



**ADALAH'S REPORT TO THE UN CERD  
IN RESPONSE TO THE LIST OF ISSUES PRESENTED TO ISRAEL**

Submitted 1 February 2007

Adalah: The Legal Center for Arab Minority Rights in Israel welcomes this opportunity to submit **additional information** to the UN CERD in advance of its review of Israel's Combined 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> Periodic Report (CERD/C/471/Add.2) on 22-23 February 2007. Adalah submitted its initial report on 15 December 2005,<sup>1</sup> prior to the scheduled review of Israel in February 2006, which was subsequently postponed at Israel's request.

This document provides responses to the "Questions Put by the Rapporteur in Connection with the Consideration of the 10th to 13th Periodic Reports of Israel," ("the List of Issues"), presented to Israel in July 2006. In addition, it discusses several new issues that we wish to bring to the attention of the Committee. This submission does not reflect the full range of our concerns regarding Israel's violations of the ICERD, but seeks to highlight some of the most important issues on which we work. We hope that this information will assist the Committee in preparing for its review of Israel's compliance with the ICERD and for its Concluding Observations. Adalah wishes to note that efforts to heighten the status of the ICERD and increase the extent to which it is invoked directly before and relied upon by the Israeli courts would greatly benefit from Israel making the text of the Convention, together with the Committee's Decisions and Concluding Observations, available electronically on the internet in Hebrew.

**ICERD Article 2**

**Question 4:** Please provide information on the status, mandate and responsibility of the World Zionist Organization, the Jewish Agency and the Jewish National Fund. Please also comment on whether these bodies are bound by non-discrimination clauses in the exercise of their functions.

In the pre-state era, Zionist institutions such as the World Zionist Organization (WZO), the Jewish Agency, the Jewish National Fund (JNF) and the United Jewish Appeal pursued the project of "land redemption" in order to establish a Jewish state in Palestine. After the establishment of the state in 1948, Israel continued to cooperate with these institutions by transferring state-acquired properties or the development of lands to these organizations for exclusive use by Jewish individuals. By the enactment of laws and the entering into of agreements with these institutions, the State of Israel pursues discriminatory land and housing policies against Palestinian citizens of Israel, which stand in violation of its obligations under the ICERD.

<sup>1</sup> Adalah's report is available at: <<http://www.adalah.org/eng/intl06/CERD151205.pdf>> and <<http://www.ohchr.org/english/bodies/cerd/cerds69-ngos.htm>>

## 1. The World Zionist Organization and the Jewish Agency

*The World Zionist Organization-Jewish Agency in Israel (Status) Law (1952)* (hereinafter: “the WZO Law”) authorizes these organizations to function in Israel as quasi-governmental entities in order to further advance the goals of the Zionist Movement. As the internal regulations of these organizations **explicitly aim to benefit Jewish people only**, and as the state cooperates and coordinates many of its governmental functions with them, the needs of Palestinian citizens of Israel are systematically disregarded.

The WZO Law includes declarative statements on the significant and important role played by these organizations in establishing the State of Israel. Article 5 of the WZO Law also includes statements which emphasize the need for cooperation between the state and the WZO and the Jewish Agency, in order to continue the development of the state: “[These] agencies [are] authorized to continue acting within the State of Israel for [the purposes of] developing and settling the land, absorbing immigrants from the Diaspora, and coordinating with Jewish institutions and organizations [in Israel] active in these fields.”

According to a covenant signed between the Government of Israel and the WZO, the functions of these organizations include the maintenance and support of cultural, educational, scientific, religious, sporting and social-service institutions, including some hospital and other health-related services.<sup>2</sup> However, even more significantly for the Palestinian minority, the WZO Law and the covenant entrust these Zionist organizations with the work of land development, including the initiation of building projects in existing Jewish towns and agricultural settlements, as well as the establishment of new Jewish localities. The WZO Law and the covenant also confer wide tax exemptions on the WZO (e.g., exemption from property taxes, license fees, capital gains tax, etc.) and the funds they secure. In fact, most of the functions performed by the WZO should be implemented by the state. However, according to the covenant, the government consents to avoid overlapping activities.

As a result, since 1948, the state has not established any new Arab towns or villages, and the infrastructure of existing Arab towns (e.g., public buildings, roads, sewage, water systems, etc.) lags far behind that of Jewish towns.

## 2. The Jewish National Fund

While the JNF was established as an official organ of the WZO, it was originally registered separately in London as a limited company. As an organ of the WZO, the JNF’s status was determined by the WZO Law; however, the lands purchased by the JNF were registered in the name of the limited English company. *The Jewish National Fund Law (1953)* was passed to facilitate transfer of title in all these lands to an Israeli company: *Keren Kayemet LeIsrael*.

The memorandum of the new company, approved by the Minister of Justice under the 1953 law, gives the main objectives of the JNF as: “Purchasing, acquiring by lease or exchange, receiving by lease or in any other way, lands, forests, rights of possession or easements and all other such rights, as well as immovable property of any sort ... **for the purpose of settling Jews on such lands and properties**” [emphasis added]. The accepted interpretation of this memorandum is that JNF-owned land may not be leased, at least on a long-term basis, to non-Jews. Most JNF land has been leased to Jewish agricultural settlements.

The Israel Land Administration (ILA) manages all state lands (“Israel Lands”), which comprise around over 93% of the total land area in the state, including JNF-owned land. Thus, land-use

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<sup>2</sup> Covenant between the Government of Israel and the World Zionist Organization (1971) (repealing the 1954 Covenant between the Government of Israel and the Executive of the Jewish Agency for Israel).

and land-allocation policy is concentrated in the hands of the state.<sup>3</sup> In return for ceding administration of its lands to a governmental body, key articles from the covenant secured significant influence for the JNF over the ILA:

2. The government will establish the ILA to administer state land and JNF land. The government will appoint a director of the ILA, after consultation with the JNF.
3. ... [T]here will be no change in the ownership of the lands as registered in the Land Registry ...
4. Israel Lands shall be administered on the principle that land is not sold, but only given on lease. Moreover, the JNF lands shall be administered subject to the Memorandum and Articles of Association of *Keren Kayemet Lelsrael*.
9. The government shall establish a council, which will set land policy. The number of council members shall be thirteen; seven of who will be government officials, and six of whom shall be appointed by *Keren Kayemet Lelsrael*.

Thus, Palestinian citizens of Israel are excluded from approximately 13% of “Israel Lands,” amounting to 2.5 million dunams, owned by the JNF. This land includes much of the land expropriated from Palestinian refugees under the Absentees’ Property Law (1950), as well as properties purchased or otherwise accumulated by the JNF prior to 1948. Crucially, 80% – close to 2 million dunams – of the JNF’s land was actually transferred to it by the state in 1949 and 1953.

A review of Israel’s laws reveals the JNF’s special status and influence with regard to the determination of land policy in Israel, the possibility of the transfer of state lands to it, and the authority to expropriate land for public use. Thus, for example, Article 2(6) of the Israel Lands Law (1960) declares that ownership of lands can be transferred between the state, the Development Authority and the JNF; Article 6 of the JNF Law [(1953)] and Article 22 of the Land (Acquisition for Public Purposes) Ordinance (1943) provide the JNF with status equivalent to that of a local authority for purposes of expropriation in accordance with the ordinance. Article 4A of the Israel Lands Administration Law (1960) establishes that half of the members of the ILA Council shall represent the JNF, and be appointed in accordance with its recommendation. Although under Israeli law state-owned land cannot be sold, the JNF’s special status enables the transfer of lands to it from the state.

### **3. Discriminatory ILA Policy for Marketing JNF-Owned Lands**

Adalah’s Initial Report to CERD (December 2005) discussed a policy of the ILA and a regulation promulgated by the Minister of Finance to effectively permit the marketing and allocation of JNF-owned lands by the ILA through bids open only to Jews, and Adalah’s petition to the Supreme Court demanding the cancellation of this policy and regulation.<sup>4</sup> Adalah argued that the special status of the JNF over land policy in Israel and the fact that the ILA is a governmental agency mean that the ILA is not at liberty to adopt discriminatory positions with regard to JNF-owned lands that violate the rights to equality, just distribution, fairness and dignity, or to be subcontracted to discriminate against Palestinian citizens on the basis of “nationality.” This policy and regulation breach Israel’s obligations to uphold the right to equality and freedom from racial discrimination as protected by Articles 1, 2, 3 and 5 of the ICERD.

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<sup>3</sup> See, *Covenant between the State of Israel and Keren Kayemet Lelsrael* (1961).

<sup>4</sup> H.C. 9205/04, *Adalah, et al. v. The Israel Land Administration, et al.* (filed 13 October 2004; pending). See also, H.C. 9010/04, *The Arab Center for Alternative Planning, et al. v. The Israel Land Administration, et al.* (filed by the Association for Civil Rights in Israel).

In its response to the petition, the JNF argued that its loyalty is only to the Jewish people, not to the general public in Israel, and that it operates only for the benefit of Jews.<sup>5</sup> The JNF demanded that the Supreme Court refrain from deciding on the issues raised in the petition, claiming that they are purely ideological matters relating to the character and identity of the Jewish state, and the relationship between Jews in Israel and Jews in the Diaspora. The JNF also argued that, “Equality does not mean giving someone the right to live on someone else’s land since, just as the Jews do not have the right to live on Islamic Waqf land, or land belonging to one of the churches, non-Jews do not have the right to choose land given to the Jews for the sake of achieving their right to equality.” Bids for JNF-owned lands in the North and the Galilee have been frozen since 20 October 2004. To date, the ILA and the Attorney General (AG) have not submitted responses to the petition.

