



المؤسسة العربية لحقوق الإنسان
Arab Association for Human Rights

SILENCING DISSENT

A Report on the Violation of Political Rights
of the Arab Parties in Israel



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By the Arab Association for Human Rights
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MK Abdelmalik Dahamshe and an IDF soldier.
Al-Ram checkpoint, between Jerusalem and Ramallah, April 2002.

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ISRAEL'S INTERNATIONAL OBLIGATIONS TO SAFEGUARD POLITICAL RIGHTS

The Universal Declaration of Human Rights

Article 21 of the Universal Declaration contains the guiding principles by which this report assesses Israel's treatment of the political status of the Palestinian Arab minority in Israel:

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

The Covenant on Civil and Political Rights

This essential expression of the human right to political action, representation, and participation is re-stated in the International Covenant on Civil and Political Rights, international law that was ratified by Israel on October 3 1991. Israel has committed to implement all the Articles in the Covenant and report every five years on whether it has done so. Article 25 of the CCPR states:

Every citizen shall have the right and the opportunity...

(a) to take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors...

The United Nations "General Comments" on the implementation of the Covenant explain that this Article means:

7. Where citizens participate in the conduct of public affairs through freely chosen representatives, it is implicit in Article 25 that those representatives do in fact exercise governmental power.

8. Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association.

15. ...Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation...

17. ... political opinion may not be used as a ground to deprive any person of the right to stand for election.

The International Covenant on the Elimination of All Forms of Racial Discrimination

Ratified by Israel on the January 3 1979, CERD further commits the state to give all its citizens equal treatment without:

... any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. (Article 1)

The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

This is the international standard for the behaviour of states towards minority communities:

Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live... (Article 2.3)

Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties. (Article 2.5)

AIMS OF THE REPORT

Israel has ratified the international treaties on the preceding page that are specifically designed either to protect the political rights of all Israeli citizens or the rights of minorities within the country. The Palestinian Arab minority in Israel badly needs protection under these international human rights standards. They are the internationally recognised benchmark for all democracies. The Arab Association for Human Rights fears that the information presented in the following pages shows a deliberate strategy by the Israeli state to work towards the disenfranchisement of the minority, which is completely irreconcilable with Israel's international human rights obligations.

We believe the report demonstrates the systematic violation of the minority's political rights both in attempts to delegitimise its political parties and in a campaign of intimidation to silence its elected representatives. We have taken as our main period of investigation the current parliament, which began in May 1999, but we have noticed a clear trend since the outbreak of the intifada two years ago to accelerate the pace of these strategies. The fact that the minority identifies itself as part of the wider Palestinian nation and supports the cause of a Palestinian state in the West Bank and Gaza has been used by the Israeli political establishment as a justification for further marginalising and persecuting the Arab political leadership. There is a real danger, as this report indicates, that Israel is moving towards banning Arab parties that have operated well within the laws of the country. At the very least, if the current situation continues, the Arab MKs and political leaders will be rendered ineffective as genuine representatives of the minority.

The Report is divided into six main sections which detail different levels of violations of political rights, from physical assaults by low-ranking soldiers to laws passed in the Knesset.

The Arab Association for Human Rights argues that these six sections represent both a progression and a systematic attempt to remove the right of the Palestinian Arab minority to free and effective political participation.

Our surveys of the nationally elected Arab leadership comprise the nine Arab MKs belonging to independent Arab - and in the case of Jabha/Hadash Arab/Jewish - parties. They are:

| | |
|---|--------------------------|
| Muhammad Kan'an (Arab National Party) | Muhammad Barakeh (Jabha) |
| Taleb al-Sanea' (Arab Democratic Party) | Issam Makhoul (Jabha) |
| Abdelmalik Dahamshe (Islamic Movement) | Ahmad Tibi (Ta'al) |
| Tawfik Khatib (Islamic Movement) | Azmi Bishara (Tajamu') |
| Hashem Mahameed (National Unity Front) | |

It should be noted that the northern wing of the Islamic Movement, which does not put up candidates for national elections to the Knesset, draws a significant share of the Palestinian minority's votes in local elections. Its legitimacy too is under attack from the political establishment so, where relevant, we have made reference to restrictions on and investigations of its leader, Sheikh Ra'ed Salah.

HISTORICAL BACKGROUND

The war of 1948 that created Israel left some 150,000 Palestinians inside what was now declared “a Jewish state”, separated from the 800,000 Palestinians who were exiled into neighbouring Arab countries. These dramatic changes left a ragged patchwork of Palestinian communities inside Israel. More than 400 villages were destroyed, others partially demolished, and a quarter of the indigenous people became internal refugees.

The limits of Israeli citizenship for this Palestinian minority were severely circumscribed in the country’s first two decades. The government under Prime Minister David Ben Gurion placed the Palestinian minority under military government in each of its three remaining geographical locations: the Galilee, the central Triangle and the Negev. The community’s every move was monitored and controlled by the authorities. Villagers were required to apply to the military governor for a permit to travel to another area. Only one Arab newspaper (the Communist-affiliated al-Ittihad) was occasionally allowed to publish, and all Arab organisations or cross-border contacts were prohibited. The Jewish population meanwhile lived under an entirely different system, allowed normal democratic freedoms.

The events of 1948 severed the Palestinian minority’s already weak ties to its political leadership. Before the war, from the late 1930s onwards, the urban Palestinian middle class feuded bitterly over its failures to halt British control and the rising wave of Jewish immigration. The growing disillusionment encouraged many of the elite to move into exile. The remaining active Palestinian leadership was concentrated in Jerusalem. But after 1948 the city was lost to Jordanian control, along with the West Bank. All that was left of the Palestinian political leadership was a network of traditional feudal village chiefs.

Israel used the military government to isolate these leaders from each other and soon Israel had created a patrimonial system of punishments and rewards to ensure allegiance, or at the very least compliance. Using a combination of emergency laws from the British mandate and new laws such as the Absentee Property Law, the authorities were able to confiscate more than 60 per cent of Palestinian-owned land. This had devastating cultural and economic consequences for the minority.

The first independent Arab political party – the al-Ard movement – enjoyed only a brief freedom. Founded in 1961 as a movement to campaign for implementation of the 1947 United Nations Partition Plan, its members tried to forge an Arab political identity for the minority in the face of the severe restrictions of the military government. However, the authorities worked from the outset to disband it, alleging that it was inciting against the state. In 1965 when al-Ard presented its list for the elections it was banned and its founders jailed or exiled from their villages.

With the end of military rule in 1966 new opportunities for political debate and campaigning developed. This was followed a year later by Israel’s occupation of the West Bank and Gaza. The renewed contacts with Palestinians in the Occupied Territories meant that not only was the minority able to re-establish ties to relatives there but they were exposed to the larger Palestinian nationalism.

Before the 1967 war and after it, a small band of activists inside the minority were committed to the realisation of Palestinian sovereignty in all of historical Palestine. But their calls grew fainter over the years as the aims of the Palestinian national movement altered and it accepted the idea of two states for two peoples. With the recognition of Israel by the PLO in the late 1980s, the focus of Palestinian nationalism among the minority in Israel became restricted to two tightly defined goals: the creation of an independent Palestinian state alongside Israel in the Occupied Territories; and the guarantee of full equality inside Israel for Jews and Arabs alike, including the legal recognition of the Palestinian citizens' collective rights as a national minority.

Today the seven parties in our Report represent the majority of the Arab electorate. The Zionist parties can still enlist nearly a quarter of the Arab vote in general elections, mainly in rural villages that are dependent on winning favours from the powerful government parties. But the Arab parties have grown stronger with every election in the past decade, even though Israeli governments consistently refuse to include any of the party members in their coalitions, making the Arabs MKs powerless within the system.

