This difference nourishes and reinforces the second difference, which pertains to labour relations in Israel and South Africa. Supporters of segregation in South Africa saw the blacks as 'racially inferior but useful', their labour force essential to the survival of the white ruling society and economy. Blacks worked as domestic servants in white houses, shared white people's most intimate moments, were present in white cities and homes — an oppressed labour force, but nevertheless present. In Israel, the segregationist policy prevents Israelis from encountering Palestinians. Very few Palestinians work in Israel. Most Palestinians are not

allowed to enter Israeli territory and thus Israelis are not witness to the daily humiliation that Palestinians experience.<sup>2</sup>

In *A Dry White Season*, Andre Brink (1980) writes about the enlightenment of a white family that witnesses the suffering and humiliation of the family of its black gardener. In Israel, Palestinian gardeners are becoming more and more of a rarity. The fences, walls, checkpoints and prohibitions make it nearly impossible for Palestinians to work in Israel.<sup>3</sup>

As Mira Hamermesh (1986) explains in her wonderful work *Maids and Madams*, despite all the racism, South African white women left what they held dearest, their children, in the care of black nannies. Such intimate, daily contact between Israelis and Palestinians is all but non-existent in Israel today. I will return to this significant difference presently, with reference to willingness to hear the testimony of victims.

Another significant difference is the role played by religion in the two countries being compared. The Afrikaner myth of settlement is based on the Old Testament and their self-perception as the chosen people in the Promised Land. The apartheid regime justified itself with unique interpretations of Christian religious notions. But Christianity also played an important part in the healing and reconciliation process that took place in South Africa in the 1990s. By contrast, in the Arab–Israeli conflict, the religious tension between Judaism and Islam continues to fan the flames of conflict and is in no way directed at healing and reconciliation.

Israel is a sacred locality for Christianity, Islam and Judaism, and the struggle for control of the holy sites is a focal point of the battle over land and resources. Furthermore, the importance of religion and the religious struggle in the Israeli–Palestinian conflict is related to the fourth difference between the Israeli–Palestinian situation and apartheid in South Africa: the degree of international involvement and commitment on the part of other countries.

While the international community imposed sanctions on the South African regime in order to end apartheid, Israel gets billions of dollars every year from the US, along with economic privileges from the European Union. International support of Israel stems, among other things, from the western world's guilt and responsibility for the horrific persecution of Jews in the Second World War and the preceding history of anti-Semitism and persecution. Therefore, despite the 1975 UN declaration that compared Zionism to apartheid, and a protracted series of condemnations of Israel's policy, Israel still enjoys international support.

These differences acknowledged, a significant similarity between Israel and apartheid South Africa is the precise and consistent use of the legal system to normalize a state of discrimination. During apartheid, not only did millions of people live without minimal rights and in ongoing poverty, but the discrimination that gave rise to these conditions was anchored in a complex system of laws: laws that prohibited marriage between blacks and whites; laws that prohibited blacks from living in cities declared white; laws legislated in a pseudo-democratic process, enforced by a system of attorneys and courts and

administered by a gigantic bureaucracy constructed to maintain it. The Occupied Territories are also governed by a complex system of laws, hundreds of them. Some are left over from the British Mandate; others have been inherited from Turkish, Jordanian and Egyptian legislation. Israeli and International Human Rights laws, as well as military edicts, *shariah* law and the legislation effected by the Palestinian Authority, all pertain.

In Israel there are two separate legal systems, one for Palestinians and one for Israelis who live in the Occupied Territories. If an Israeli and a Palestinian commit the same crime, together, in the territories, they will stand trial before different courts and according to a different set of laws. Though they live in the same Occupied Territories, the Israeli will come before an Israeli court, the Palestinian will be brought before a military court.

As in South Africa, Israel employs hundreds of attorneys, lawyers and consultants to explain how, in this convoluted system, things may be unjust but also legal. This structure undermines the assumption that the law is more than an agreement between the powerful. Hundreds of laws do not make discrimination just. Regardless of how we rationalize it and how many articles Israeli scholars and lawyers generate on the subject, there are two groups living on this small piece of land: one enjoys rights and liberty and the other does not.