According to media reports in January 2005, the AG ruled that the ILA cannot discriminate against Palestinian citizens of Israel in the marketing and allocation of the lands it manages, even lands belonging to the JNF. However, the AG also decided that whenever a “non-Jewish” citizen wins an ILA tender for a plot of JNF-owned land, the ILA will compensate the JNF with an equal amount of land. This allows the JNF to maintain its current hold over 13% of the total land in Israel. Moreover, in June 2005, the government accepted recommendations of the *Gadish Committee* to exchange state-held land in the Galilee and the Naqab (Negev), in the north and south of Israel respectively, for land of equal value held by the JNF in the center of the state. To date, no agreement has been signed between the state and the JNF regarding this proposed exchange of land.

The transferal of state-held land in the Galilee and the Naqab to the JNF would result in the prohibition of Palestinian citizens of Israel from leasing or purchasing this land. Encouraging the perpetuation of such segregationist land and planning policies contributes to the institutionalization of apartheid-like settlements, in which citizens of Israel are divided according to ethnic criteria. Some 55% of Palestinian citizens of Israel live in the Northern District of Israel, comprising over half the district’s population (51.8%). A further 12.8% of Palestinians live in the Southern District, accounting for over 14% of the population. Against the background of the massive expropriation of Arab-owned land, any further prohibition or limitation of land-use through the transferal of land to the JNF would result in the exacerbation of existing discrimination and the thwarting of Arab citizens’ development needs in these areas.

**Question 6:** Please indicate whether military service is a condition for benefiting from various public services, for example in the fields of housing and education. How does the State party reconcile this policy with the Convention, bearing in mind that most Arabs in Israel do not perform national service?

### **1. Palestinian Citizens of Israel, Military Service and the ICERD**

Adalah has launched several legal challenges to policies and decisions of the Israeli Government and state-supported institutions which condition eligibility for public services or award significant benefits, including in the fields of housing and education, on the performance of military service. It is Adalah’s position that, as the vast majority of Palestinian citizens of Israel are exempt from and do not perform military service, the use of this criterion discriminates against them on the basis of their national belonging, in violation of the ICERD and, specifically, their right to equal enjoyment of various public services. By employing this criterion, the state is

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<sup>5</sup> English excerpts of the JNF’s response to the petitions, submitted on 9 December 2004, are available at: <<http://www.adalah.org/eng/publications/makan/hc9010.pdf>>. See also the submission of Adalah and the Habitat International Coalition on the JNF to the 62<sup>nd</sup> Session of the former UN Commission on Human Rights, 13 March – 21 April 2006, available at: <<http://www.adalah.org/eng/intl06/un-i6-jnf.pdf>>

distributing public funds and land in an inequitable and unjust manner, and violating its duty to all citizens to serve as a trustee for the entire public.

Adalah emphasizes that individuals who have served in the Israeli military already receive substantial compensation under the *Absorption of Discharged Soldiers Law (1994)*, which enumerates all the social and economic benefits to which discharged soldiers are entitled, including housing and educational grants and awards. It is Adalah's position that this law should preclude the granting of any additional benefits – above and beyond what is already legislated by law – conditioned on military service. Recent Israeli Supreme Court case law supports this stance. In a landmark decision delivered on a petition filed by Adalah against the exclusion of Arab towns from the list of 'National Priority Areas,'<sup>6</sup> delivered in February 2006, the Supreme Court ruled that the state is not permitted to grant benefits, especially significant benefits, in addition to what is already provided in primary laws.

Recent examples of Adalah's litigation against the use of military service as a prerequisite for receiving public services and benefits beyond those enumerated in the Absorption of Discharged Soldiers Law, and the decisions delivered on them by the Israeli courts, include the following:

a. 90% Discount on Land Leases in the Naqab and Galilee

Adalah's Initial Report to CERD (December 2005) discussed ILA Council Decision No. 952, approved by the Israeli government in March 2003, which afforded discharged Israeli soldiers a **90% discount** on the price of leasing lands controlled by the ILA Council. Adalah challenged this decision before the Supreme Court in October 2003 on the grounds that it discriminates against Palestinian citizens of Israel in the equal enjoyment of housing, socio-economic and other rights.<sup>7</sup> In July 2006, the Supreme Court dismissed the petition, ruling that it had become moot as the two-year decision had expired. As Adalah argued at the hearing, the result of the Court's delay in hearing the petition was that ILA-managed lands continued to be leased according to the conditions of the decision for its two-year duration, without effective judicial review. Further, despite Adalah's requests, the Court refused to issue an injunction freezing the implementation of the decision. In its decision, the Court noted that it would strive in the future to hear petitions which require prompt treatment in a more expeditious manner.

b. Enormous State Support for Home Mortgages

Adalah filed a petition to the Israeli Supreme Court in December 2005, challenging the legality of a discriminatory Israeli governmental policy of providing substantial financial support or "extended support" – in the form of low-interest governmental loans – for home mortgages to Israeli citizens who have completed military or national service.<sup>8</sup> Under this policy, a married couple in a poor socio-economic situation, each of whom has completed full military service, receives NIS 124,500 (around US \$30,000) more towards their home mortgage than a similarly-situated married couple neither of whom served in the military. As Adalah argued, this "extended support" violates the rights of Palestinian citizens of Israel to equality and housing. Moreover, the purpose of supplemental governmental housing support is to assist the socio-economically disadvantaged to find housing solutions, and hence the performance of military service is an arbitrary and irrelevant consideration in this instance.

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<sup>6</sup> H.C. 2773/98 and H.C. 11163/03, *The High Follow-up Committee for the Arab Citizens in Israel, et al. v. the Prime Minister of Israel* (filed 5 May 1998, re-submitted at the request of the Court 22 December 2003, decision delivered 27 February 2006).

<sup>7</sup> H.C. 9289/03, *Adalah, et al. v. Israel Land Administration, et al.* (filed 19 October 2003, decision delivered 11 July 06).

<sup>8</sup> H.C. 11956/05, *Suhad Bishara, et al. v. The Ministry of Construction and Housing* (filed 29 December 2005, decision delivered 13 December 2006).

In December 2006, the Supreme Court rejected the petition, deciding that there is no impediment in principle to granting benefits to those who have completed full military and national service above those afforded by the Absorption of Former Soldiers Law. In rejecting the petition, the Supreme Court allowed the use of a criterion that severely discriminates against Arab citizens and ignored the unacceptable housing situation of Palestinian citizens of Israel, which is characterized by overcrowding and an acute lack of available land for building. Further, the Court disregarded a wide range of prior rulings, particularly the recent ruling in the National Priority Areas case (H.C. 2773/98 and H.C. 11163/03, see above). Adalah will shortly submit a request for a second hearing before an expanded panel of the Supreme Court.

#### c. Discriminatory Allocation of Student Housing at Haifa University

In August 2006, the Haifa District Court issued a precedent-setting judgment, accepting a petition filed in October 2005<sup>9</sup> in which Adalah demanded that Haifa University's policy of including military service as a criterion for allocating student housing be declared illegal and cancelled. Adalah argued that the use of this criterion discriminates against Arab students on the basis of their national belonging, emphasizing that participation in military service does not reflect students' needs for university housing, making it an irrelevant criterion. In its decision, the District Court ruled that the inclusion of military service as a criterion for determining the allocation of student housing at Haifa University is illegal because this benefit is not enumerated in The Absorption of Discharged Soldiers Law, and that it therefore discriminates against Arab students on the basis of national belonging. The decision is precedent-setting as it represents the first occasion in which an Israeli court has decided that: the military service criterion discriminates against Arab students; the use of the military service criterion to afford benefits to former soldiers beyond those benefits included in The Absorption of Discharged Soldiers Law is illegal; and Haifa University has discriminated against Arab students. Haifa University has appealed the decision to the Supreme Court of Israel.<sup>10</sup> The first hearing on the appeal will be held in June 2007.

## **2. Arab Citizens of Israel and National Service**

In December 2004, the 'Ivri Committee on National Service,' set up by the Defense Minister with the purpose of providing advice on how to establish a framework for coordinating national service, recommended that Arab youths be drafted for national service. The committee argued that Arab citizens would thereby gain similar benefits to those received by individuals who serve in the military. Thus, the committee explicitly linked Arab citizens' entitlement to equal rights with an obligation to perform national service. The committee also made a connection between national and military service. However, national/military service in Israel is not neutral, but relates to difference: it constitutes the Jewish Zionist identity, as distinct from the Arab minority's identity, and is a prominent factor shaping Israeli security discourse. Military service as a criterion for receiving benefits and rights has long been used as justification for discrimination against Arab citizens and depriving them of their equal enjoyment of rights, just as security discourse is a major cause of their oppression. Therefore, the Ivri Committee asked Arab citizens not only to stop demanding an end to discrimination and oppression, which contradicts the principle of "equal treatment for difference," but also to submit to a rationale that further grounds discrimination and oppression.

**Question 7:** The Multi-Year Plan for Arab Development.

See *Adalah's Initial Report, December 2005, pp. 2-3.*

<sup>9</sup> Haifa District Court, Lawsuit 217/05, *Haneen Na'amneh, et al. v. The University of Haifa* (filed 26 October 2005; decision delivered 17 August 2006).

<sup>10</sup> C.A. (Civil Appeal) 8695/06, *Haifa University v. Haneen Na'amneh, et al.* (filed 23 October 2006, pending).

## ICERD Article 5

**Question 10:** Please comment on the information that a draft Criminal Law Procedure Bill, proposed in October 2005, provides for harsher criminal procedure for non-citizens and non-residents. Please comment on how the citizenship or residency criteria are relevant in relation to the rights of persons suspected of security offences.

### Discriminatory Criminal Procedures Law

Adalah discussed this harsh detention bill in its Initial Report (December 2005) pp. 7-8. The bill was passed into law, with substantial amendments, by the Israeli Knesset on 27 June 2006 as *The Criminal Procedure (Detainees Suspected of Security Offences) (Temporary Provision) Law – 2006*. However, the law still lacks essential procedural safeguards for individuals suspected of security offences.