The Palestinian Arab minority in Israel today votes for a number of parties which grew out of three major political streams:

The first is the **Communist** stream represented by the Jabha party (Hadash in Hebrew) which emerged out of the Jewish-Arab Communist party that pre-existed the founding of Israel. Before the growth of nationalist and Islamic parties in the late 1980s it was the main alternative for Arabs who did not want to vote for the Zionist parties. It still campaigns on a platform of co-existence and has Jewish candidates on its lists, although as the junior partner. Its vote among the Jewish public is now minuscule.

The second stream is **Islamic**, represented by the Islamic Movement that was founded by Sheikh Abdullah Nimr Darwish in the early 1980s. The movement refused to participate directly in Knesset elections until it split for the 1996 election. One group, the southern wing, ran candidates. The northern wing, led by Sheikh Ra'ed Salah, however, has remained extra-parliamentary. Support for both wings has grown steadily, both in line with the general rise of political Islam in the Arab world and because of the movements' success in community work.

The third stream is **nationalist**, the legacy of the al-Ard movement. Such parties have had to cope with strong opposition from the Israeli establishment. The Sons of the Village (Abna' Al-Balad) has remained a small, extra-parliamentary party. The Progressive List of Muhammad Miari had a rapid rise and fall in the late 1980s. The latest and most successful inheritor of the mantle is Azmi Bishara's Tajamu' party (Balad in Hebrew). It has done most to articulate an aggressive challenge to Zionist orthodoxy, arguing that Israel must be transformed from a Jewish state to a "state of all its citizens".

At the last election, in May 1999, the seven parties won 70 per cent of the Arab vote. Nine Arab MKs were elected to three lists: two to Jabha; two to Tajamu'/Balad; and five to the United Arab List. The latter comprises the southern Islamic Movement, and three secular, mildly nationalist parties, the Arab Democratic Party, the Arab National Party, and the National Unity Front. After the election, Ahmad Tibi broke from the Tajamu' list he formed with Bishara to set up a new party, Ta'al.

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PHYSICAL ASSAULTS

It is a stark fact that over the three years of the current parliament eight of the nine Arab Members of the Knesset have been beaten by a member of Israel's security forces. Several of them have been assaulted regularly when they have attended demonstrations or tried to mediate at protests. So harsh have been some of the attacks that seven of the MKs have had to be treated in hospital for their injuries.

The use of violence against the Palestinian Arab minority in general peaked in October 2000, when 13 unarmed citizens were shot dead by the security forces. However, the physical assaults on the minority's political representatives appear to have continued at a steady rate.

We condemn all unprovoked physical attacks on minority citizens, but there are additional grounds for concern in the case of the MKs. All Knesset members enjoy wide-ranging immunities by virtue of belonging to the Israeli parliament, including "the right of free movement within the territory of the state without limitations". This should allow them to move freely in restricted circumstances, an important privilege, for example, in a situation where mediation is required between demonstrators and police.

Physical assaults on demonstrators by the police break international standards of law enforcement:

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Article 2, UN Code of Conduct for Law Enforcement Officials

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Article 3, UN Code of Conduct for Law Enforcement Officials

RECOGNITION OF MKS BY SOLDIERS

There is no question that in most of the attacks members of the security forces, whether soldiers or policemen, know whom they are attacking. In fact, the MKs who have been assaulted most frequently are precisely the ones who are most often featured on television and in the press. Cases reported by the MKs of threatening confrontations with soldiers often start with the soldiers abusing the MK by name or after the soldier has demanded to see the MK's identity card. When MKs respond by citing their parliamentary privileges, this often only escalates the confrontation.

Just such an incident involved MK Muhammad Barakeh at Qalandiya checkpoint in December 2001, when a soldier fired over the MK's head (see the next section on investigations for a more detailed account). But this is a far from isolated incident. Another case involved three MKs, Muhammad Barakeh, Ahmad Tibi and Issam Makhoul at a protest in Tira against land confiscations for the Trans-Israel Highway in October 2001. Physical assaults on two of the

MKs occurred after they had moved away from the main group of protesters to negotiate with the police and site security guards. When they approached the police, Makhoul was knocked on to a metal pole and Tibi hit with batons on his leg. Both needed treatment in hospital. Later Barakeh was hit in the face by a policeman with a baton.

There can be no doubt that the security officers who attacked the MKs were aware of whom they were assaulting.

POTENTIALLY LETHAL FORCE

It is important to note that some of these attacks have involved potentially lethal force. Azmi Bishara was hospitalised after a policeman fired a rubber-coated steel bullet at him during a demonstration against house demolitions in Lod in June 1999. And three MKs needed hospital treatment after a demonstration at Al-Ram checkpoint to bring aid to the Palestinian population of Ramallah during the Israeli army's invasion of the city in April. Issam Makhoul had been facing a border policeman in a standoff at a police barrier for some time. The officer had addressed Makhoul by name. When the police were ordered to let off a volley of tear gas, the policeman fired a canister at Makhoul's legs from a distance of only two metres, causing serious burns. Another MK, Hashem Mahameed, had to go to hospital after a soldier fired a stun grenade in his face. MK Tibi was concussed when he was hit on the back and neck by a policeman who Tibi says knew his name.

It is revealing that Tibi has the highest number of hospitalisations among the MKs. It may be no coincidence that he is a well-known Arab MK among the Jewish population, mainly because of his former job as an adviser to Palestinian leader Yasser Arafat. His connections to Arafat make him openly despised by many within the Israeli media and a substantial proportion of the Jewish public.

It does not appear that the beatings inflicted on the Arab MKs are directed or ordered by the officers' superiors, or the security forces' hierarchy. However, the following sections of the Report will show that there is evidence to suggest that the police and judicial investigations of the Arab MKs, and the new raft of legislation against the Arab parties, have been organised in co-ordination between the political and legal echelons. The physical attacks, on the other hand, appear to be the work of individual soldiers or policemen or groups of them, possibly in some cases with the sanction of junior commanders.

FAILURE TO INVESTIGATE

We are concerned at the lack of official interest in investigating these assaults, which sends a message to junior soldiers and policemen that attacks against the Arab MKs are acceptable and will go unpunished. It contributes substantially to the impression in the wider Jewish society that the rights of the Arab MKs are significantly inferior to those of Jewish MKs. Further, it makes claims by Jewish MKs and the political establishment that the MKs are a "fifth column" or agents of the Palestinian Authority more plausible. The impression conveyed to the public is that the security forces are in a war against the Arab MKs whereas the HRA fears that the Arabs are being victimised by armed soldiers and policemen who are confident that they can "get away with it". Such reinforcement of the prejudice that the Arab politicians are second-

class or traitorous MKs creates a suitable environment for the political and legal establishments to further delegitimise them – as we will argue in the following sections.

All the assaulted Arab MKs observe that policemen and soldiers have not been investigated over the attacks, even when the MKs have complained. Often the MKs have instead found themselves under investigation after they have filed a complaint to the police investigations unit. Even when Muhammad Barakeh was able to produce video footage of an assault by a policeman to halt an investigation launched against him by the police, no investigation was begun into the policeman who had falsely accused him (see next section for details).

An even more extreme case concerns a policeman who admitted to the Or Commission of Inquiry, which is examining the deaths of 13 Palestinian citizens at the hands of the police in October 2000, that when off-duty he joined a mob that went to MK Azmi Bishara's home to burn it down. This confession was part of his testimony to the inquiry. Bishara states that to his astonishment no action has been taken against this officer either by the commission or by the police.

Finally, it is worth observing that recorded cases of Jewish MKs being assaulted by members of the security forces are virtually unknown, and that there would be a scandal if a Jewish MK was attacked. Although some Jewish MKs rarely attend demonstrations or protests, a substantial number on the far right regularly participate in protests, often in support of the settlers. A number of these rallies have degenerated into aggressive protests against government policy. However, the demonstrators and their allies among the MKs expect and receive restraint from the security forces.