Anyone who has visited both apartheid South Africa and Israel cannot help but perceive the similar use of imaginary and real borders and the physical representation of the segregationist laws. Professor John Dugard, former UN Special Rapporteur to Human Rights in the Occupied Territories and previously a professor of law in South Africa comments that, 'In terms of basic human rights such as freedom of movement, political detainees and the harsh treatment they receive including torture, the situation is very similar. In South Africa the struggle was also for control over land.'<sup>4</sup>

In the mid-1980s when I travelled through Kwazulu, South Africa, the roads connecting parts of Kwazulu to white South Africa were unmarked. There were no signs indicating the entrance to, or exit from, the Bantustan. All the water sources, the factories, the well-paved roads were in white South Africa; the poverty, hunger, and anger were in Kwazulu, a state composed of forty-nine units and dozens of disconnected pieces of land. Travelling through the West Bank, in the days when it was still possible, before there were hundreds of checkpoints, was very similar. Areas — A, B and C — were defined by the Oslo Accords to grant incremental autonomy to the Palestinians. Area A was completely controlled by the Palestinian Authority, while Area B was ostensibly administered by Palestinians and controlled militarily by Israelis. Area C was controlled by Israel alone. Area C, which comprises more than 60% of the West Bank, is home to the Jewish settlers, some 250,000 of whom live scattered among more than two million Palestinians. This draft map, which was agreed upon in the Oslo negotiations, is very much like the map of the South African Bantustans. The Palestinians call it the Swiss cheese map: 'We got the holes,' they say.

Today, the division of land is marked by checkpoints and walls: Israel inside the wall, the northern West Bank, the southern West Bank, and the Gaza Strip. A convoluted set of laws and regulations limits movement between the different pieces, and, in the case of the West Bank, even within them. Each person's right to move within the pieces is defined by his or her collective identity as defined by the Israeli authority which provides each group with a different identity card. Today, Palestinian freedom of movement is more limited than that of black South Africans ever was under apartheid. The map of Israel, the West Bank and Gaza looks a lot like the map of the Bantustans, albeit smaller and more crowded, but the fact is that most Palestinians cannot move from one point on it to another. Because maps are two-dimensional, they do not show Israeli highways and bridges that run above the little, mostly unpaved roads that the Palestinians must use. The unequal division of the space is being effected by Israel not only across the length and breadth of the map, but also in layers, with the Israeli roads running above and the Palestinian roads below.

Since 2002, Israel has been building a giant wall around the Palestinian areas, setting up hundreds of checkpoints that divide the West Bank into cantons that the Palestinians are not permitted to leave. It separates Palestinian families, bars farmers from picking their olives, and obstructs the way to work, to school, to hospitals. These walls, built on Palestinian lands, are the manifestation of the Israeli policy of segregation. They are supposed to afford Israelis security, but if there is any lesson we might learn from the South African example, it is that forcibly imposed segregation does not bring security.<sup>5</sup>

The giant wall is doubtless the most significant reflection of the segregationist policy and the lack of desire and faith in negotiations and coexistence. In practice, however, all Israeli policies are rooted in control and segregation. Even what appeared to be a step towards peace, the disengagement from Gaza, was nothing but another segregationist act.

In summer 2005, Israel withdrew from the Gaza strip, and evacuated some 8,000 Jewish settlers who had held some 22% of the land in what is one of the most populated areas in the world — home to some 1.5 million Palestinians. The disengagement, as it is called in Israel, or dismantling of the Jewish settlements in Gaza, did not arise from negotiations with the Palestinians about past, present, or future. It was, declared Prime Minister Sharon, a unilateral disengagement.<sup>6</sup> The withdrawal from the Gaza strip did not end Israeli control over the area. Israel controls all the entrances to Gaza and, now more than ever, Gaza is like a prison. Almost no merchandise moves in or out, fishing is banned, the tens of thousands of Palestinian authority workers receive no salaries, and the possibility of working in Israel is out of the question (Levi, 2006). If the unilateral withdrawal from Gaza was seen as a move towards peace, it turned out to be a tragic example of how peace cannot be achieved without negotiation.