Following severe criticism over the discriminatory scope of the law – i.e. its application solely to non-Israeli residents or citizens – the relevant provision was removed from the adopted draft. The new law applies to all detainees charged with security offences. The law, however, remains discriminatory in its application, since it stipulates harsher criminal procedure laws for detainees classified as “security suspects,” the overwhelming majority of whom are Palestinians from the Occupied Palestinian Territories (OPTs): according to statistics obtained from the Israel Prison Service, as of 6 November 2006, from a total **9,498** “security prisoners,” only **12** were Jewish.<sup>11</sup>

The main legal deficiencies that still exist in the law are as follows:

- The law adopted the provision in the bill concerning the detention of a suspect for up to **96 hours before being brought before a judge**, which is twice the period of 48 hours allowed under the Israeli Criminal Procedure Law.
- The law allows for **a detainee to be held for period of 35 days without being indicted**, as opposed to a period of 30 days under the Criminal Procedure Law (originally proposed as 40 days).
- The law permits the detention of a suspect who was remanded by a court for a period of less than 20 days to be extended by the court **in absentia** for the rest of a period of up to 20 days from his original detention if the original detention was ordered in his presence. During this period, the suspect is also denied contact with legal counsel.
- The provision relating to access to legal counsel has been amended in the law, which adopted the same provision as in the Criminal Procedure Law providing for **up to 21 days of detention without access to an attorney** (originally proposed as 50 days). However, this provision itself is incompatible with international human rights law and standards, including the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

As is well known, a detainee is most at risk for torture and degrading or ill treatment in the first days of detention. All of the adopted provisions allowing for prolonged denial of access to a judge, prolonged incommunicado detention, prolonged denial of access to legal counsel and prolonged detention before accusation *de facto* deny the necessary procedural safeguards granted to suspects under all rights instruments which Israel has ratified.

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<sup>11</sup> Letter sent from the Israel Prison Service to Adalah, dated 6 November 2006.

According to Article 8 of the law, the Ministry of Justice is obliged to submit a report regarding the implementation of the law to the Knesset's Constitution, Law and Justice Committee. Adalah and other NGOs have asked the Committee to hold a hearing on the legislation and the report in order to discuss its effect on the human rights of those suspected of security offences.

**Additional Information: Closure of “The Prisoners’ Friends Association”**

On a related matter, on 8 September 2006, Israeli security forces raided the offices of *Ansar Al-Sajeen* (The Prisoners’ Friends Association) in the Galilee village of Majd Al-Krum and confiscated property, including all of its computers, files, documents and furniture. The organization’s General Secretary, Mr. Munir Mansour, was issued with an eviction notice from the premises. The notice included an announcement that the Israeli Defense Minister, pursuant to his authority under Regulation 84(1) (b) of the Defense (Emergency) Regulations – 1945, which date from the era of the British Mandate, had decided to declare the organization illegal on the ground that such a measure “is necessary in order to protect state security, public welfare and the public order.”

*Ansar Al-Sajeen* is an NGO legally registered in Israel. Since 1980, it has been acting on behalf of Palestinian political prisoners incarcerated in Israeli prisons and detention centers. Among its goals, the organization seeks to improve the conditions of confinement of prisoners and detainees, provide them with legal representation in the military courts and in the Israeli civil judicial system, to initiate and organize public activities calling for the release of political prisoners as part of peace negotiations, and to assist and support prisoners’ families in maintaining contact with their relatives in prison. The organization operated from offices in Israel and the West Bank.

Adalah submitted a pre-petition on behalf of *Ansar Al-Sajeen* to the Defense Minister of Israel in November 2006 demanding the cancellation of the order, arguing that the arbitrary use by the Minister of the Emergency Regulations grossly violates the rights of the organization’s members to freedom of speech and association, employment, assembly and property, as protected by Articles 2 and 5(d)(ix) of the ICERD. It also violates the rights of Palestinian prisoners to proper legal representation and to maintain contact with their families.

The Defense Minister’s use of the Emergency Regulations to close down an organization legally registered in Israel raises many questions and is a cause for concern, in particular given that a clear mechanism exists in the Israeli Law of Associations – 1980 for the cessation of an NGO’s activities. According to this law, the cessation of an organization’s activities is a judicial action that can only take place after the organization has had a proper opportunity to be heard and defend itself. Instead of following this proper, legal course of action, however, the Minister employed a Mandate-era regulation that allows for the sweeping denial of rights by means of an administrative action. Such an action completely ignores the widespread public criticism which is voiced in opposition to the use of Emergency Regulations and calls for their cancellation. Adalah has not yet received a response to the pre-petition.

<p><b>Question 11:</b> Significant Disparities in Conviction and Imprisonment Rates for Criminal Offences between Arab and Jewish Citizens. <i>See Adalah’s Initial Report, December 2005, p. 8.</i></p>
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**Question 12:** Please comment on the information that a high number of complaints filed by Arab citizens against law enforcement officers are not properly and effectively investigated, and that the Ministry of Justice's Police Investigations Unit (Mahash) lacks independence. Please also indicate whether the persons responsible for the killings of 14 Israeli citizens in October 2000 have been prosecuted and sentenced. (Periodic report, para. 185.)

Adalah's Initial Report (December 2005, pp. 9-11) discussed the institutional and systematic failure of Mahash to properly and effectively investigate police brutality and misconduct against Palestinian citizens of Israel in general, and regarding the October 2000 killings, in particular.

### **The October 2000 Killings**

To date, **no indictments** have been filed against any police officers or commanders responsible for the killings of 13 Arab citizens of Israel and the wounding of hundreds of others shot by police during the October 2000 protest demonstrations. In October 2006, Adalah, the legal representatives of the families of the 13 Arab youths, submitted a comprehensive report entitled, "The Accused" to the Attorney General, and demanded an investigation into Mahash for breach of trust and damaging public confidence.<sup>12</sup> The report addresses the shortcomings and failures of the law enforcement authorities – first and foremost Mahash – in investigating the killings and the injuries incurred in October 2000. The report demonstrates that Mahash's failure began at the very outset of the events of October 2000. The law enforcement authorities violated the principle of the rule of law by failing to perform their legal duty to immediately open criminal investigations against the police officers and commanders. The report also exposes Mahash's subsequent negligent work and how Mahash concealed significant facts from the public and issued a falsified report in September 2005, in which it claimed that "it investigated the fatal events in an intensive investigation."

"The Accused" report was compiled after Adalah studied thousands of pages of documents and other evidentiary material presented to the Official Commission of Inquiry (Or Commission) into the October 2000 events and collected by Mahash. The material that Adalah examined should have served to guide Mahash during its investigation; however, the reality was very different.

The main findings of "The Accused" report include that: (i) Mahash did not conduct any investigation into five of the killings; (ii) even where Mahash investigated some of the killings, it did so in a completely negligent, incompetent and superficial manner; (iii) although Mahash did not present a single shred of new evidence beyond that brought before the Or Commission, it nonetheless reached opposite conclusions in many cases; and (iv) Mahash concealed the fact that police officers had refused to cooperate with it, including a refusal to undergo a polygraph test. In light of these findings, Adalah concluded that Mahash has damaged the public's confidence and breached its trust, and on behalf of the families of the deceased, demanded the opening of an immediate investigation into Mahash's grave failings, and the immediate suspension of all those responsible for Mahash's failures, led by Eran Shendar, the Director of Mahash in 2000, and currently the State Attorney of Israel. Adalah anticipates that the State Prosecutor's Office will issue a review report of Mahash's findings in 2007.

Warnings against the existence of a culture of lies and deliberate ignorance, and against its severe implications for the rule of law and public trust were repeated in the most recent report of the State Comptroller, published on 31 August 2005, which examined the activities of Mahash.<sup>13</sup>

<sup>12</sup> An English summary of "The Accused" report is available at: <http://www.adalah.org/eng/october2000.php>

<sup>13</sup> The State Comptroller's Report is available in English at: <http://www.adalah.org/features/october2000/StatComptroller-aug05.pdf>. See also, Adalah's letter to Prof. Philip Alston, UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, 1

**Question 17:** Please comment on the decision by the Supreme Court of 14 May 2006 to uphold the Citizenship and Entry into Israel Law (Temporary Order), and indicate to what extent the Convention and CERD Decisions 2(63) and 2(65) were taken into account by the Court in this regard. (Periodic report, para. 286)

## 1. The Citizenship and Entry into Israel Law (Temporary Order) – 2003

### a. The Supreme Court's Decision (May 2006)

In reaching its decision to uphold the Citizenship and Entry into Israel Law (Temporary Order) – 2003, the Supreme Court failed in its most important task: to protect against the violation of human rights and to provide a legal remedy to injured individuals. These rights include the fundamental rights of individuals to family life, equality, dignity and privacy as protected by various articles of the ICERD, in particular Article 5(d)(iv). Thus, in issuing this ruling, the Supreme Court failed to take its obligations under ICERD into account as well as CERD Decisions 2(63) and 2(65). Moreover, the Court failed in a very clear case: it upheld a racist, discriminatory law that denies a person's basic human rights on the basis of his or her national belonging. In deciding not to cancel the law, the Court rejected the petition filed by Adalah<sup>14</sup> and six other petitions joined to it by the Court challenging its constitutionality.

The decision to uphold the law, delivered in May 2006, was reached by a slim 6-5 majority of the expanded panel of justices. Significantly, however, a clear majority of the justices ruled that the law violates the basic rights to family life and equality. One of the justices from the majority decision indicated that the law violates these rights in a disproportionate way, but also held that the petitions must nonetheless be dismissed in order to give the Knesset an opportunity to amend it. Of the remaining justices from the majority position two ruled that the law does not harm basic rights (including former Deputy-Chief Justice Cheshin), and three ruled that although it does cause harm to the right to family life, it is nonetheless proportionate.