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POLICE INVESTIGATIONS

One of the clearest ways in which the political establishment has sought to delegitimise the Arab MKs has been by initiating a wave of investigations against them. In the past two years the list of investigations opened against the MKs has grown so long that we fear these cases are a concerted attempt to intimidate and silence the MKs, as well as forcing them to mount time-consuming defences of their speech or behaviour.

A joint survey undertaken by the Arab Association for Human Rights and Mossawa Center shows that at least 25 police or judicial investigations of the Arab MKs have been opened in the course of this parliament, which began on May 1999. All nine of the MKs have faced or are facing investigations by the police over accusations of incitement, sedition, visiting Palestinian areas or threats towards state officials. Another important Arab political leader, Sheikh Ra'ed Salah, the head of the extra-parliamentary northern Islamic Movement, is under investigation too.

(See the appended table for the full list of investigations that have been opened against the Arab MKs).

As well as these investigations, there are also many cases of preliminary questioning, or threatened investigation, that are not included in our figures. One such example followed a meeting MKs Ahmad Tibi and Muhammad Barakeh had with Yasser Arafat in Ramallah in November 2001. Although the meeting took place when there were no military restrictions imposed on Ramallah, the Prime Minister asked the Attorney-General Elyakim Rubinstein to investigate the MKs. Rubinstein questioned the MKs over the fact that a leader of the Popular Front for the Liberation of Palestine was present in Arafat's room. Both MKs refused to co-operate with the Attorney-General's initial inquiries. After plenty of publicity had been gained for the implied accusation that the MKs had misbehaved, the inquiries were dropped.

POLITICAL MOTIVES

The political nature of these investigations should be apparent from a quick comparison with actions taken against Jewish MKs. There are some 107 Jewish MKs (ten times the number of Arab MKs) and yet none is under investigation for his or her comments or behaviour, even though many, particularly on the rightwing, have regularly expressed views and used language that are likely to incite against the Arab population. Examples include cabinet minister Effi Eitam who referred to the Palestinian minority as a "cancer" in March 2002, national infrastructure minister Avigdor Lieberman who accused the Arab MKs of helping Israel's enemies in October 2001, public security minister Uzi Landau who claimed the Arab MKs helped terrorists in April 2001, and former tourism minister Benny Elon who suggested that the Palestinian minority be stripped of the vote in February 2002 (see appended table on investigations).

Other MKs have proposed openly racist legislation without incurring investigations or censure from the Knesset. Michael Kleiner (Herut) has proposed legislation to encourage the physical transfer of Palestinian citizens and another bill to strip anyone of the vote who refuses to swear

an oath of loyalty to Israel as a Jewish state. The latter piece of legislation is being considered by the Knesset even though the government's legal adviser warned that it was a racist measure (see New Laws to Silence MKs section). In a case where Avigdor Lieberman was accused of threatening a police officer, a simple apology was all that was required to cancel the investigation.

The Arab MKs' treatment at the hands of the Attorney-General could not be more starkly different. Each of the MKs has received police letters warning them that they are being investigated. Most of the MKs reported to us that they now refuse to attend police interrogations because of the overtly political nature of the questioning and the charges. It is significant to note that in the vast majority of the cases the police have not pursued their actions after making very public announcements that an MK was being investigated. This suggests that the point of these investigations is not about enforcing the law but about delegitimising the speech and behaviour of the MKs in the eyes of the Jewish public.

The cases against the MKs can be divided into two categories. The first concerns investigations for expressing support for the Palestinians and their resistance to occupation, or visiting Palestinian areas in contravention of military orders. And the second concerns physical or verbal confrontations with security officials, both police and soldiers.

SUPPORT FOR THE PALESTINIANS

Arab MKs have made statements in support of the Palestinian resistance in the Occupied Territories. One example was Taleb al-Sanea's comment to Abu Dhabi television shortly after a shooting attack at the Defence Ministry in Tel Aviv in August 2001 that wounded ten soldiers. The view he expressed provoked anger from the Jewish majority public. However, it is not the Attorney-General's job to pander to popular mood but to interpret the law. It is worth quoting the part of al-Sanea's comments that prompted the investigation:

"This was an act of special quality, since it was not directed against civilians - it was aimed against soldiers in the heart of the state of Israel".

The difficulty with these kind of comments by the Arab MKs is that they are addressed to their own constituency, the Palestinian Arab minority and the wider Arab world, both of whom have a very different perception from that of the Israeli government and the Jewish public of what is occurring in the Occupied Territories. It is after all not the duty of the Arab MKs to represent Jewish public opinion. The Jewish population has 107 of the 120 MKs to perform that role, as well as exclusive control of the government and most of the media.

The HRA is deeply concerned that the Attorney-General has failed to recognise the difference between actions that constitute breaking the law and actions that involve merely upsetting majority opinion. He has no right to order investigations of the latter.

PHYSICAL AND VERBAL ATTACKS

The numbers of cases of alleged physical and verbal attacks by Arab MKs against security officials, has risen steeply since the start of the intifada. It is worth noting that on several

occasions Arab MKs have complained to the police investigations unit that an officer has insulted or assaulted them. The system does allow the police to act as the investigators of themselves and their own actions, which is itself a cause for concern. However, rather than do this, the police have instigated investigations of the incident on behalf of the officer against whom the MK has complained.

This is illustrated by an incident involving MK Muhammad Barakeh. He attended a demonstration of farmers at Tamra in the Galilee in June 1999 that ended in a violent confrontation with the police. Barakeh received wounds to his stomach and leg from a beating by a policeman. He complained to the police investigations unit which launched an inquiry that was closed after a few months for lack of evidence. A few weeks later Barakeh received a warning that he was now under investigation for the same incident, accused of assaulting the policeman he had complained against. The Attorney-General then began proceedings to lift the MK's parliamentary immunity so that he could be tried in the courts. Fortunately, there was video footage filmed by Israeli television that confirmed Barakeh's account. The Attorney - General dropped the case. Barakeh then asked that the investigation of the officer be reinstated using the new evidence. He was told the case file had been lost.

This not an isolated case. Ahmed Tibi too was accused of insulting and threatening a border policeman in Jerusalem. Again, Tibi only prevented the process of his immunity being lifted because he was able to produce taped evidence. Many of the MKs now say they carry tape recorders to prove their version of events.

It is a sign of how effective the delegitimisation of the Arab MKs has been, and the degree of racism towards Arabs in Israeli society, that the testimony of low-ranking policemen is instantly preferred over that of elected Arab public officials. Although the proceedings against these MKs were dropped, it is noteworthy that in neither case were proceedings instigated against the policemen who lied.

HUMILIATION AND INSULTS

We believe that the spate of soldiers and policemen accusing Arab MKs of insulting, threatening or assaulting them reflects the climate created by the steady process of delegitimisation this Report describes. Most of the MKs report being regularly insulted and humiliated by soldiers at checkpoints or roadblocks. Most soldiers instantly recognise the MKs from their television appearances, and have formed a bad opinion of the Arab representatives. Some of the police and soldiers, say the MKs, are keen to let off steam or pick a fight, seeing this as a unique opportunity to tell the MKs what they think of them.

Just such an incident appears to have occurred at Qalandiya checkpoint (between Jerusalem and Ramallah) in December 2001 when a delegation of Arab politicians, including MKs Muhammed Barakeh and Ahmad Tibi, tried to enter Ramallah to see Yasser Arafat. According to their accounts, the soldier called Barakeh "trash" and as the pair argued another soldier approached and fired over the heads of the MKs. One of the soldiers then filed a complaint against Barakeh, accusing him of spitting at him, and the MK was investigated. It is discernible from the coverage of the events in the media, and the response of the police authorities, that the soldier's account was automatically trusted over the MKs' accounts.

