

## Is Israel a democracy? It's conditional

*State does not qualify for label by standards a universal jury would recognize*

By Chibli Mallat

Daily Star staff

Thursday, December 10, 2009

On December 6, the Association for Civil Rights in Israel (ACRI, website [www.acri.org.il](http://www.acri.org.il)) released a 73-page report on democracy and human rights in Israel, entitled on “Human Rights – On Condition, Democracy – On Condition.” The chapters of the report develop the characteristic list of an authoritarian state: “Freedom of Expression – as long as you have nice things to say;

Harassment of Human Rights Organizations and Activists: Freedom of Expression and Activity – as long as you don’t criticize;

Palestinian-Arab Citizens of Israel: Rights – as long as you’re loyal,

Bedouin Rights – as long as you live where we tell you;

Criminal Justice Rights – as long as you’re not suspected of a security offense;

Hatred and Racism: Rights – as long as you’re one of us;

Rights of the Elderly – as long as you’re young;

The Right to Education – as long as you fit in;

The Right to Housing – as long as you’re one of us;

The Right to Social Security – as long as you’re gainfully employed; The Right to Health Care – as long as you pay;

The Occupied Territories: Rights – as long as you’re Israeli;” and a conclusion entitled “Undermining the Foundations of Democracy.”

As The Daily Star law page presents excerpts of the report, it is time for a serious discussion among jurists and human rights advocates on one basic premise which remains the received mantra in the West: can Israel be considered a democracy, in the same way we consider the US, France or India democracies?

I have argued in my “Introduction to Middle Eastern Law,” published two years ago, that Israel does not qualify as a democracy by standards a universal jury recognizes. This is not only on account of history, where patterns of ethnic cleansing and of legal discrimination are hardly in dispute. The argument of Israel not qualifying as a democracy rests on the persistence of these patterns as structural traits of Israel to date, six decades after its foundation.

The evidence is plain in the treatment of all the people living under Israeli control, by which I mean those whose lives have been and continue to be determined by Israel's legal structure and its political treatment of their daily existence. Next to 7 million Jewish Israelis who enjoy by-and-large a Western-style democracy, over a million so-called Israeli Arabs have no place in governmental representation and are subject to a large array of rights breaches; 4 million "occupied Palestinians" in the West Bank, Gaza and Jerusalem suffer from open legal exclusion in a system of Israeli decisions that have governed their lives for over a generation. West Bankers, Gazans and Jerusalemites are respectively the victims of land settlement and expropriation, siege and daily physical harassment of their right to live and move freely; and 4-6 million Palestinians are denied their universal right to return to the place from which they fled or were evicted in successive waves in 1948, 1949 and 1967. To this should be added over 100,000 Syrians in the Golan, not to mention the 22-year occupation of south Lebanon and the victims of repeat massacres, from Deir Yasin to Sabra and Shatila, Qana and Jenin.

This is a serious discussion to be undertaken on a world level on the type of system that Israel is, as serious indeed as the legal investigation carried out in the mid-1960s on the legal nature of the apartheid regime in South Africa. In the early 1960s, Yale Law Journal published a long, two-part article by Elizabeth Landis entitled "South African Apartheid legislation," part one, "Fundamental structures," part two "Extension, enforcement and perpetuation." It was no longer possible for white Afrikaners and their US supporters to argue that apartheid, a neutral term until then in world politics, was a tolerable system of discrimination.

We need a similar study for Israel. While insufficient, the present ACRI report is a step toward a correction of the mantra of democracy for Israel's legal and political system.

***Chibli Mallat** is a lawyer and law professor at the Universities of Utah and Saint Joseph in Lebanon. His books include "Introduction to Middle Eastern Law," Oxford paperback 2009, and "The Middle East into the 21st Century," at Ithaca press in 1996. He edits the weekly law page of **The Daily Star**.*