In his articulation of the majority position, Justice Cheshin supported the security pretext employed by the state to justify this discriminatory legislation, stating that over 26 residents of the OPTs from the thousands who have received status in Israel via family unification were involved in what he termed "terrorism against citizens of the State of Israel." However, the Attorney General (AG) claimed in his written submission to the Supreme Court that "26 individuals have been investigated over terrorist activities." After receiving this statement, Adalah demanded that the AG inform the Court of these investigations and their results. However, the AG provided no response to the Court, nor a single document to verify this statement, such as indictments or reports to corroborate that they had even been arrested. The only document submitted by the AG examines the personality traits of suicide bombers, in which no mention is made family unification applicants; in fact, the document states that the vast majority of suicide bombers are unmarried. Therefore, Justice Cheshin's decision relies not

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November 2006, available at: <<http://www.adalah.org/features/october2000/alstonr011106.pdf>> and The Arab Association for Human Rights, "Four Years On: Cases of Police Brutality against Palestinian Arab Citizens of Israel during the Year Following the Or Commission Report on the October 2000 Events," (September 2004) available at: <<http://www.arabhra.org/publications/reports/index.htm>>

<sup>14</sup> H.C. 7052/03, *Adalah, et al. v. Minister of Interior, et al.* (filed 3 August 2003, dismissed 14 May 2006). The Supreme Court also dismissed petitions filed by Adalah and ACRI challenging Government Decision #1813, which has been in effect since 12 May 2002, prior to the enactment of the Citizenship and Entry into Israel Law (Temporary Order) – 2003. The decision ordered the freezing of implementation of the "gradual naturalization process" for gaining status in Israel for any spouse of an Israeli citizen who is "Palestinian, a resident of the Palestinian Authority or Palestinian by origin." See H.C. 4608/02, *Abu Assad, et al. v. The Prime Minister of Israel, et al.* (filed by Adalah 30 May 2002; dismissed 11 January 2007) and H.C. 4022/02, *ACRI, et al. v. Minister of Interior, et al.* (filed by ACRI 12 May 2002; dismissed 11 January 2007).

on a genuine security rationale but on the discriminatory contention that every Palestinian is a potential terrorist or supporter of terrorism and must be prevented from entering Israel.

In his articulation of the minority position, former Chief Justice Barak stated (para. 51 of his decision) that:

The issue concerns the right of Israeli citizens of the state to family life and equality [...] A citizen has the right to conduct a family life with a spouse in Israel. There [in Israel] is his [or her] house and his [or her] society, there is his [or her] historical, cultural and social roots ... this violation of rights is directed against Arab citizens of Israel. As a result, therefore, **the law is a violation of the right of Arab citizens in Israel to equality** [emphasis added].

The Supreme Court made only a passing reference to the ICERD, in para. 17 of Barak's minority decision, in which he stated that:

The main issue in these petitions is the Israeli spouse. The main question is whether the rights of the Israeli spouse were illegally harmed. The question is whether the rights afforded to him by the Basic Law: Human Dignity and Liberty were unlawfully harmed. In light of the importance of the Israeli spouse's rights and my conclusion regarding the infringements of the rights of the Israeli spouse, **I do not find it appropriate to discuss the rights of the non-Israeli spouse (the foreigner) under international human rights law** (for example the International Covenant on Civil and Political Rights (1966), The International Covenant on Economic, Social and Cultural Rights (1966) and **The International Convention on the Elimination of All Forms of Discrimination 1965**) or under international humanitarian law which are applicable to him (the non-Israeli) as long as he is living in Judea and Samaria (The West Bank), which are occupied territory [emphasis added].

#### b. New Proposed Amendments to the Law

A further amendment to the Citizenship and Entry into Israel Law (Temporary Order) (Amendment No. 2) – 2006 is currently being debated in the Knesset plenum. The proposed legislation maintains the prohibition on the unification in Israel of families in which one spouse is a Palestinian resident of the OPTs. It also adds more stringent restrictions on basic rights, including the rights to family life and equality, on a national/ethnic basis: it seeks to deny the unification of families in which the spouse of an Israeli citizen is a resident or citizen of Lebanon, Syria, Iran or Iraq – states all defined by Israeli law as “enemy states” – and/or is an individual defined by the Israeli security forces as residing in an area where activity is occurring that is liable to endanger the security of Israel. It also expands the prohibition on granting a spouse status to include not only an individual who constitutes a “security threat” to Israel, but also to those whose place or area of residence is the site of activity liable to endanger the security of the state. Moreover, the imposition of this prohibition would be based on an assessment by the security forces; that is, a basic right would be denied via a directive from the executive branch. In addition, the proposed legislation expands the definition of “family member” – with regard to the prohibition on granting residency or citizenship – to include not only “a spouse, parent, child, brother and sister and their spouses,” but also “the children of each of these.”

The language of the proposed legislation indicates that it would result in cutting off Palestinian citizens of Israel from the Palestinian people and from the Arab nation to which they belong, even when the link with members of their nation is on a humanitarian basis, through maintaining family life. It thereby contradicts principles of international law protecting humanitarian connections, including family ties, between domestic ethnic and national minorities, and between citizens of different states related by national or ethnic, religious or linguistic ties, as stipulated, *inter alia*, by Article 2(5) of the UN Declaration on the Rights of

Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992), which is based on the International Covenant on Civil and Political Rights.

This racist legislation stands in complete contradiction to the ICERD. Indeed, there is no democratic or non-democratic state in the world today whose laws restrict its citizens' right to family life on the basis of ethnic affiliation. In addition, it contradicts the rulings of the majority of Supreme Court justices in the aforementioned decision on the constitutionality of the first amendment to the Citizenship and Entry into Israel Law (Temporary Order) – 2003 (see above), in which six of the eleven justices decided that the law disproportionately violates the basic rights to family life and equality. A majority of justices also recommended in the decision that the state amend the law, so as to make it rely essentially on individual checks to evaluate the security risks posed by persons seeking to enter Israel for family unification purposes. The proposed legislation therefore constitutes a clear infringement of the Court's decision, and a grave breach of the principles of the rule of law and the separation of powers.<sup>15</sup>

## **2. Revocation of the Residency Status of Palestinian Legislative Council (PLC) Members and a Palestinian Minister (PA) from East Jerusalem**

On 29 May 2006, three members of the Palestinian Legislative Council (PLC), Mohammad Abu Ter, Ahmad Attoun and Mohammad Totah, and the Palestinian Minister for Jerusalem Affairs, Khaled Abu Arafa, were informed that unless they resigned from their positions, their East Jerusalem permanent residency status would be revoked by an administrative order of the Israeli Minister of the Interior. The men were subsequently arrested on 29 June 2006 and their status was revoked on 30 June 2006. The basis given by the Interior Minister for the revocations was that the men had run and been elected as Hamas members of the PLC and are therefore considered members of a foreign entity, one which Israel has considered a "terrorist entity" since the victory of the Hamas party in the PLC elections in January 2006.

On 25 December 2006, the Israeli Supreme Court held a hearing on the petition of the three PLC members and the Palestinian Minister for Jerusalem Affairs.<sup>16</sup> At the hearing, Adalah and the Association for Civil Rights in Israel (ACRI) submitted a request to the Court to join the case as "amicus curiae". This request was granted by the Court due to the fact that this is a principle case with far-reaching implications. The amicus brief will be submitted shortly.

Revoking the men's permanent residency status constitutes a deportation, which is a breach of Article 49 of the Fourth Geneva Convention, which states that, "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive." The status of East Jerusalem as Occupied Territory, as recognized by the international community, was confirmed by the International Court of Justice on 9 July 2004 in its Advisory Opinion on the legal consequences of the construction of the Wall in the OPTs, which it held to include the area in and around East Jerusalem.<sup>17</sup> The men are permanent residents of East Jerusalem by birth, and did not seek their residency after having relocated to the area. Therefore, their classification under Israeli law as "permanent residents" is tantamount

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<sup>15</sup> On 15 January 2007, the Knesset voted to extend the existing Citizenship and Entry into Israel Law for a period of three months ending on 15 April 2007, for the fifth time. On 25 January 2007, Adalah submitted a petition to the Supreme Court (H.C. 830/07, *Tabeli et al. v. The Minister of the Interior, et al.* [filed 25 January 2007, pending]) demanding the cancellation of the law, arguing that these repeated extensions render the so-called temporary law permanent, and stand in contradiction of the aforementioned decision of the Supreme Court.

<sup>16</sup> H.C. 7803/06, *Khaled Abu Arafa, et al. v. The Minister of the Interior* (pending).

<sup>17</sup> International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory: Advisory Opinion*, 9 July 2004. Available at: [http://www.icj-cij.org/icjwww/ipresscom/ipress2004/ipresscom2004-28\\_mwp\\_20040709.htm](http://www.icj-cij.org/icjwww/ipresscom/ipress2004/ipresscom2004-28_mwp_20040709.htm)

to citizenship status, the revocation of which leads to statelessness and is among the most extreme measures which can be taken by states.

There is no basis in Israeli or international law for the revocation of the petitioners' residency as a result of their participation in the Palestinian elections. The PLC elections were undertaken with the consent of the Israeli government. The considerations of the Minister of the Interior in revoking the residency status of the men on the basis of their election to the PLC are based on arbitrary, political motives, and breach, *inter alia*, the men's equal enjoyment of their rights to stand for election, as protected by Article 5(c) of the ICERD. Further, as the Interior Minister does not possess the authority in law to issue an administrative order to revoke permanent residency status on the basis of political considerations, the attempt to revoke the men's residency is illegal under Israel law. The grounds on which the Minister is authorized by the Entry into Israel Law (1952) to revoke residency status are purely administrative grounds, such as an individual's reliance on falsified document in obtaining residency status. These administrative grounds do not apply in this instance.

**Question 18:** Do Jewish and Arab villages receive equal funding from the government? Please provide information on measures taken to ensure that outline plans for Arab towns and villages are drafted with the equal and full participation of Arab Israelis. Please indicate the proportion of Arab members participating in the National Planning Council, as well as in the regional, local, and district councils.