The number of investigations against the Arab MKs suggests that there has been a coordinated attempt to delegitimise the representatives in an attempt to silence their support for the Palestinians in the Occupied Territories. This delegitimation has generated yet more investigations as ordinary soldiers and policeman have felt both justified in venting their anger at the MKs and in believing that their version of events will be trusted over that of the MKs. All the evidence suggests that this process of delegitimation is likely to carry on. This summer legislation has been passed to make it much easier for the legal authorities to investigate and charge MKs over statements critical of Israel and in support of the Palestinians (see New Laws to Silence MKs section). It will soon be possible to silence the Arab MKs and effectively disenfranchise the Palestinian minority.

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RESTRICTIONS ON FREEDOM

As a result of the two-year intifada new suspicions of disloyalty have fallen on the Arab minority and its political representatives. The grounds for such suspicions are almost non-existent: since the outbreak of the intifada, there is only one recorded instance of an Israeli Arab committing a suicide attack. Among a population of more than one million, there have only been a handful of cases where Arab citizens are suspected of knowingly assisting Palestinian attacks. The Arab MKs have distanced themselves from such behaviour and repeatedly called both on the Arab minority not to participate in attacks and on Palestinian militants not to involve Israeli Arabs.

But like the wider Arab population, the Arab MKs have continued legitimately voicing support for a Palestinian state, as they did during the many years of the Oslo peace process. And as part of their democratic duty as representatives of a Palestinian minority, they have also visited the Palestinian leader Yasser Arafat in his Ramallah compound and sites where Palestinians have been killed, such as at Jenin.

Many Arab MKs have offered to act as a bridge to the Palestinians, and as a sounding-board for developing Israeli positions after the face-to-face negotiations have broken down. This choice of action would be available in a fully-functioning democracy, and is recommended as a legitimate role for a minority in international human rights standards. However, the Israeli government has chosen to tar the Arab MKs with the label “traitors”, as it had already done with the wider Arab citizenry. That such an important opportunity has been lost was predictable given the refusal of successive governments, on ideological grounds, to integrate the Arab parties into their coalitions.

MOVEMENT RESTRICTIONS

The Arab MKs’ criticism of Israel’s reliance on military force in the West Bank and Gaza has provoked a political backlash that includes attempts to severely restrict their movements. All Israeli civilians have been barred from entering Palestinian-controlled areas under wide-ranging military orders, officially for their own protection. MKs have privileged freedom of movement by virtue of their membership of the Knesset but have had this privilege curtailed in relation to the Occupied Territories. A delegation of Jabha MKs, for example, was prevented by the army in January 2002 from meeting Yasser Arafat in Ramallah and from entering the Gaza Strip to witness for themselves the humanitarian effects of the closures on ordinary Palestinians. The delegation petitioned the High Court to overturn the military’s decision but their request was rejected. Court president Aharon Barak said it accepted the army’s argument that the MKs’ lives were in danger and that guarantees of their safety provided by the Palestinian Authority could not be trusted.

It is worth observing that although there is a fairness of treatment here (the restrictions apply equally to Arab and Jewish MKs) there is not a fairness of outcome: unlike most Jewish MKs, Arab MKs want and need to maintain contacts with the Palestinian leadership in the search for a peaceful resolution of the conflict, and their presence in the Occupied Territories is unlikely to place them at risk. The barring of the Arab MKs from Palestinian areas has produced an

outrageous anomaly: they cannot carry out their legitimate parliamentary duties in the West Bank and Gaza whereas illegal Jewish settlers are allowed to roam about at will.

The reasons for restricting the Arab MKs' movements are political: the Israeli government has repeatedly stated that it wants to isolate the Palestinian leadership from all possible sources of support. When Arab MKs have managed to reach Ramallah, the government and its law officers have tried to delegitimise them by suggesting that they are consorting with terrorists. For example, Prime Minister Ariel Sharon called on the Attorney-General to investigate both Ahmad Tibi and Muhammad Barakeh after they met Arafat in his Ramallah compound in November 2001. Sharon based his demand on the fact that Arafat had invited a leader from the Popular Front for the Liberation of Palestine to attend the meeting. At least three MKs are currently under investigation for entering Area A this summer to see the Palestinian leadership again in Ramallah.

These political restrictions have been formalised into legal restrictions. In the case of two Arab leaders.

SHEIKH RA'ED SALAH'S TRAVEL BAN

In February 2002, the leader of the extra-parliamentary northern wing of the Islamic Movement, Sheikh Ra'ed Salah, was banned from leaving the country under a six-month administrative order which was renewed for a further six months in August 2002. The order, based on an emergency regulation from 1948, can be renewed indefinitely. Sheikh Ra'ed Salah only became aware of the travel ban when staff at Ben Gurion airport refused to allow him to board a flight to Egypt. From there he was due to travel on to Qatar. The injunction was signed by the interior minister Eli Yishai on the grounds that the sheikh's departure "could harm state security". Such an injunction is believed to have been issued only once before in the state's history. Yishai said he had made the decision after the security services had passed on information about the nature of Sheikh Reed's travel arrangements.

The information collected by the Shin Bet, the assessment sent to Yishai and the detailed basis for the minister's decision are all undisclosed. The form of the administrative order means that it does not have to be subjected to judicial scrutiny. Sheikh Ra'ed and his lawyers, al-Mezan Center and the Adalah legal centre, have therefore had great difficulties challenging the order. The only details that have emerged are reports in the Hebrew press suggesting that the Shin Bet were concerned that Sheikh Ra'ed would meet Islamic leaders in Qatar who had in the past condoned suicide attacks. However, the order was a blanket travel ban and not specific to the meeting in Qatar, thus violating Sheikh Ra'ed's right to freedom of movement. The injunction has also planted the impression among the wider Jewish society that Sheikh Ra'ed Salah has acted, or planned to act, in illegitimate ways that were a danger to the state. However, if the Shin Bet had evidence of this, they could have prosecuted him in the courts.

In effect the political and security establishment have delegitimised Sheikh Ra'ed Salah and his influential Islamic Movement, which wins approximately 20 per cent support among the community at local elections, in the eyes of Israeli society in a way that he cannot challenge. The danger is that this may be a prelude to banning the party, which is regularly attacked by a

broad spectrum of Jewish parties. There are currently well-reported discussions taking place in the government and with the Attorney-General about banning the Islamic Movement.

AHMAD TIBI'S PRIVILEGES REMOVED

The second case involves MK Ahmad Tibi. On June 25 2002 he was stripped by the Knesset of his parliamentary privilege of freedom of movement for the rest of his term. This privilege allows MKs to gain access to restricted areas declared by the police or security forces and is a vital component in an MK's duty to help and represent his voters, by for instance negotiating between police and demonstrators. The proposal from Likud MK Michael Eitan was adopted by a majority of the Knesset after Eitan claimed that Tibi was promoting the interests of the Palestinian Authority president Yasser Arafat, that he had made public statements against the actions of the Israeli army during its invasion of the West Bank in April 2002, and that he had visited the Jenin refugee camp in violation of an Israeli military order.

There is no doubt that the decision to revoke Tibi's immunity on freedom of movement was political in nature. The immunity covers Israel but not the Occupied Territories, which are governed by military orders. The decision is therefore entirely ineffective in achieving the stated goals. Its purpose seems more clearly designed to delegitimise Tibi, and send a warning to the other Arab MKs and the Palestinian citizens that their identification with the plight of the Palestinians in the West Bank and Gaza will not be tolerated.