Thus, perhaps the most important similarity between Israel and apartheid South Africa is that both societies have imagined themselves as societies of separation and denied the reality of shared society.

## **IS THERE HOPE FOR TRUTH AND RECONCILIATION IN THE CONTEXT OF ISRAELI PALESTINIAN CONFLICT?**

In *A Country Unmasked*, Alex Boraine (2001) mentions six factors that contributed to the establishment of the Truth and Reconciliation Commission (TRC) in South Africa. Most of these factors are not features of the Israeli–Palestinian conflict.

First, the idea of a Truth Commission enjoyed substantial political support from the ANC, which became South Africa's ruling party. The ANC understood the repercussions stemming from the Commission's investigation of its own human rights violations, but its leaders had the courage to continue supporting the idea. Second, the leadership of Nelson Mandela, which, as Boraine notes, is the embodiment of truth and reconciliation in his own life and person, has made it easier to obtain the support of both other leaders and the people of South Africa. Third, South Africa's traditional status, and its new democratic institutions facilitated the implementation of the Truth Commission as a measure of transitional justice. Fourth, as so many South Africans were excluded from participation in political life, civil society had to develop alternative mechanisms. This, according to Boraine is what spawned the great number of NGOs in South Africa, and these helped to build the TRC. The fifth element discussed by Boraine is the interest of the international community, and the last factor assisting in the implementation of the commission was its religious character.

It would appear that the Israeli–Palestinian conflict lacks several of the central elements that Boraine suggests are essential to the Truth and Reconciliation Commission. The conflict is not over, and the ruling parties in both Israel and the territories are not talking of reconciliation. We do not have a leader of Nelson Mandela's stature. The international community is not helping bring about a solution to the conflict as it did in South Africa. In fact, despite public criticism from the international community regarding the occupation, there is almost no real pressure brought to bear on Israel to change its policies. Religion is not a unifying, healing and conciliatory factor as it was in South Africa, but instead a component of the conflict itself.

The only element that is common to South Africa and Israel is the many organizations that formed in civil society. Still, however important these civil organizations may be, it is difficult to presume they can lead to change in Israel, just as they did not bring about the transition in South Africa on their own. Still, I want to focus on these pinpricks of hope — the Israeli organizations working to effect change — particularly the Israeli human rights organizations that work to promote Palestinian rights.

By means of a comparison between human rights organizations in Israel and South Africa, I will examine the possibility that the Israeli organizations may play a role in preparing a truth and reconciliation commission, just as their South African counterparts did.

## HUMAN RIGHTS ORGANIZATIONS IN ISRAEL AND SOUTH AFRICA

Dozens of Israeli human rights organizations operate to protect Palestinian rights, utilizing a variety of strategies. Organizations such as *B'Tselem*, the *Israeli Information Center for Human Rights in the Occupied Territories* and, the *Public Committee Against Torture* focus mainly on monitoring and reporting violations. Others, such as *Physicians for Human Rights*, *Machssom Watch* and *Hamoked for Defense of Individuals* provide individual Palestinians with help.<sup>7</sup> Other organizations, such as the *Association for Civil Rights in Israel*, focus on petitioning the High Court in precedent-setting cases of the violation of Palestinian rights. These important organizations have been collecting testimonies and documenting the violation of Palestinians human rights for years — all of which might one day form the basis of a truth and reconciliation process.<sup>8</sup>

The operational space occupied by the human rights organizations in Israel is much broader than it was in South Africa. They are working in a society that has more freedom of expression, largely for Jews, but also to some extent for Arab citizens. Press censorship in South Africa was much worse than it is in Israel and the personal risk taken by human rights activists and journalists was much higher there too.

The achievements of the Israeli human rights organizations have been especially impressive.<sup>9</sup> Still, comparison of these organizations with their counterparts in apartheid South Africa can teach us about their limitations with respect to preparing the ground for a truth and reconciliation forum. I will focus on three main differences between the Israeli human rights organizations and their counterparts in apartheid South Africa: first, the apolitical character of the movement in Israel as opposed to the political character of the movement in South Africa; second, the focus on the rights of the individual in Israel as opposed to the emphasis on collective rights in South Africa; and third, the vision of a single democratic state which was the frame of reference for activism in South Africa, as opposed to the vision of two separate states that characterizes the Israeli organizations' perception.