### **1. Unequal State Funding of Arab Towns and Villages: “Budget Balancing Grants”**

“Budget balancing grants” are grants allocated by the state to municipalities and local councils to reduce budget deficits created when the expenditure of municipalities and local councils for essential services exceeds their income. They are intended to secure a minimal and reasonable level of service for the communities under their jurisdiction. The government's policy for distributing budget balancing grants relies on a complex method of calculation not based on equitable criteria, which differs for Arab and Jewish towns and leads to discrimination against Arab municipalities and local councils. In 2003, for example, local councils and municipalities of Jewish towns received **59%** more per citizen than their Arab counterparts, despite the fact that Arab towns and villages consistently rank lowest on all socio-economic indices.

Adalah challenged the state's unequal distribution of “budget balancing grants” in a Supreme Court petition filed in July 2001 on behalf of the National Committee of Arab Mayors and the Nazareth Municipality.<sup>18</sup> Adalah demanded the setting of equal, objective criteria for the government's distribution of the grants to Arab and Jewish municipalities in Israel. At the time of the filing of the petition, the budget deficits of Arab municipalities accounted for 45% of the total deficits of all municipalities in Israel. The Supreme Court issued an *order nisi* in June 2002 asking the state to explain why it should not apply clear, equal and unified criteria for the allocation of the grants.

In January 2004, the state presented a new formula for calculating the allocation of the grants, which include elements which inherently benefit local councils and municipalities in Jewish towns. Therefore its effect is to deepen the existing discrimination within the system of

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<sup>18</sup> H.C. 6223/01, *National Committee of Arab Mayors v. The Ministry of Interior, et al.* (filed 7 August 2001; pending). On 21 September 2006, the Supreme Court of Israel ordered the Minister of the Interior, the Minister of Finance and the Prime Minister to submit an update regarding articles of the state's budget for 2007 relating to budget balancing grants for municipalities and local councils. The petition has been pending before the Supreme Court for five and a half years and is due for final decision.

allocating balance grants. For example, the revised criteria award towns which absorb new Jewish immigrants with additional balance grants, as well as towns designated as 'National Priority Areas' (found to constitute illegal discrimination by the Supreme Court in February 2006, see H.C. 2773/98 and H.C. 11163/03, *The High Follow-up Committee for the Arab Citizens in Israel, et al. v. the Prime Minister of Israel* [accepting Adalah's arguments]) and "front line" communities (designated Jewish towns in the north of Israel and Jewish settlements in the 1967 OPTs). Thus, while the new criteria in the proposed formula are now clear, they are not objective, or necessarily based on socio-economic need. In fact, the new formula increases the existing socio-economic gaps between Arab and Jewish local councils and municipalities, thus contradicting the very purpose for which the grant was intended, and is even more discriminatory than the original equation.

## 2. The State's Discriminatory Scheme for War Compensation

In July 2006, the Finance Minister issued regulations regarding compensation formulae for damages incurred during the Second Lebanon War (between Israel and Hizbullah) as they apply to businesses in areas designated as 'border towns' and 'restricted towns', and to 'non-governmental organizations' (NGOs). Four Arab villages (Arab al-Aramshe, Fasuta, Ma'alia and Jesh) were excluded from the list of 'border towns' for the purpose of receiving compensation for damages incurred during war. Businesses in towns and villages afforded such status are eligible for higher compensation payments for damages incurred during the war under the amended *Property Tax Regulations and Restitution Fund (Compensation Payments) (Direct and Indirect War Damages) (Temporary Order), 2006*. The four villages are located on or very close to the border with Lebanon and in the same geographic area as Jewish towns granted the status of 'border towns,' and the exclusion of these Arab towns constitutes discrimination against them. In addition, NGOs which rely on donations for one third of their income were omitted from those defined as 'damaged'. The legal situation resulting from these discriminatory regulations prevents Arab citizens damaged by the war from exercising their basic rights to equality, work, free choice of employment, own property and freedom of association, as protected by the ICERD, on an equal basis with Jewish citizens.

Adalah filed a petition to the Supreme Court in September 2006 on behalf of the High Follow-up Committee for Arab Citizens of Israel, several Arab NGOs, and two Arab business owners, who suffered damages as a result of the war, challenging this discriminatory compensation scheme.<sup>19</sup> Adalah demanded the following in the petition: (i) an order requiring the Finance Minister to grant the status of 'border towns' to the four Arab villages; (ii) the setting of clear, transparent and equitable criteria for the granting of 'border town' status; (iii) the determination of an equitable policy for the calculation of compensation payments covering the remaining towns and villages in northern Israel classified as 'restricted towns' – which would entail applying an equal method of compensation, in accordance with *the Property Tax Regulations and Restitution Fund (Compensation Payments) (Direct and Indirect War Damages) (1973)*, to all towns and villages exposed to the same dangers during the war – and (iv) that the Finance Minister not exclude NGOs from compensation, including compensation for employees' salaries. In December 2006, the Supreme Court ordered the Finance Minister to present his reasons for not using one method for calculating compensation for all towns and villages in the north regarding indirect damages incurred as a result of the war, and for excluding the four Arab villages from the list of "border towns".

*Update:* On 31 January 2007, the Minister of Finance announced: (i) the inclusion of the aforementioned Arab villages in the list of 'border towns'; and (ii) the addition of 19 Jewish towns and villages all located within 9km of the Israeli-Lebanese border in the list of 'border towns,' thereby providing an equitable criterion based on geographical location for the

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<sup>19</sup> H.C. 7444/06, *Abeer Shehade, et al. v. The Minister of Finance, et al.* (filed 13 September 2006; pending).



designation of 'border town' status. Further, the decision applies retroactively from 1973. The Supreme Court has still to decide on the issues of compensation for NGOs and the setting of an equitable policy for the remaining towns and villages in the north.

### 3. The Lack of Participation of Arab Citizens of Israel in the Planning Process

According to the National Council for Planning and Building (NCPB), two Arab members from a total of 32 members sit on the NCPB.<sup>20</sup> There is also very low representation for Arab citizens of Israel in district planning and building committees in Israel and low representation at the level of local planning and building committees.<sup>21</sup> *The Planning and Building Law (1965)* tightly controls all planning and development in the state, and Israel has a centralized planning system for the use of land, in which the central government is involved firstly by way of its extensive powers to oversee local-level planning decisions, and secondly through its power to draw up binding national plans for land-usage. This centralized, hierarchical arrangement greatly limits the involvement of citizens and residents in the planning process at the regional and local levels in general. However, Arab citizens of Israel are also excluded from contributing to the process at the national level, due to their severe under-representation in the NCPB and other planning institutions, as well as in the central government.

Significantly, the only means available to individuals in Israel through which to participate in the planning process under the Planning and Building Law is the submission of objections to particular plans. Individuals can obtain standing before a planning committee if they have a direct personal interest in a specific piece of land affected by a plan and believe themselves to be harmed by a particular plan. However, the process of objecting to a plan or parts of it is confrontational by nature and is far removed from the ideal of positive, inclusive community participation. While steering committees may be formed to work on specific plans, there is no obligation on the planning authorities to establish such committees and they do not possess real decision-making powers.

**Question 19:** Following the 2000 *Ka'adan v. The Israel Lands Administration* decision, please indicate how the State party ensures that State land is allocated without discrimination based on ethnicity or religion. Has the Ka'adan decision been implemented? Please report on the criteria on the basis of which persons may be refused to settle in Jewish areas / villages, as well as on the mandate and composition of "Selection Committees". (Periodic report, para. 14 and 25.)

#### The Qa'dan Ruling

In its Initial Report to the Committee (December 2005, pp. 5-7), Adalah presented numerous examples of the state's efforts to by-pass the *Qa'dan* ruling. Adalah also wishes to draw the Committee's attention to the fact that, while the *Qa'dan* ruling has many positive aspects, several weaknesses can be identified in the ruling itself which are relevant to the Committee's review.

<sup>20</sup> Fax sent to Adalah by the National Council for Planning and Building, 22 January 2007.

<sup>21</sup> See, Yosef Jabareen, "The Right to the City: The Case of the Shihab el-Din Crisis in Nazareth," *Makan: Adalah's Journal for Land, Planning and Justice*, Volume 1, 2006 available at: <<http://www.adalah.org/eng/makan.php>> and Hana Hamdan and Yosef Jabareen, "A Proposal for Suitable Representation of the Arab Minority in Israel's National Planning System," *Adalah's Newsletter*, Volume 23, March 2006, available at: <<http://www.adalah.org/newsletter/eng/mar06/ar1.pdf>>

1. The Court limited its decision to the communal settlement of Katzir, noting that the judgment may not apply to different kinds of settlements, such as *kibbutzim*, *moshavim*, and *mitzpim* ('observation posts') built on state-held land.<sup>22</sup>
2. The Court's decision ignores past discriminatory allocations of state land, emphasizing that its judgment looks solely to the future. In fact, the Court praised the important long-standing role of the Jewish Agency in settling Jews in Israel during past century.<sup>23</sup>
3. Chief Justice Barak, writing for the Court, discusses the values of the state as a Jewish state, which prohibits discrimination and requires equality by relying on *Halacha*. By grounding his reasoning on *Halacha*, Justice Barak avoids tackling the problem of the contradiction between Zionism and the right to equality and non-discrimination of all in Israel.
4. The Court did not provide a remedy to the Qa'dans. The Court did not order their admission to Katzir but simply advised the respondents that the Qa'dans may not be excluded outright because they are Palestinian. After almost ten years, the Qa'dan family received permission from the ILA in May 2004 to live on a plot of land in Katzir.

For information on "Selection Committees," please refer to *Adalah's Initial Report, December 2005, pp. 5-7.*

**Question 20:** Please explain further why the State party has decided to relocate inhabitants of the approximately 45 unrecognized Bedouin villages rather than to recognize these villages. What are the legal and/or planning criteria for a locality to be "recognized" in a regional plan, and are these criteria applied equally throughout the country to all communities?