The Knesset's decision is also almost certainly unconstitutional. As Haaretz's legal commentator Zeev Segal observed:

"This authority [to strip an MK of his immunity] gives the legislators the power to act as judges, stripping an MK of the legal rights granted him to be able to perform his job and foiling the will of his voters. In this sense, it is not the norm in proper government."

In this case the Knesset has acted without producing the investigative evidence needed to remove the immunity of an MK if he were being tried for a crime or corruption. The Jewish MKs are judge and jury. In the rare cases where this procedure has been used before, mainly in the 1980s against Arab MKs who visited the occupied territories, the Supreme Court has usually overturned it. Tibi is currently petitioning the court to review his case.

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THE OR COMMISSION

Prevalent assumptions among the Israeli Jewish majority about the Arab minority and its elected representatives are encapsulated in the proceedings of the Or Commission. This judicial inquiry under Justice Theodor Or was supposed to provide catharsis for the events of October 2000 at the start of the intifada, when 13 Palestinian citizens were shot dead by the security forces. The protests by the minority in the first week of October were both a reflex of sympathy with their ethnic kin facing a military crackdown on their uprising in the Occupied Territories and a venting of long pent-up frustration at five decades of discrimination and broken promises by successive Israeli governments. The driving force behind the demonstrations was Arab youth rather than the traditional leadership.

The clashes between the Arab population and the police occurred across most of the country, but the 13 deaths were restricted to the Northern region, which at the time was under the command of the northern police chief Alik Ron. The inquiry revealed that the force led by Ron used live ammunition as one of its first lines of defence and that it brought in sniper units supposed to be used only against terrorists. International observers such as Amnesty International attributed the severity of the clashes in the North to these aggressive policing methods. Several officers also admitted that entirely different, non-militaristic tactics were used when handling equally violent counter-demonstrations by Jewish protesters against Arabs.

The confrontation between the state and the Arab protesters brought to the surface deep tensions between the two ethnic communities that had never before been addressed. The Or Commission, to which the then prime minister Ehud Barak reluctantly agreed in the hope of winning back Arab support in the February 2001 elections, provided a public arena, the first in Israel's history, in which the state's relationship to its Arab minority could be examined. It had the chance to identify the causes of Arab alienation as well as to attribute blame to those in the political and security establishment who had approved the policing methods used in the North.

INQUIRY INTO "INCITEMENT"

However, Barak also included in the mandate of the inquiry an additional element: an examination of the "conduct of the inciters and organisers". The Adalah legal centre, which represented the families of the dead, objected to this formulation at the outset for two reasons. First, it presumed that incitement (and this meant Arab incitement) had taken place before the investigation process had even begun. And second it broke with all previous commissions of inquiry, which had limited their examinations to the behaviour of the executive arm of the state. The inquiry was therefore required to investigate the Arab public and its representatives: what many in the Arab community called "blaming the victims". As Adalah pointed out, this was a form of double jeopardy for the Arab leadership since they were already subject to the normal rules of investigation and prosecution by the police for any illegal acts committed during the protests.

Of the Arab MKs who were questioned about their role in the October 2000 events, at least five of them and the leader of the extra-parliamentary northern Islamic Movement, Sheikh Ra'ed Salah, were questioned by the commission as though they were defendants under investigation rather than witnesses to the events. The line taken by the panel of judges presumed that these

Arab leaders had behaved in ways that directly contributed to the protesters taking to the street and the subsequent violent confrontation. The questioning ignored the escalation of violence caused by the shooting of unarmed protesters by the police and concentrated instead on comments made by the MKs. Statements by MK Taleb al-Sanea`, for example, were described by the judges as “extremist” and “militant”. Al-Sanea` had to point out that most of comments cited by Justice Or occurred after the October 2000 events. MKs Hashem Mahameed and Muhammed Barakeh were also interrogated by Justice Or over their statements and why they did not issue public calls for the protesters to stop their demonstrations.

In fact both Arab protesters and police commanders testified to the Or Commission that the Arab leadership had taken a leading role in trying to separate the police and demonstrators, to negotiate between the two sides and to prevent bloodshed. However, despite this testimony, Justice Or chose to focus on the MKs’ comments on unrelated matters, claiming these as incitement. An Israeli commentator for the daily Haaretz newspaper, Ori Nir, observed in relation to the Or Commission that the whole of Israeli Jewish society, from the public to the top of the government, sees the Arab minority in racist terms:

“nothing more than a donkey led by the leadership ... all that is needed for the street to erupt and for Arab citizens to take out their clubs and sabers from under their mattresses and set out on a pogrom is for an Arab leader to clear his throat.”

LETTERS OF WARNING

The Or Commission took a harsh view of the behaviour of the government’s leaders – Barak and his security minister Shlomo Ben Ami – as well as the police commanders. But Justice Or, possibly under public pressure to appear even-handed, also selected three Arab leaders for warning letters, accusing each of inciting the protesters. The three were MKs Azmi Bishara and Abdelmalik Dahamshe, and leader of the extra-parliamentary northern Islamic Movement Sheikh Ra`ed Salah. After the first round of hearings, all were issued with warning letters and were further investigated in a second round of hearings that began in June 2002. The inquiry will issue a final report, expected in the next few months, which may recommend criminal proceedings against some individuals.

During the hearings, no Jewish MKs were questioned about their own inflammatory comments in October 2000 and no connection was made between the Jewish disturbances and the outspoken comments of some rightwing Jewish MKs. The question of incitement applied only to the Arab representatives.

In late July, before the Arab leaders were questioned under warning by the commission, Adalah petitioned the Supreme Court to overturn Justice Or’s decision to warn the Arab leaders, claiming it violated the Commissions of Inquiry Law (1968). Adalah argued that the commission’s mandate to investigate “the inciters” discriminated against the Arab leaders. It also complained that the Arab leadership was not being given a fair hearing in contrast to the treatment of the Jewish warnees. This was because of the organisation of the second round of hearings, in which only the panel’s three judges and the lawyers of each warnee could cross-examine other warnees. But, argued Adalah, the lawyers for the Jewish warnees had been shown secret evidence and documents by the security services that were not available to Adalah and the Arab leaders. One example concerned a poem written by Sheikh Ra`ed Salah that was the subject of an undisclosed expert analysis cited by Justice Or during a hearing in

January 2002. The poem, however, was written in Arabic, which Justice Or does not understand. This meant that Adalah could not challenge either the analysis of the poem or Justice Or's understanding of that analysis. The Supreme Court rejected Adalah's petition without addressing these points.

Justice Or's questioning of the Arab leaders concentrated on comments made by each in the press or at rallies that were seen as making a "real contribution to stirring up the atmosphere and making the violence [of October 2000] worse". A statement made by MK Dahamshe shortly after he had witnessed police using force against families resisting the demolition of their homes in the Galilee – one of a spate of violent confrontations as police enforced the demolition of homes that summer – was cited several times by the commission. Dahamshe was reported as saying that the families had the right to "break the arms and legs" of policemen "who had come to break their arms and legs". The commission also expressed concern at Sheikh Ra'ed Salah's annual "al-Aqsa is in danger" rally, which concerns the mosque on the Haram al-Sharif (known to Jews as Temple Mount). A visit by Ariel Sharon on 28 September 2000 to the Haram al-Sharif, and the killing of seven Palestinian protesters at the site the next day by Israeli police, provoked the current intifada. Bishara was questioned over comments he made about Hizbullah that he is already on trial for, underlining Adalah's point about double jeopardy (see The Bishara Trial section). Bishara was repeatedly accused by the commission of being "the most nationalist politician" in the Arab community and it was also implied that the Arab MKs co-ordinated the October 2000 protests with the Palestinian leadership. In contrast, all the Arab leaders stressed that the police's militaristic policy towards the Palestinian minority was responsible for the escalating protests and the violence.