### Political Versus Apolitical Organizations

As Stanley Cohen (1991) has suggested, 'In South Africa the struggle for legality and basic civil rights was inseparable from the overall political struggle.'<sup>10</sup> In Israel, however, human rights organizations are careful to be seen as professional, rather than political, organizations that are protecting Palestinians human rights in the territories for the interim — until the politicians find a solution.

In Israel, the political solution is perceived of as a demarcation of boundaries — a political act that does not fall within the human rights frame of reference.

The human rights organizations have therefore never addressed the question of where the border between the states would be and what the peace agreement would look like. Instead, they focus on how they can, in the present setting, improve the human rights situation in the territories and how they can ensure that protection of human rights will be taken into consideration if peace agreements are signed.<sup>11</sup>

Because the public being addressed by the human rights organizations consists of policy makers and liberal Israelis, because the prevailing view is 'if they only knew, they would do more,' and because threats to the consensus in Israel are perceived as political, most of the Israeli human rights movements avoid broaching the issues which are defined by Israeli academics as political.

Eyal Gros, chairperson of the executive board of the Association for Human Rights, reinforces the claim that the human rights organizations are apolitical in a review of one of my own articles. He writes:

Until some time ago it was difficult to find human rights organizations which are openly against the occupation. I agree with Golan that this is due to their attempt not to be seen as political but rather as professional. At ACRI it took a very long and difficult process for us to finally take a decision pertaining to the occupation itself. It was only in the context of the Gaza disengagement plan (2005) when we were asked whether we will represent settlers who wanted to argue that their mere evacuation from Gaza violates human rights, that we finally formulated a position saying that this occupation, with its system of different regimes for different populations, violates human rights. Some time before, after the beginning of the second Intifada an attempt to pass a similar resolution failed in a narrowly divided board. Indeed at that time I said that the parallel, in my mind, would have been a human rights organization not taking a position on apartheid.<sup>12</sup>

### **Individual Versus Collective Rights**

In Israel, as was the case in South Africa, the conflict centers on collective rights, yet the organizations in Israel are focused on individual rather than collective rights.

In keeping with their apolitical stance, Israeli human rights organizations deal mostly with individual Palestinians and leave issues pertaining to collective rights to the politicians. Exceptions to this rule are the Palestinian-Israeli organizations, Adallah and Mossawa, both of which stress collective rights. They are, however, concerned primarily with the collective rights of Palestinians inside Israel and less with those in the Occupied Territories. The focus of human rights activity on the legal system is part of the 'legalization' of Israeli society. It dictates the nature of most activism, which revolves around petitioning the

courts on behalf of individuals because the High Court will not hear any discussion pertaining to collective rights.

There are more lawyers per capita in Israel than in any other country in the world.<sup>13</sup> Israel has no constitution and the High Court has become the main organ for deciding human rights issues. Thus, despite the fact that the Court has accepted state and military positions on almost every issue pertaining to the Occupied Territories, by approving expropriation of territories and house demolitions, deportation and prolonged arrests without trial of Palestinians, the Court still seems the only avenue with some potential for justice. The number of appeals regarding Palestinians' rights in the Territories has increased steadily.<sup>14</sup>

The High Court has never clearly acknowledged that the Occupied Territories are in fact occupied and, hence, that the Fourth Geneva Convention, which protects civilians living in occupied territories, applies. The High Court continues to disregard the opinion of the International Court at the Hague, which ruled that Jewish settlements in the Occupied Territories are illegal and the construction of a separating wall in the territories is against international law.