Adalah submitted information to the Committee in December 2005 (pp. 23-25) on numerous measures being taken by Israel to dispossess and displace Arab Bedouin citizens of Israel living in the unrecognized villages, including issuing home demolition and evacuation orders and the aerial spraying of toxic chemicals on agricultural crops.<sup>24</sup> In this regard, Adalah wishes to bring to the attention of the Committee further measures being employed by the state aimed at pressuring Arab Bedouin families living in the unrecognized villages to relocate to one of the existing over-crowded, government-planned Bedouin towns, rather than granting official recognition to their villages.

## 1. Displacing and Dispossessing Residents of the "Unrecognized Villages"

### a. The Negev 2015 Plan

'Negev 2015: The National Strategic Plan for the Development of the Negev' was approved by the government in November 2005, but was frozen due to the Second Lebanon War. In November 2006, the government decided to begin the implementation of the plan with some modifications, and to allocate a budget of NIS 340 million (US \$80 million) for the year 2007.

<sup>22</sup> In a minority opinion, Justice Kedmi writes that national security needs or the special needs of a homogenous community may legally justify the exclusion of Palestinian citizens of Israel. He adds that "national security" as a value will prevail, when balanced with the competing interest of the value of "equality." *Qa'dan* at 287-288.

<sup>23</sup> *Qa'dan* at 284.

<sup>24</sup> H.C. 2887/04, *Saleem Abu Medeghem, et al. v. Israel Land Administration, et al.* (filed 22 March 2004, injunction preventing the aerial spraying of the crops issued 23 March 2004, case pending). See also, The Arab Association for Human Rights, "By All Means Possible: A Report on the Destruction by the State of Crops of Bedouin Citizens in the Naqab (Negev) by Means of Aerial Spraying with Chemicals," (July 2005) available at: <<http://www.arabhra.org/publications/reports/index.htm>>



The plan's stated aim is to promote the development and growth of the Naqab (Negev) between 2006 and 2015, and is designed to achieve four main goals by 2015 : (i) to increase the population of the Naqab from approximately 535,000 (at the end of 2003) to approximately 900,000; (ii) to increase the number of employed persons in the Naqab from approximately 164,000 (at the end of 2003) to approximately 300,000; (iii) to reduce by 60% the average per capita income gap between the Naqab and the national average; and (iv) to make the number of students among the Jewish population in the 20-29 age bracket (12.1%) equal to the national average (15.6%) and increase the number of students in the Bedouin population in the 20-29 age bracket from 2.2% (as of 2001) to at least 5%. Between 2006 and 2015, the government will allocate, directly and indirectly, as much as NIS 17 billion (approximately US \$4 billion) for the implementation of the plan. However, the plan discriminates against Arab Bedouin citizens of Israel by not responding to their socio-economic and spatial needs, and contradicts the principles of equality and justice in resource allocation.

On 28 January 2007, Adalah sent a letter to the Prime Minister and the Deputy Prime Minister, demanding the cancellation of the plan, arguing that it discriminates against Arab Bedouin citizens living in the Naqab in the fields of housing and communities, economic development and education, and is based on illegal and invalid governmental decisions. Adalah also demanded that a new development plan be prepared that sets as one of its main goals the development of the Arab Bedouin community in the Naqab.

*Housing and Communities:* One main element of the plan is the proposed development and addition of about 10,000 'special properties' housing units, 100 "individual settlements," and 65,000 regular housing units, almost all of which are designated for Jewish towns and the Jewish community. The plan completely neglects the Arab community's current and future housing needs, and it offers no options for them to make choices between various lifestyles (e.g., to live in cities, community towns, agricultural villages, etc.). The plan also suggests evacuating and demolishing the unrecognized villages and moving all of their Arab Bedouin inhabitants (around 70,000 people) to the government-planned towns. The plan does contain a section on development in Arab towns, also called 'special properties,' according to which multi-purpose housing could be built for residential and business purposes, residential units should be surrounded by land for agriculture, and plots of lands could be used by families for three generations. **However, the plan allocates no money for this proposed development.** Thus, the plan perpetuates the governmental policy of encouraging Jewish citizens to relocate to the Naqab, by providing them with multiple housing and land use options, and of simultaneously seeking to concentrate the Arab Bedouin on the smallest possible land area. The plan gives no solutions to the existing harsh situation and housing problems, and does not allocate resources to or allow for spatial development for the benefit of the Arab community.

*Economic Development:* The plan does allocate some funds for the economic development of the Arab community in the Naqab, but in insufficient measure to resolve the problems in this field over ten years. The plan essentially ignores the dire socio-economic situation of the Arab Bedouin, including the unemployment rate, which is more than double the national average, and the average wage of the Arab Bedouin in the seven government-planned towns in the Naqab, which is approximately half of the general average wage in the Naqab. These figures are even more dismal among Arab Bedouin women. The plan also proposes the establishment of 17,000 to 25,000 new workplaces over a ten-year period for the Arab Bedouin population. However, this is inadequate for their future needs over ten years given the high birth rate and the high number of individuals who potentially need to be integrated into the workforce, particularly Arab Bedouin women. Furthermore, the plan does nothing to solve the great obstacle to economic development and employment posed by the lack of infrastructure and public transportation to connect the unrecognized villages to universities, colleges and potential workplaces.

*Education:* The plan also fails to take into consideration the urgent educational needs of the Arab Bedouin in the Naqab. For example, the percentage of Bedouin high school students in the seven government-planned towns who complete the *bagrout* examination (matriculation) is around half the average of those living in Jewish localities in the Naqab. Likewise, schools attended by Arab Bedouin children in the Naqab suffer from severe overcrowding in comparison to Jewish schools, and the number of students per school is substantially above the Ministry of Education's officially required standards. Among the proposals in this section is the addition of 1,250 classrooms for the Arab Bedouin community over five years, and an additional 1,750 classrooms over ten years. However, according to a position paper issued in 2005 by the Regional Council for the Unrecognized Villages in the Naqab, there is current deficit of 900 classrooms in the unrecognized villages alone, and thus this number is well below the level needed to meet the needs of the Arab Bedouin in the Naqab over ten years. Thus, although the plan allocates 29-33% of the educational budget to the Arab Bedouin community, because of the current gaps between the Arab Bedouin and Jewish communities, it does not fulfill the current and future needs of the Arab education system in the Naqab.

b. Ex Parte "Requests for Demolition Orders without Conviction"

In order to evacuate the inhabitants of the unrecognized villages, the state is resorting to the routine filing of *ex parte* "Requests for Demolition Orders without Conviction" to the Israeli courts. Typically, having received such requests, the courts automatically issue *ex parte* demolition orders against homes, on the sole basis of the state's request and without the presence of or hearing from any of the affected parties. Contrary to the state's claims, however, the identities of the home owners are often known to the authorities. Thus, this policy reveals a lack of good faith on the part of the state and represents the procedural misuse of *the Planning and Building Law (1965)*. Adalah stresses that, by using this procedure, Israel **is violating the rights to due process** of these homeowners, and provides **no form of compensation or alternative accommodation** to families living in the unrecognized villages following a home demolition.

*Example 1 – Al-Sura:* In July and August 2006, the Beer el-Sabe Magistrate Court issued six *ex parte* demolition orders at the state's request on the homes of six families from the unrecognized village of Al-Sura. The orders affect approximately 40 individuals from the village, mostly women and children. In October 2006, Adalah submitted six motions to cancel the orders to the Court, which relied solely on the state's contention that it had been unable to identify the individuals who had built the houses. However, the home owners are indeed known to the state; their representatives approached the relevant authorities immediately after receiving warning notices of the demolitions. Al-Sura existed before the establishment of the state in 1948, following which the residents were not asked to leave the village; nor did the state attempt to seize the land.

*Example 2 – Umm al-Hieran:* In September 2006, the police began preparing to implement *ex parte* demolition orders issued by the Beer el-Sabe Magistrate Court on a number of houses in the unrecognized village of Umm al-Hieran. In October 2006, Adalah filed an initial motion to the Court against the state, demanding a delay in the implementation of the demolition orders<sup>25</sup> on behalf of six individuals, which the Court granted on 23 October 2006. Approximately 40 *ex parte* demolitions orders have been issued on houses in Umm al-Hieran, affecting almost all of the over 300 people living in the village. On 31 January 2007, Adalah submitted motions to the Beer el-Sabe Magistrate Court to cancel 35 of these orders. To obtain the orders, the state claimed that it could not determine the owners of the homes it planned to demolish. However, the state's claims are groundless, as it filed a lawsuit in April 2004 to evacuate and expel all of the village's residents. In the lawsuit it identified each building, its exact location and the names and identity numbers of the individuals living in each. Umm al-Hieran was established in 1956,

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<sup>25</sup> Beer el-Sabe Magistrate Court 9097/06, *Sabri Abu el-Qian, et al. v. The State of Israel* (filed 22 October 2006; pending).

during the period of the military government. At that time, the military governor ordered the village's residents to leave their homes in Wadi Zuballa to Umm al-Hieran.<sup>26</sup>

The land on which Umm al-Hieran sits has been earmarked for the construction of a larger Jewish settlement named "Hiran," in accordance with a report submitted by the ILA to the Prime Minister detailing initiatives for the establishment of 68 new settlements throughout Israel. The ILA report identifies a number of "special problems" that may affect the planning and establishment of the new Jewish settlement of Hiran, among which the Arab Bedouin inhabitants of Umm al Hieran and the neighboring unrecognized village of Atir appear. The establishment of the settlement of Hiran was approved by the National Council for Planning and Building on 9 April 2002 and by the government in its decision no. 2265 of 21 July 2002. The state's attempts to evacuate Umm al-Hieran and Atir are part of its efforts to create a Jewish village on the land-space, and clearly testify to the state's discriminatory and unjust land-allocation policies.

In such circumstances, the practice of issuing *ex parte* demolition orders results in violations of the right to housing on a non-discriminatory basis, as provided for by Article 5(e)(iii) of the ICERD, as well as the right to due process and to be heard. Further, as decisions are made over the future of houses, which provide shelter for families, without providing them with alternative housing, the state's attempt to make the families homeless constitutes a danger to the lives of these women, men and children, Palestinian Bedouin citizens of Israel.