Three leading Israeli academics testified as expert witnesses at the inquiry that the Arab leadership had behaved responsibly and democratically both before and during the October 2000 events. Prof Dan Rabinowitz, of Tel Aviv University, for example, argued that the driving force for the protests was not the leadership but what he called a "stand-tall generation" in their twenties. All three academics were concerned that the commission had failed to consider the historical and social context in which the demonstrations occurred: namely, the large-scale confiscation of Arab-owned land over many decades for the resettlement of Jewish immigrants and the trampling of the minority's political and social rights and its civic identity.

The questioning of all three Arab politicians suggested that they had been selected more because of what they represent and believe in than because of their role in the events of October 2000. The Islamic Movement and Tajamu' have been visible in asserting and developing the political rights of the Arab minority, and Tajamu' have used the slogan that Israel must be transformed from an ethnically exclusive state into a "state of all its citizens". The Islamic Movement, both its southern and northern wings, have promoted Islamic self-sufficiency in the face of continuing discrimination by the state in budget allocations to Arab areas. Both Tajamu' and the Islamic Movement have antagonised the Jewish establishment with their political platforms and their direct challenge to Zionist orthodoxy. Both are currently facing very real threats of being banned from participating in the next elections.

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THE BISHARA TRIAL

In the trial of Azmi Bishara, the Israeli political establishment has pushed the intimidation of the Arab MKs into a new realm – the legal jurisdiction of the courts. Bishara's case sets a disturbing precedent. Whatever the eventual verdict in this case (and Bishara's international standing and the pressure being brought to bear on his behalf may yet ensure the trial is dropped), the door has been opened to using the courts to criminalise elected MKs. The message that has been sent to Arab MKs is that the parliamentary immunity that is supposed to offer them protection while performing their duties as elected representatives is no longer a safeguard. In the polarised ethnic climate in Israel, this is an almost certain recipe for political persecution of the representatives of the Arab minority by the representatives of the Jewish majority. In fact there is clear evidence that this is already happening (see the next section).

Bishara is currently involved in two protracted criminal trials. He has been forced to defend himself in the courts after the Knesset, on the advice of Israel's law chief, Attorney-General Elyakim Rubinstein, voted to strip him of his parliamentary immunity.

It is the first time that the Knesset has lifted the immunity of an MK in a case not involving criminal activity or corruption.

After the vote lifting Bishara's immunity, Rubinstein quickly moved to indict Bishara. Both indictments are based on anachronistic emergency regulations from the British mandate period that have rarely been invoked.

THE SYRIA VISITS TRIAL

The first trial, which began on 10 December 2001 under the Emergency Regulations (Foreign Travel) (1948), concerns a series of trips to Syria organised by Bishara to allow some 800 ageing Palestinian citizens to be reunited with relatives they had not seen since the 1948 war that created Israel and forced out the majority of the existing Arab population. The state of hostilities between the two countries has made it virtually impossible for families separated by the war to meet over the subsequent decades. Although Bishara is allowed to travel to Syria on his diplomatic passport, the state argues that the ordinary citizens who entered Syria should have applied for permits first. According to the Attorney-General, Bishara and two of his assistants were prohibited by the emergency regulations from assisting them in entering an enemy state such as Syria. However, Bishara's lawyers, the Adalah legal centre, have pointed out that the holder of a service passport, including an MK, is specifically exempted from this prohibition. Adalah accuses the Attorney-General of failing to alert the Knesset to this regulation when he requested they strip Bishara of his immunity.

THE SPEECHES TRIAL

The second trial began on 28 February 2002 under the Prevention of Terrorism Ordinance (1948). It concerns a speech Bishara gave in Kerdaha on 10 June 2001, on the first

anniversary of Syrian President Hafez Assad's death. The part of the speech that state prosecutors have concentrated on during Bishara's trial goes as follows:

"But following the victory of this resistance [Hizbullah's in south Lebanon, which forced an Israeli withdrawal in May 2000], and following the Geneva summit and the failure of Camp David, an Israeli government came into power determined to shrink the realm of resistance, by putting forth an ultimatum: either accept Israel's dictates or face full-scale war. Thus, it is not possible to continue with a third way – that of resistance – without expanding this realm once again so that the people can struggle and resist. Nor is it possible to expand this realm without a unified and internationally effective Arab political position. This is precisely the time for such a stance."

These comments were seen in Israel both as an endorsement of Hizbullah's military strategies against Israel's 18-year illegal occupation of south Lebanon and as a rallying cry to the Palestinians and the rest of the Arab world to replicate such strategies in ending the 35-year illegal occupation of the West Bank and Gaza. This interpretation has not been denied by Bishara or his lawyers. However, they have denied prosecution claims that Bishara was also inciting the Arab minority to partake in such activities. Bishara says he was only addressing those who have a right to resist the occupation: i.e. the Palestinians.

Furthermore, Bishara's lawyers have pointed out that not only was this view part of Bishara's political platform but it was an opinion he had expressed frequently on previous occasions, including in the Knesset. The legitimate status of Bishara's platform was underscored by the testimony of Zeev Maoz, a professor at Tel Aviv University and an expert on security issues. He observed that Hizbullah is a guerrilla group and not a terrorist organisation and has demonstrated over the years "political characteristics and much higher standards of morality and operational self-restraint than is typical of other guerrilla groups."

POLITICAL REASONS FOR PURSUING BISHARA

Israel has maintained that the decision to pursue Bishara through the courts was based solely on legal criteria and pursued independently by the Attorney-General Elyakim Rubinstein. And yet Bishara's previous statements were apparently of no legal interest to the Attorney-General until the Kerdaha speech. Bishara's statements in Syria seem to have provoked the state into acting less because of what was said than because of the circumstances in which the remarks were made (even though these should have been irrelevant legal considerations). Pictures of Bishara on Israeli television sitting next to Hizbullah leader Hassan Nasrallah are known to have outraged Prime Minister Ariel Sharon. It was only then that a previous speech by Bishara, given at a political rally in the Arab town of Umm al-Fahm (northern Israel) a year before the Syria speech, was retroactively deemed a criminal offence and added to the charge sheet. At the Umm al-Fahm rally Bishara referred to Israel's withdrawal from south Lebanon in May 2000 as the Arabs' "first victory over Israel since 1967" and called Hizbullah a "legitimate resistance movement".

In the early stages of the hearing, the prosecution denied that there had been any consultation between the Attorney-General and the internal intelligence service, the General Security Service (also known as the Shin Bet), in deciding whether to prosecute Bishara. Only after this was challenged by Bishara's lawyers did the prosecution admit that meetings had occurred

between the law chief and the GSS, the latter being directly answerable to the Prime Minister's Office. The prosecutors claimed that such meetings were normal procedure in high-profile cases. Adalah, however, observes that if this is the norm it violates Israeli law and severely compromises the ability of the Attorney-General to apply his powers independently of the executive and the Prime Minister himself. Adalah and other observers have claimed that there is a strong evidence of political interference in what should have been purely legal considerations by the Attorney-General to prosecute Bishara.

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NEW LAWS TO SILENCE ARAB MKs

For eighteen years after the founding of the Israeli state, the Palestinian minority lived under military rule. When they were freed of these emergency restrictions, they were offered the chance only to vote for the Jewish Zionist parties and the Jewish/Arab Communist party. A significant development over the past decade has been the emergence of genuine Arab political parties that do not subscribe to the Zionist ethos of the state. The legitimacy of these parties for the Palestinian minority is underlined by the fact that they have quickly become extremely popular. They have also taken an overwhelming share of the Arab vote away from Zionist parties like Labour, Likud and Meretz, all of which are now viewed as having been party to the decades of discrimination against the minority.