In rare cases, however, the Court allows the human rights organizations and the lawyers who represent Palestinians a few victories, which indicate that it is still possible to effect change from within. For example, about a week after the International Court's ruling on the illegality of the wall and settlements in the Territories was made public, the High Court ruled that the location of the wall in the Beit Sourik area should be changed.<sup>15</sup> Even so, this verdict, like a similar one delivered in the Alfei Menashe High Court case,<sup>16</sup> was very different from the International Court's ruling in that it did not state explicitly that the wall is illegal or that Jewish settlements in the territories are a violation of international law. The verdict indicates, however, that the High Court is not totally oblivious to the human rights organizations and to the language of civil rights, particularly when these organizations enjoy international legal support.<sup>17</sup>

All the victories belong to individual Palestinians and hence do not constitute a challenge to the system. Thus, for example, the human rights organizations did not challenge the overall logic and justice of building a wall on Palestinian land, but merely opposed the exact location of certain stretches of that wall. Thus, despite having gained important ground when the High Court ordered the dismantling and relocation of certain parts of the wall, the achievements remain the domain of individuals and not of the Palestinian collective.

### **The Frame of Reference for Activism: One Democratic State in South Africa Versus Two States in Israel–Palestine**

Human rights organizations in South Africa had a vision of a democratic country, in which every individual would have an equal say. The basis of these organizations' activities was opposition to the existing state and a desire to change its structure and character. In Israel, by contrast, most human rights organizations accept the prevailing paradigm, namely that Israel is a Jewish,

democratic state with a temporary hindrance, the Occupied Territories. Most of them see the role of human rights organizations as the documentation of violations in the Territories and protection of Palestinian rights in the interim, until a political solution to the inevitable separation is reached.

In practice, most opposition to Israeli policy is directed through legal channels. therefore, given that the Israeli legal system is based on the assumption that Israel is a democratic state, where rule of law prevails, and the Occupied Territories are a separate entity with a separate legal system, the defence of human rights takes place within the limitations of accepting a state framework based on separation (Rouhana and Sabar-Huri, 2006).

Very few, if any, members of the human rights organizations question the separation program and the unrealized (perhaps impossible) vision of two states — Israel and Palestine. They focus on the temporary hindrance, hoping that its removal will reinstate Israel as the democratic state it was for the 19 years before the forty-year-long 'temporary occupation' began.

Notwithstanding the aforementioned limitations, the Israeli human rights organizations do important work in documenting present violations of human rights. This documentation, should the day come, may serve as historical evidence. The organizations also manage to assist individuals and sometimes win victories of principle, such as the High Court prohibition against torture of Palestinian prisoners.

The Israeli organizations are struggling to make Israeli society hear the testimony of Palestinians regarding the atrocities committed by Israelis in the occupied territories, which are inaccessible to Israelis, locked down behind walls of concrete and denial. They tell the Israeli public, which does not want to know, what the Israeli army does to Palestinians in the territories. They struggle against the denial endemic in an Israeli public that just does not want to know, that lives in fear and a sense of victimization. They work within a social context in which Israelis, even the liberals among them, even those who advocate Palestinian rights, do not ask how it can be that Jews and Arabs can live together on one piece of land. Instead, they ask how they might live separately.

All these differences notwithstanding, both the Israeli and the South African defenders of human rights chose to defend rights of others even though it was not a popular choice. They operated according to universal norms of human rights and lent assistance and gave a voice to the victims.

## **VICTIM TESTIMONIES — THE ROAD TO HOPE**

The South African Truth and Reconciliation Commission constructed a political context within which the testimonies of victims and their assailants could be heard. Despite the important criticism leveled at the individual emphasis of the TRC and its avoidance of the collective aspects of oppression in apartheid South Africa, this political context facilitated the hearing of testimonies that represented the collective as well.

Paradoxically — because freedom of expression is less restricted in Israel, because there are far fewer limitations on the publication of human rights violations, because of the globalization of information and access to global media, because the Israeli human rights organizations bring testimonies of Palestinians victims to the public, in published reports, newspaper articles, court testimonies — Israelis are exposed to media information regarding individual Palestinian victims much more than South Africans were to black victims during apartheid. They see Palestinian children wounded or killed by IDF fire, they see people whose homes are demolished. Yet, Israelis who have intimate knowledge of Palestinians, like that which existed between black and whites in South Africa, are few and far between. All these testimonies are perceived, seen, presented, as testimonies of individuals, exceptions, injured parties who are to be pitied. The broader picture of a collective victim, of a Palestinian people that is in its entirety a victim, is denied.