Moreover, the practice contrasts sharply with the state's policy towards Jewish citizens of Israel living in the Naqab. The clearest examples of this discriminatory approach are the expansive ranches or so-called "individual settlements" in the Naqab region, through which the ILA and other state bodies have allocated vast parcels of land for the exclusive use of Jewish families. The state provides families living on such ranches with all necessary basic amenities, including electricity, water and connecting roads, often prior to obtaining the approvals required under the planning and building laws. In requesting these *ex parte* demolition orders, therefore, the state is discriminating against Arab Bedouin citizens of Israel on the basis of national belonging.

#### c. The State's Continued Refusal to Provide Access to Clean Drinking Water

The state is not providing thousands of Palestinian Bedouin families living in the Naqab with access to clean drinking water due to the unrecognized status of their villages. The clear aim of the denial of basic services such as water is to support the government's policy of seeking to relocate Arab Bedouin from their land to government-planned towns. This policy discriminates against Arab Bedouin citizens of Israel living in the Naqab on the basis of their nationality: individual Jewish families living on "individual settlements" in the Naqab, for example, are promptly connected to the water mains even in the absence of the necessary planning approvals for their dwellings.

Denying Arab Bedouin families in the Naqab of their basic right to water of the necessary quality and quantity exposes them to serious risks to their health and ultimately to their lives. Most of the residents of the unrecognized villages obtain water via improvised, plastic hose hook-ups or unhygienic metal containers, which transport the water from a single water point located on main roads located far from their homes, causing health risks and daily hardships. As a result of the poor quality of their drinking water, residents of the unrecognized villages are at risk of dehydration, intestinal infections and other diseases associated with poor hygiene,

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<sup>26</sup> As noted in Adalah's previous report to the Committee, in April 2004, the state filed 27 lawsuits to evacuate and expel all of the residents of the Umm al-Hieran and Atir, approximately 1,500 people. Adalah is representing the residents in these lawsuits, which also remain pending before the Beer el-Sabe Magistrate Court.

such as dysentery.<sup>27</sup> Refusing to provide these families with drinking water constitutes a violation of their basic right to dignity, which includes the right to an adequate standard of living and the right to health, as protected by Article 5(e)(iv) of the ICERD. Conditioning these rights on the application of a discriminatory governmental policy is illegal.

In November 2006, Adalah submitted an appeal to the Supreme Court<sup>28</sup> against a ruling delivered by the Haifa District Court (sitting as a Water Tribunal) in September 2006 that upheld prior decisions of the Water Commissioner not to provide water to hundreds of Palestinian Arab Bedouin families living in unrecognized villages. Adalah argued that the Water Tribunal based its decision to deny water access to Arab Bedouin families on the political issue of the “illegal” status of the unrecognized villages, ruling that it did not have the authority to interfere in considerations relating to how “Bedouin settlement” is regulated. These considerations are improper and arbitrary, and unconnected to the humanitarian issue of the unavailability of clean drinking water raised by Adalah. According to the Water Tribunal’s decision, therefore, the right to water is not absolute, but can be made conditional, in this case on a “clear” public interest “not to encourage cases of additional illegal settlement” by Arab Bedouin living in the unrecognized villages.

The appeal included data from a survey of drinking water quality carried out in the unrecognized Arab Bedouin villages in the Naqab located in the jurisdictional borders of the town of Arad, commissioned by the Ministry of Health’s Southern Division in 1999, which is still relevant today. According to the results of the survey, in the unrecognized villages in the Naqab there exist, “defective water-transportation systems ... neglected or defective water tankers, improvised and defective water pipes – and all of these factors provide a breeding ground for bacteria, viruses, parasites and algae, which can lead to diseases as a result of pollution.”

## **2. No Criteria to Determine Whether a Village Receives Official Recognition**

The State of Israel has no specific, objective criteria to determine whether a locality should be given recognized status. Further, there is no official process by which a community can apply for recognition. The latest National Master Plan, TAMA35, contains only general criteria for determining government policy on the building of new towns and villages, including that: a planning institute has been convinced that a new town or village should be established; its location is not in an area with high environmental or scenic sensitivity; and the plan for a proposed town or village should contain an estimation of its population over at least 20 years.

According to the policies of the Ministry of the Interior, government officials must inspect an unrecognized village to determine whether it should be recognized. However, the unrecognized Arab Bedouin villages in the Naqab have never undergone a professional, objective process of examination in accordance with the above criteria by the National Council for Planning and Building (NCPB) or any other governmental body. In practice obtaining recognition for an unrecognized village has only been accomplished at the political level, outside of the legal/planning processes by way of vigorous lobbying. By contrast, on many occasions decisions are made to establish Jewish settlements in contradiction to the planning and building laws and the criteria contained in TAMA35. For example, the “Wine Path Plan” to establish and retroactively recognize “individual settlements” in the Naqab contradicts the principles of TAMA35 in letter and spirit. The lack of conformity between the policy of “individual settlements”

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<sup>27</sup> Expert Opinion of Prof. Michael Alkan, Director of the Institute for Infectious Diseases, the Soroka Medical Center and the Faculty of Health Sciences, Ben-Gurion University, submitted with the appeal.

<sup>28</sup> C.A. (Civil Appeal) 9535/06, *Abdullah Abu Musa’ed, et al. v. The Water Commissioner and the Israel Land Administration* (filed 18 November 2006; pending). The appeal was submitted on behalf of six Palestinian Arab Bedouin citizens of Israel, representing 128 families.

and the official planning principles is evident from a letter submitted to the NCPB by a staff member of TAMA35:

The staff of National Master Plan TAMA35 think that there is great danger in the policy of individual settlements as a means to disperse the population and "seize land" which is not subject to planning control ... It should be emphasized that refraining from establishing new settlements as a planning policy is incorporated in the basic principles of National Master Plan TAMA35, so as to direct efforts towards the development and strengthening of the existing settlements, without diffusing effort and resources ...<sup>29</sup>

**Question 24:** Please provide information about the resources allocated by the Ministry of Education to each Arab student as compared to each Jewish student. Please also comment on the information according to which the psychometric examination used to test aptitudes, abilities and personality, indirectly discriminates against Arabs in accessing higher education. Please provide information on the implementation of the recommendations of the Dovrat Committee adopted by the government on 16 January 2005 (Periodic report, para. 480).

Adalah provided information on the issues of the allocation of resources to Arab and Jewish students and on the discrimination against Arab students entailed by the psychometric examination in its Initial Report (December 2005), pp. 26-30. Adalah would also like to draw the attention of the Committee to the following issue relating to the right to education.

#### **Drastic Fall in Numbers of Arab Medical Students at the Hebrew University in Jerusalem**

In recent years, medical schools in Israeli universities have limited and reduced the number of Arab students admitted to study medicine, by according greater weight in the admissions process to the result of a personal interview of the candidates conducted by the school. This change in admissions procedure led, for example, to a decrease of around 70% in the number of Arab students accepted to study the subject at the Hebrew University in Jerusalem in 2006, when only 16 Arab students were accepted, as compared to 2005, when 55 were accepted.<sup>30</sup>

Under the new admissions process, candidates are also appraised through interviews and role-playing sessions designed to test personal and psychological characteristics. According to a spokesperson for the university, the system had been changed to "improve the composition of the students who are accepted."<sup>31</sup> However, several factors lead to discrimination against Arab students in this process. The questions may be culturally biased towards Jewish students, for instance, and many Arab candidates cannot express themselves as fluently in Hebrew as their Jewish counterparts. The evaluation of students on the basis of questions over moral dilemmas faced by physicians discriminates against Arab students who do not serve in the army and therefore seek to enter university three years younger than Jewish candidates, and often with corresponding lower levels of emotional maturity and life experience. Thus, the new admissions process raises concerns that the aim is to exclude Arab students. In November 2006, the Minister of Education instructed Hebrew University's medical school to review its admission process following accusations that it was discriminating against Arab applicants.<sup>32</sup>

<sup>29</sup> Letter sent by Mr. Shami Asef to the National Council for Planning and Building, 22 July 1999.

<sup>30</sup> Tamara Traubmann, "Arab Students say Hebrew Univ. Med School Discriminates against Them," *Ha'aretz*, 2 November 2006.

<sup>31</sup> *Id.*

<sup>32</sup> Yoav Stern and Tamara Traubmann, "Hebrew Univ. to Review Application Process Deemed Discriminatory," *Ha'aretz*, 22 November 2006.

Regardless of the motivation behind the introduction of the new process, however, the result is a sharp fall in the numbers of Arab medical students at the university. Israel must ensure that such drops in the numbers of Arab students in its universities are redressed, in accordance with its obligations to eliminate racial discrimination in all its forms in the enjoyment of the rights to education and training under article of 5(e)(v) the ICERD.

**Question 25:** Please comment on the information that several laws establish Jewish cultural institutions but that none create similar centers for Arab citizens.

### **Discrimination in State Support for Cultural Institutions**

State support for cultural institutions reflects a strong bias against the Palestinian minority. No law concerning Arab Palestinian culture or heritage has been legislated by the State of Israel to help Arab citizens of Israel to realize their rights to culture and to participate in cultural activities on an equal basis with Jewish citizens. In addition, there is no law that establishes or recognizes existing independently-run Arab cultural or educational institutions, nor has the state devoted any resources to establishing an Arab university. By contrast, several laws have been enacted to support and encourage Jewish culture and to establish specific Jewish cultural institutions. *The High Institution for Hebrew Language Law (1973)* established a special institute to further develop the Hebrew language and to conduct academic research on the history of the Hebrew language. No institute was established by this law or any other to develop or conduct research on the Arabic language, although Article 82 of *The Palestine Order-in-Council (1922)*, which was subsequently adopted into Israel law, designates Arabic as an official language of the state in addition to the Hebrew. *The Law of Yad Yitzhak Ben-Zvi (1969)* and *The Law of Mikve Yisrael Agricultural School (1976)* define the aims of these institutions as, *inter alia*, the development and fulfillment of Zionist goals, and represent examples of the statutory recognition that may be afforded Jewish cultural and educational institutions.