The political establishment subsequently began a process of delegitimising the Arab parties and their elected representatives which we have discussed in the previous sections of the Report. There has been a wave of incitement against all Arab MKs in the Knesset, including by government ministers. One, the public security minister Uzi Landau, commented that some Arab politicians were “agents of the Palestinian Authority in the Knesset”.

An even more disturbing change, however, has been the emergence of a consensus among the Jewish public and its representatives that the minority should be stripped of basic political rights. Jewish politicians, believing that they have a popular mandate, have begun using their parliamentary powers to formulate and revise laws to undermine Arab representation in the Knesset and severely limit free speech. This has largely been done in co-ordination with the government and its legal adviser, Attorney-General Elyakim Rubinstein. The process began with the Knesset’s decision in late 2001 to remove Azmi Bishara’s parliamentary immunity so that he could be put on trial for speeches he made in line with his political platform (see previous section).

The assault on the rights of the Palestinian citizens culminated in the summer of 2002 in the amending of three pieces of legislation. Combined, the revised laws threaten to significantly curb the minority’s right to choose its public representatives and for those representatives to develop independent political platforms and carry out their duties.

AMENDMENTS TO THE ELECTIONS LAWS

On May 15 2002 the Knesset passed three amendments to long-standing elections laws: the Law of Political Parties (1992); the basic Law on the Knesset (1958); and the Law of Election (1969). The effect was to give sweeping new powers to the Central Election Committee, allowing it to use new criteria for banning individuals or political parties from running for election. The grounds for barring candidates include explicitly or implicitly denying that Israel is a Jewish and democratic state; engaging in racist incitement; and supporting the armed struggle of an enemy country or a terrorist organisation. Although banned individual candidates will be able to appeal to the courts, political parties will have no recourse to judicial review. The decision of the committee will be final.

There are two reasons why the HRA is deeply concerned by this law. First, the election committee comprises representatives from the main Labour and Likud parties who have a political interest in banning Arab parties from standing. Both Labour and Likud object to the platforms of the Arab parties on ideological grounds (mainly because they challenge Zionist orthodoxy). But the Labour party has a further vested interest. Over the past 15 years it has lost significant electoral ground to the Arab parties, which have drawn Arab voters away from Labour. Banning genuine Arab parties may reverse that trend.

And second, all Arab parties will fall foul of the terms of the current legislation, even the joint Arab-Jewish Communist party, Jabha. All Arab parties have adopted platforms denying that Israel can be both truly democratic and a Jewish ethnic state. And all of the Arab MKs have continued supporting the Palestinian Authority and its chairman Yasser Arafat during the intifada, even visiting him in his ravaged Muqata'a compound in Ramallah. Given Israel's unilateral redefinition of the PA as a terrorist organisation, all the Arab MKs could be prevented from running at the next election. As Ahmad Tibi observed the law is an attempt "to create a Knesset without Arab MKs".

PENAL LAW: INCITEMENT TO RACISM, VIOLENCE AND TERROR

On May 15 2002 the Knesset passed an amendment to the penal law that was initiated by the government and formulated by the Attorney-General Elyakim Rubinstein. It prohibits anyone from issuing "a call for an act of violence or terrorism", or expressing words of praise, sympathy or encouragement to violence or terror, or supporting or identifying with such acts. An offender can be jailed for up to five years. The Attorney-General has claimed that the new law is necessary because he has been forced to drop dozens of incitement cases due to an existing loophole in the law. This comment in itself should give cause for concern. As should be clear from the section on investigations, Rubinstein has been systematically selecting Arab MKs for investigation while refusing to investigate Jewish MKs.

The Jewish ultra-Orthodox Shas party joined the Arab parties in refusing to support this legislation fearing that its own leaders might be singled out for their racist comments against Arabs. However, the public atmosphere of accusation that preceded and gave impetus to the legislation, taken together with analysis of the legislation itself, leads us to conclude that it is designed to entrap the Arab public and its leaders. Most members of the Arab minority support the fight of the Palestinians to end the Israeli military occupation of their lands. Any Arab politician who uses language identifying with the Palestinian cause or supporting acts of resistance will be liable to prosecution and imprisonment.

The law in effect silences the Arab leadership and thereby strips the Arab public of its voice on a central issue for the community.

THE LAW OF IMMUNITY OF MEMBERS OF KNESSET: THEIR RIGHTS AND DUTIES (1951)

The amendment to this law was passed by the Knesset on July 22 2002. Introduced by rightwing national-religious MK Eliezer Cohen, the law now allows the Knesset to strip an MK of

his parliamentary immunity if he speaks out or takes action against the state, expresses support for armed struggle against Israel, or denies that Israel is a Jewish and democratic state. The vague phrasing of the legislation will again deny the Arab MKs the right to represent their constituencies. As even government minister Dan Meridor observed, it is not a crime to deny Israel's right to be a Jewish state so it is unclear why an MK's immunity should be revoked for doing so. The intention of the revised law, combined with the other amendments, seems designed to delegitimise the Arab MKs and their political platforms. It will be close to impossible for the Arab MKs to speak out on what they perceive to be the racist character of the Jewish state and its discriminatory policies, or to support the fight of the Palestinians for control of their occupied lands. As Taleb al-Sanea' commented: "You cannot force me to become Jewish and a Zionist." The danger, however, is that, armed with the new legislation, the Knesset can force al-Sanea' and the other Arab MKs to leave the national arena of Israeli politics.

THE FUTURE

There are more laws in the pipeline to exclude Arab participation in the elections and their representation in the Knesset. Rightwing MK Michael Kleiner (Herut), for example, is attempting to pass legislation forcing all voters to swear an oath of loyalty to the state of Israel as a Jewish state, including its flag, symbols and anthem. Those refusing to make a declaration would be stripped of the right to vote. The government's legal adviser, Anna Schneider, has warned that the bill is racist in nature but it has passed the Knesset's preliminary committee stages and is likely to reach the floor of the Knesset.

The purpose of the laws that have been passed, and the climate being created by laws being proposed, is to limit the range of political platforms available to the Arab MKs. Before the next election they will be faced with a choice to represent their Arab constituencies and risk being banned from politics, or to accept an essentially Zionist platform that lacks any legitimacy with the Palestinian minority. In effect, the Knesset has refused the Arabs MKs, and therefore the Arab public, their right to identify with both their Palestinian kin and the Palestinian cause.

Sources

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- "Panel approves bill banning extremist Knesset candidates", by Gideon Alon, Haaretz, May 2 2002
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- "Landau: some Arab MKs are PA agents", by Miriam Shaviv, Jerusalem Post, November 15 2001
- "The escalating war against the '48 Palestinians", Between the Lines, June 2002
- "Law limiting parliamentary immunity of MKs approved", by Nina Gilbert, Jerusalem Post, July 22 2002
- "Pledge of allegiance bill going to Knesset", by Gideon Alon, Haaretz, July 16 2002
- "Recent developments – the rights of the Palestinian minority in Israel", Adalah report, October 2 2002

CONCLUSION

It is a central claim of this report that the Arab leadership, and the Palestinian minority they represent, are now facing a systematic attack on their political rights, which has been gathering pace since the outbreak of the intifada. The key areas we have identified in the preceding sections should not therefore be seen in isolation but rather as part of a progressive and concerted attack on the legitimacy of the Arab representatives in an attempt to silence and intimidate them. It is worth restating the main findings of the report.

THE MAIN FINDINGS

1. Physical attacks:

According to our survey, eight of the current nine Arab party MKs have been physically beaten by the security forces with batons when attending demonstrations or protests as elected representatives. Most have been attacked on many occasions.

A total of seven MKs have needed hospital treatment after such attacks (see appended table on hospitalizations). Most report being singled out by members of the security forces for “special treatment”, including instances where potentially lethal force has been used, such as when MKs have been shot with rubber bullets (Azmi Bishara) or hit by tear gas or stun grenade canisters from close range (Hashem Mahameed and Issam Makhoul).