What made it possible for victims of apartheid to make their voices heard, to tell their stories to the Truth and Reconciliation Commission, was that they were victims of political acts and they believed that going public would elicit recognition of their pain, and perhaps compensation and relief. It was the knowledge that they were part of a political process of reconciliation that led them to speak out in South Africa. Even though the processes of reconciliation, compensation and amnesty were individual, the TRC was a political framework that recognised the society's political responsibility for crimes committed as part of an oppressive system, and recognised the need to return to the past in order to coexist in the future.

The establishment of the Truth and Reconciliation Commission in South Africa attests to the realization that questions of memory, truth and past pain have to be addressed in order to create a better future. South Africa teaches us that in order to move forward towards a better future we have to return to old wounds.

In Israel, the past and future are repressed issues that are not only beyond the consensus, but not even talked about. The Nakba — expulsion of hundreds of thousands of Palestinians from their lands in 1948, is still taboo in Israeli society. The Nakba is not mentioned in school textbooks and only recently has the Minister of Education suggested the Palestinian Israeli students might learn about it — a program that has yet to be put into practice and which provoked heated public protest. Hebrew schools do not teach about the fate of some 800 thousand Palestinians who were not allowed to return to their lands, which they left during the 1948 war. The deep-seated fear of discussing Palestinian refugees' right to return to their lands, is, in my opinion, one of the central obstacles on the road to reconciliation, if not the most significant.<sup>18</sup> This refusal to speak about the dispossession and expulsion of Palestinians in 1948 and the refusal to speak about Palestinian refugees' right of return, stem from the fear of some day finding that Jews are no longer the majority.

In 1982, Amos Oz (1983), one of the most important Israeli authors, conducted a series of interviews which he published under the title *In the Land of Israel*. In this book he tells of a visit to the *Al-Fajr* newspaper and a conversation he held with the Palestinian editor Ziad Abu Ziad. Oz writes:

You find, both among them and among us, blazing insistence on the crown of the 'few' on the glory of the 'persecuted' on the image of the isolated and abandoned, of the victims. Every claim, of theirs and of ours, is drowned in a flood of self-pity.

Even if one day all of us arrive, we and they, at a searing compromise over 'the Promised Land,' there will never be a compromise — never a concession, 'not one inch' — on the right to be considered the victim. Never on the joy of the oppressed. Or on the bittersweet warmth of the feeling that the whole world is against us, and that we are little David facing the giant Goliath. Even after the national conflict has slowly subsided and agonizingly made way for some searing formula of compromise, both the Israelis and the Palestinians will enthusiastically continue to nurture the delightful weepy sensation. (Oz, 1983: p. 165)

Amos Oz is a writer who often speaks out in favour of peace with the Palestinians and their right to self-rule. Yet he does not relent. As early as 1982, before the Intifada and the bombings, and the Kasam rockets, he refused to yield the status of victim to the Palestinians.

The peace that Oz, one of the most important spokespeople of the Israeli peace movement, advocates is 'a searing compromise'; as if there were symmetry between the two nations. Moreover, it is an agreement over the 'Promised Land,' not over Palestine, not over land kept illegally under military rule, but over the land promised to the Jewish people by God. In using the phrase 'not one inch' Oz is alluding to the Israeli right, which is unwilling to give up 'a single inch' of the greater land of Israel. Oz is renowned for his support of the two state solution, and hence his willingness to give up more than a piece of land, but he is not willing to give up the right to be considered the victim. Is there any such statement made by a South African author who is considered progressive? Can we think about reconciliation when Israelis do not see the Palestinians as victims?

The history of Jewish persecution, the Holocaust, anti-Semitism, sharpens the Israeli collective sense of victimhood. The Palestinian opposition to the partition proposal in 1947, the incessant wars with neighbouring countries, the lack of security amidst an Arab world that will not recognize the historic Jewish connection with the land of Israel, and Palestinian terrorism, all reinforce the Jewish Israelis' sense of victimhood. Israelis do not want to see Palestinians as a nation victimized by the state of Israel, because the state of Israel is the realized dream of a people that has been victimized for thousands of years. Therefore,

while the democratic elements of Israel make it possible for human rights organizations, peace activists and authors like Amos Oz to take action directed at changing the present situation, the segregationist and dispossessionist policies remain intact.