All these attacks violate the rights the MKs enjoy to move freely at demonstrations and act as mediators. They also contrast strongly with the security forces’ treatment of Jewish MKs, including members of the extreme rightwing parties who regularly attend violent protests in Israel and the Occupied Territories.

Arab MKs who have been able to identify the policeman or soldier who attacked them say they have not been informed of any action being taken against the assailant. In the case of a policeman who admitted to a judicial inquiry that he had attacked the home of Azmi Bishara with a mob in October 2000, the officer has yet even to be disciplined.

2. Police investigations:

During this parliament a total of 25 investigations for sedition, incitement, visiting the occupied territories or threatening behaviour have been opened by the Israeli authorities against the Arab MKs (see appended table on investigations). All nine MKs are either facing or have faced investigations, many for comments made during speeches.

All these cases appear designed to stifle free speech for the Arab MKs or to delegitimise them. In two cases the investigations have been closed after the MKs have produced taped recordings to counter claims of what they are supposed to have said or done to policemen or soldiers. No investigations have been initiated against the security officers shown to have lied. The legitimacy of the Arab MKs has been so severely undermined in the eyes of the Jewish public and Israel’s legal system by this spate of investigations that some now say they carry cassette recorders to support their accounts of confrontations with soldiers with documentary evidence.

There has also been a wave of cases of Jewish MKs inciting against the Arab MKs or the Palestinian minority; yet none has been investigated during this parliament (see table of comparative instances of incitement by Jewish MKs).

3. Restrictions on Freedom:

There has been a systematic attempt to prevent the Arab MKs from fulfilling their duties – duties that are part of their popular mandate – to campaign for an end to the military occupation of the West Bank and Gaza and for a Palestinian state. As part of these duties the MKs have visited the Occupied Territories, seeing Palestinian leaders and witnessing for themselves the effects of military invasions, such as that of Jenin. In large part they have been prevented by the military from reaching Palestinian areas.

This has been done less to ensure the MKs' safety than because of a political decision to isolate the Palestinian leader. Those who have managed to reach Palestinian areas have faced a campaign of delegitimation by the Israeli political establishment. This has culminated recently in police investigations and emergency sanctions taken to severely restrict the movement of key leaders.

Both Sheikh Ra'ed Salah and Ahmad Tibi have had their rights, as a citizen and as an MK respectively, violated without a proper judicial hearing and in the case of Sheikh Ra'ed without any evidence being produced. Neither can now fulfill all their duties as political representatives, answerable to substantial constituencies within the Palestinian minority.

4. The Or Commission:

By investigating the killing of 13 Arab citizens at the hands of the police force, the judicial inquiry had the potential to show the Palestinian minority that the Israeli state was serious about defending its rights. However, the commission has largely forfeited that credit by turning its powers equally against the Palestinian minority and its representatives.

Most of the Arab MKs were made to justify their presence, and that of their supporters, at demonstrations that swept the Palestinian minority's areas in October 2000. The questioning of the MKs implied that they had incited the demonstrators. No Jewish politicians faced the same questioning, even though some had made inflammatory comments and there were violent demonstrations in Jewish areas in October 2000 too.

The commission then broke with all precedent for a commission of inquiry by extending its mandate from assigning responsibility for the actions of the executive arm of the state to assigning responsibility for the actions of the demonstrators. Three Arab politicians – Azmi Bishara, Abdelmalik Dahamshe and Sheikh Ra'ed Salah – are now under warning for inciting the protests and may face criminal prosecution. Expert witnesses brought before the commission have attacked the decision to blame the Arab leadership for the outbreak of the protests.

5. The Bishara trial:

The decision by the Attorney-General Elyakim Rubinstein to try to criminalise Azmi Bishara through the courts has every appearance of being politically motivated. Bishara has been visible in presenting the case of the minority to the international community. He has widely advocated unarmed resistance to the military occupation of Palestinian land. The expression of these views, and the fact that they have found a receptive audience among the international community, are known to have deeply angered the political establishment, including Prime Minister Ariel Sharon.

The decision by the Attorney-General to indict Bishara for two speeches he made, in Syria and Israel, and then to seek the Knesset's approval for stripping him of his parliamentary immunity looks suspiciously co-ordinated with the political establishment. The speech made in Israel was retroactively deemed an offence by the Attorney-General after discussions with the General Security Service (GSS), which is answerable directly to the Prime Minister's Office.

6. New legislation to silence MKs:

Most disturbing of all the recent developments is the Knesset's approval this summer of three new pieces of legislation that appear designed to prevent candidates from standing for Arab parties and promoting their platforms once elected.

The combined effect of these laws is to make it illegal for Arab politicians to make statements: either, that deny Israel is a Jewish and democratic state; or, that identify with the cause of Palestinian resistance to military occupation.

Both of these ideas have been central planks in the platforms of the Arab MKs for many years and have won them an overwhelming share of the Palestinian minority's vote. There has been great support in the minority for the idea that Israel must stop being a Jewish state and become inclusive and democratic. All the MKs support popular Palestinian resistance to the occupation of the West Bank and Gaza. At the next election candidates or parties can be banned from running for promoting these platforms. And any elected politician who voices such opinions in the future will be liable to be jailed.

THE ROLE OF THE ATTORNEY-GENERAL

The Attorney-General is the government's chief legal officer who advises the government on the legality of its actions and can recommend legal prosecutions against individuals based on information gained through investigations by the police. However, there is much evidence to suggest, particularly in the cases of the wave of incitement investigations and the Bishara trial, that his role has become increasingly politicised. The Attorney-General appears to be initiating investigations by police, or prejudging their outcome. The sheer number of legal battles currently being waged against the Arab MKs not only delegitimises them in the eyes of the Jewish public and the international community but it also overburdens them with the task of defending their reputations – taking up time that should be spent on their duties as public representatives. The suspicion is that the Israeli political establishment is using the legal authorities to subvert the democratic rules in a way that ensures that the Arab MKs cannot effectively operate within the parliamentary system.

THE FUTURE

If the Arab political leadership is not allowed to participate in the Israeli parliamentary system, then the Palestinian Arab minority (20 per cent of the Israeli population) will be left with no legitimate form of representation – a violation of its political rights as recognised by international law.

The HRA fears two dangerous consequences will follow. First, Israel will have abandoned the idea that it is a state that safeguards the right of free and equal participation to all its citizens. It will have redefined itself both legally and politically as an ethnic democracy: i.e. a parliamentary system that excludes sections of its population based on their ethnicity. Second, the lesson has been learnt in other states that minorities deprived of the right to genuine democratic participation usually resort to more radicalised political strategies.

Although it falls outside the scope of this report, the HRA draws attention to recent wider trends against the Palestinian minority in Israeli society. These include the first case of citizenship being revoked for an Arab citizen, the exclusion of Arab participants from public and media debates, and the inclusion of openly racist Jewish politicians in the government and inner cabinet.

The combination of violations of political rights and these wider social developments are likely to produce a climate in which Israel is capable of breaking all norms of behaviour by a democratic state. There has been plenty of talk of “transfer” of both the Palestinians in the Occupied Territories and the Arab citizens of Israel by the Jewish public and politicians during the course of the intifada. Almost no effort has been made by the Israeli government to condemn such talk as morally abhorrent or place it outside the realms of legitimate public discourse. In fact, such views have been promoted by members of the cabinet itself.

The HRA is seriously concerned that the future of the Palestinian Arab minority and the immediate safety of its political rights are in severe danger.

The HRA reiterates that Israel has ratified International Covenants which oblige it to provide equal access for all its citizens to democratic political participation on the basis of free choice and speech.