In Israel, the physical segregation is much deeper than it was in South Africa. There are no Palestinian gardeners or domestic servants in Israel. In fact, Israelis almost never encounter Palestinians. Israeli textbooks are devoid of Palestinian history just as black history was purged from South African textbooks. Black people however, were present in the lives of whites, while Palestinians are kept out of the lives of Israelis. They do not write for the Israeli press, they do not work in Israel, they are kept behind giant walls and fences so that Israelis do not know what is happening to them, cannot see them. And Israelis, for their part, do not want to see Palestinians. They do not want to hear their stories, because they threaten the basic perception underlying the existence of Israel, that the Jews are the victims.

In order to make it possible to consider a truth and reconciliation process between Israelis and Palestinians, Israelis have to recognize the reality that the state of Israel has created: the Palestinians, as a collective, are the victim. Israelis must want to hear testimonies about the past, rethink Zionist history not only as the history of a survivor people, but also as the history of the dispossession and oppression of the Palestinian people. The failure of the Oslo Accords and the peace talks afterwards derives chiefly from the desire to avoid discussing the past: from the Palestinian perspective, failure to recognize the Jewish people's historical link to the land of Israel, and from the Israeli perspective, lack of willingness to recognize the expulsion of hundreds of thousands of Palestinians and the attempt to ignore their right to return to their land. Reconciliation is not possible unless Israelis hear the testimonies of the Palestinians who were expelled from their homes, homes that today house Israelis, and Palestinians hear Israeli victims of terror. The assumption that borders can be discussed, lines moved, territories exchanged, without recognizing the hundreds of thousands of Palestinians refugees, has been proved fruitless by dozens of previous attempts. For these testimonies to be heard, Israelis and Palestinians will have to consider the future, not only in terms of separation, but in terms of coexistence.

The victims who testified before the TRC in South Africa said they expected recognition, compensation, comfort, and that they saw their testimony as part of the process of building a new South Africa.

In the current situation, Israeli human rights organizations are important in giving a voice to Palestinian victims of the present. They allow the voices of Palestinian victims to be heard, in accurate professional reports which do not deal with history, nor with the future vision of separation. Yet, a vision of coexistence is essential in order to contemplate reconciliation. In the context of such a vision of coexistence, it will be possible to think about the past differently, acknowledge crimes, apologize, and find ways of making amends and living together. Israelis will be able to hear Palestinian testimonies if they

are not afraid that those testimonies will undermine their very existence, if they believe that a future of coexistence is possible. The airing of testimonies in a public, political context, as part of a reconciliation process, is an act of hope. And hope is severely lacking in both Israel and Palestine.

## NOTES

- 1 The *Guardian's* award-winning Middle East Correspondent Chris McGreal published an assessment of the comparison between Israel and South Africa, after four years reporting from Jerusalem and more than a decade reporting from Johannesburg. McGreal's fascinating articles were not translated or published in Israeli newspapers, though *Haaretz*, the liberal Israeli paper, did publish a scathing response to McGreal by Benjamin Pogrund, who claimed that the comparison between Israel and apartheid South Africa was unjustified (see McGreal, 2006a, 2006b; Pogrund, 2006).
- 2 According to the 2006 Annual Report of the Workers' Hotline, there were 124,000 Palestinians employed inside the Green Line during 2000, until the month of October. In 2006 the number had dropped to 55,000. As of July 2010, there are 20,000 Palestinians from the West Bank working in Israel and 23,000 more working in the settlements. There are no workers from Gaza in Israel. It is important to note that this data excludes workers without permits from the West Bank in Israel. ([http://www.kavlaoved.org.il/UserFiles/news973\\_file.doc](http://www.kavlaoved.org.il/UserFiles/news973_file.doc) and personal delivery by Hanna Zohar, director of the workers' hotline).
- 3 Data from the workers' hotline, <http://www.kavlaoved.org.il>.
- 4 Interview with Professor John Dugard, 7 March 2006.
- 5 B'Tselem report on the wall: <http://www.btselem.org?English/Separation%5FBARRIER>.
- 6 As is evident in government decision no. 1996, from June 6, 2004.
- 7 B'Tselem — [www.btselem.org](http://www.btselem.org); HaMoked — [www.hamoked.org.il](http://www.hamoked.org.il); The Association of Civil Rights — [www.acri.org.il](http://www.acri.org.il); The Public Committee against Torture — [www.stoptorture.org.il](http://www.stoptorture.org.il).
- 8 I focus here only on Israeli human rights organizations protecting Palestinian rights, but the last ten years have seen the establishment of new organizations dealing with two main issues: the rights of the Palestinian Israeli minority and social issues. With the widening economic gaps in the 1990s, due to the decline of the welfare state and the influx of approximately a million Russians and thousands of Ethiopians with simultaneous intensive growth of the high-tech industries, Israel became one of the countries with the most pronounced economic differences. There are dozens of human rights organizations that inform citizens of their rights, assist in the legislation of public housing, and petition the courts on issues of principle in the field of human and social rights and private cases. These organizations are not active at the grass roots level but stress legal strategy. Most of them also lobby in the Knesset and have education and media departments.
- 9 Forty-eight employees work for the Association for Civil Rights in Israel. Some 60,000–80,000 people enter their website each month. B'Tselem — The Israeli Information Center for Human Rights in the Occupied Territories (established

- 1989) has 27 office employees and 8 field workers. About 2,000 people use their website daily. The Public Committee Against Torture employs 28 staff and 4 volunteers. Physicians for Human Rights (established 1988) has 19 employees and hundreds of volunteers, most of whom are medical doctors.
- 10 The first two essential differences between the activism of the human rights organizations in South Africa and Israel were presented by Stanley Cohen in 1990 and are still relevant today (Cohen, 1991). For a review of his arguments see Golan-Agnon (2007).
- 11 It is worth noting that although the human rights organizations made an important contribution to exposing the horrors of the Occupation and holding up a mirror to Israeli society so that it would have to address the evil it was perpetuating, they were not invited either by the Israeli or Palestinians to the many peace talks, all of which failed.
- 12 Eyal Gross comments on my presentation at a faculty seminar of the Minerva Center for Human Rights, Neve Shalom, January 12, 2007.
- 13 According to the Ministry of Trade and Industry's website: 511 new lawyers qualified in 1990, and 2271 in 2004. Israel has become the country with the most lawyers per capita in the world. <http://www.moit.gov.il/NR/rdonlyres/D404E25B/-/257D-4845-BE8A-DAAF67C46487/0/X6532.doc>.
- 14 In his book *The Occupation of Justice*, David Kretzmer (2002) studies the main rulings pertaining to Palestinians in the territories which enabled the Israeli government to conduct deportations, house demolitions and establish Jewish settlements on lands declared state property. He concludes: '... in its decisions relating to the Occupied Territories, the Court has rationalized virtually all controversial actions of the Israeli authorities, especially those most problematic under principles of international humanitarian law.'
- 15 HCJ 2056/04 Beit Sourik Village Council vs. The Government of Israel [http://elyon1.court.gov.il/files\\_eng/04/560/020/a28/04020560.a28.pdf](http://elyon1.court.gov.il/files_eng/04/560/020/a28/04020560.a28.pdf).
- 16 HCJ 7957/04 Maraaba vs. The Prime Minister of Israel. <http://elyon1.court.gov.il/files-eng/04/570/079/a14/04079570.a14.pdf>.
- 17 To obtain the ruling ordering that the wall be moved, thus freeing five Palestinian villages from the threat of being surrounded and cut off from all their sources of income, Attorney Mohammed Dahala of Adalah 'recruited' a group of retired Israeli military figures who live in the Israeli town of Mevasseret Zion near the wall. They presented their professional-military opinions regarding why the proposed location of the wall was not in Israel's security interests. They made use of surveyors who built a model of the proposed wall and displayed it before the court. (Mohammed Dahala: lecture delivered to my students, 2005).
- 18 Professor Ruth Gavison, former president of the Association of Civil Rights in Israel is one of the most prominent Israeli leaders in the discussion of the right of return, her central claim being that no such right exists in international law. See for example Gavison (2007).

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