A further two laws were enacted by the Knesset more recently: *The Museum of the Jewish Diaspora Law (2005)* and *The Council for the Promotion of Sephardi and Oriental Jewish Heritage Law (2002)*. The former law recognizes the Museum of the Jewish Diaspora as a national center for Jewish communities in Israel and around the world. The museum conducts research and gathers information on the history of Jewish communities. The law recognizes the museum as a national institution and ensures funding and resources allocation for its various activities, including research, documentation and collecting data and information on the communities of Israel and the history of the Jewish people, and providing education on Jewish heritage. The latter law aims to establish a 19-member council to provide advice for government ministers on the “Sephardi” and “Oriental” Jewish heritage and its preservation, and to promote cooperation among different bodies engaged with the “Sephardi” and “Oriental” Jewish heritage.

**Question 26:** Please provide more detailed information on the pending case before the High Court of Justice regarding the protection of holy sites. In particular, please indicate whether the Minister of Religious Affairs has set forth regulations in relation to holy sites of both the Jewish and non-Jewish population. Please also comment on the information that to date, approximately 120 places have been declared as holy sites, all of which are Jewish. (Per. report, § 50 and 300.)

### **Lack of Recognition for Muslim Holy Sites in Israel**

Adalah's Initial Report (December 2005, p. 4) discussed *The Protection of Holy Sites Law (1967)* and the government's issuance of implementing regulations solely for Jewish sites, as well as a petition that Adalah filed to the Supreme Court on 14 November 2004 on behalf of

Arab religious leaders in Israel to compel the government to issue regulations to protect Muslim sites in a manner similar to Jewish holy sites.<sup>33</sup> Adalah argued that the government's failure to issue regulations had resulted in the desecration and inappropriate conversion of Muslim holy sites.

On the same day that the petition was filed, the Supreme Court ordered the state to provide its initial response to the petition within 60 days. The state submitted numerous motions to delay. On 1 January 2006, the state announced to the Court that there is an inter-ministerial committee working on how to manage the holy sites, administratively and in terms of budget. The petition is still pending. The Court has rescheduled the initial hearing on the petition multiple times, and the hearing is currently set for May 2007.

When the petition was filed, 120 Jewish holy sites had been designated as such. There are now 135 designated holy sites according to the National Authority of Religious Services, *all* of which are Jewish. Thus from December 2004 to December 2006, the state has added 15 Jewish holy sites.<sup>34</sup>

**Question 27:** According to information before the Committee, the Civil Torts (Liability of the State) Law 2005, passed by the Knesset in July 2005, denies Palestinians living in the Occupied Palestinian Territories the right to compensation for any wrongs committed against them by Israeli security forces. Please report on the compatibility of such measure with the principle of non discrimination.

#### **Annulment of the No-Compensation Law**

On 11 December 2006, in a landmark decision, the Supreme Court of Israel cancelled the amendment to the Civil Wrongs (Liability of the State) Law (2005), deciding that Israel cannot exempt itself from paying compensation to Palestinians in the OPTs who have been harmed by the Israeli military. The decision was delivered unanimously by an expanded nine-justice panel, and partially accepted a petition filed against the law by nine human rights organizations, including Adalah, on 1 September 2005.<sup>35</sup> In its ruling, the Court rejected the state's arguments that each party must bear the costs for its own damages: the State of Israel bears the costs of damages sustained by its citizens, and the Palestinians will carry the burden for damages incurred by Palestinians. As the petitioners argued, this sweeping principle not only has no basis in international law, but also relies on the assumption of equivalence in power between the Israelis and Palestinians, as two independent states, or at least two political entities, with no relationship of domination and subordination. This logic, however, ignores the clear and obvious reality that the relationship between the two sides is that of an occupying power and a protected population under occupation, and that the occupying power is obliged to apply the norms of international human rights and international humanitarian law, and afford protection to civilians in the OPTs.

As a result of this decision, Palestinians who have been injured or killed or who have sustained property damage, outside the context of a so-called combat situation, at the hands of the Israeli

<sup>33</sup> H.C. 10532/04, *Adalah et al. v. The Prime Minister et al.* (filed 21 November 2004; pending)

<sup>34</sup> A list of the sites in Hebrew is available at: <[http://www.religions.gov.il/list\\_holy\\_places.htm#top](http://www.religions.gov.il/list_holy_places.htm#top)> See also, The Arab Association of Human Rights, "Sanctity Denied: The Destruction and Abuse of Muslim and Christian Holy Places in Israel," (December 2004), available at:

<<http://www.arabhra.org/publications/reports/index.htm>> (reporting that some 250 non-Jewish places of worship were destroyed during or since the 1948 war or made inaccessible to Arab citizens of Israel).

<sup>35</sup> H.C. 8276/05, *Adalah, et al. v. The Minister of Defense, et al.* (filed 1 September 2005; decision delivered 11 December 2006). The petition was submitted by HaMoked, Adalah, ACRI, Al-Haq (West Bank), PCHR-Gaza, B'Tselem, PHR-Israel, PCATI, and Rabbis for Human Rights.

military since September 2000 can again submit tort cases for compensation in Israeli courts. While welcoming the Court's cancellation of this racist law, Adalah foresees a further legal battle over the question of what the scope of combat operations is.

The Supreme Court's decision stated that the law exempts the state from liability in tort for any damages caused by the security forces, even though these damages do not fall within the context of combat operations; that the law exempts the state from tort liability in circumstances which have nothing to do with security; that it violates rights disproportionately – the basic rights to life, dignity, and property of Palestinians in the Occupied Territories.

However, the Supreme Court also decided not to strike down another provision of the law that provides that Israel does not have to pay compensation for damages caused in military operations since September 2000, for "a citizen of an Enemy State" or "an activist or member of a Terrorist Organization." The Court left this provision intact but open for future legal challenges, ruling that the petitioners did not bring enough factual material before the Court concerning the applicability of this provision. Therefore, in the future, individuals can bring cases before the Israeli courts to challenge the constitutionality of this provision.

### **Additional Information for the Attention of the Committee**

#### **1. Travel Ban on Author, Literary Critic and Translator Mr. Antwan Shalhat**

Antwan Shalhat, a Palestinian citizen of Israel, is a prolific author, a renowned literary critic, a skilled translator of Arabic and Hebrew literature, and a journalist. He was also an editor for the *Al-Ittihad* and *Fasl al-Maqal* newspapers. In December 2005, the Israeli Interior Minister issued orders pursuant to the Emergency Regulations (Leaving the Country) – 1948 prohibiting him from leaving the country for one year on the ground that his leaving the country might create a threat to the security of the state. Mr. Shalhat had no intention or plan to travel abroad. The ban is in breach of Mr. Shalhat's right, as protected by Article 5(d)(ii) of the ICERD, to leave any country, including his own.

Adalah petitioned the Supreme Court on 21 January 2006 on behalf of Mr. Shalhat to cancel the travel ban.<sup>36</sup> Adalah presented two main arguments, among others: (1) Mr. Shalhat poses no threat to the state's security, and therefore banning him from traveling abroad violates his constitutional right, under Israeli law, to leave the country, and is a breach of Israel's obligations under Article 12 of the ICCPR, which also protects this right. The nature of the danger allegedly posed by Mr. Shalhat is extremely questionable, particularly since he was not summoned for investigation or interrogation by any authorities before the travel ban was imposed; and (2) the Interior Minister violated Mr. Shalhat's rights to due process, as the orders were issued without affording him a hearing and were based on classified information or "secret evidence", making it impossible to challenge the accusations against him. Adalah also submitted two affidavits in support of Mr. Shalhat from acclaimed Israeli novelist Sami Michael ("I think that Antwan, through his translation of Hebrew work into Arabic and his public activities, has made a notable contribution to the understanding, closeness, tolerance and friendship between these two peoples: the Israeli and the Palestinian"), and Israel Prize Laureate Prof. Sason Somekh, an expert on Arabic language and literature ("Through his work, he [Antwan] plays an important role in the creation of dialogue between the two cultures").

In March 2006, the Supreme Court held a hearing on the petition, at which Adalah vehemently challenged the ease with which the Interior Minister and the General Security Services (GSS or *Shabak* in Hebrew) restricted Mr. Shalhat's basic rights and freedoms, using arbitrary powers

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<sup>36</sup> H.C. 841/06, *Antwan Shalhat, et al. v. The Minister of the Interior* (filed 21 January 2006; withdrawn 27 March 2006).



and relying on “secret evidence,” and asserted that such a ban would not be imposed in this manner in the case of a Jewish journalist of Mr. Shalhat’s professional standing. After Adalah presented its arguments, the Supreme Court held a closed session with representatives of the state and the GSS, from which Adalah and Mr. Shalhat were excluded. Shortly thereafter, the Court recommended that the petition be withdrawn. The petitioners withdrew the petition, as they were prevented from challenging the “secret evidence”. Commenting on the Supreme Court’s position, Mr. Shalhat stated that, “The clear impression is that the GSS dominates all that which is connected to the rights and freedoms of Arab citizens of Israel. Arbitrariness and lack of integrity are bywords for the GSS, as they are for any shadowy regime.”

In December 2006, the Interior Minister notified Mr. Shalhat that he was extending the travel ban until 15 January 2007, and that he may extend it for an additional nine months based again on “secret evidence” presented by the security agencies. Adalah responded to the letter, on behalf of Mr. Shalhat, asking that the order be cancelled and that it not be extended as it violates Mr. Shalhat’s rights, and that all of the information relied upon by the Interior Minister be “de-classified” and given to Mr. Shalhat. In January 2007, the Interior Minister extended the travel ban order until 30 September 2007, stating that the information provided by the security agencies is credible and shall not be revealed to Mr. Shalhat for security reasons, and that the need to prevent harm to the state’s security outweighs Mr. Shalhat’s arguments.

## **2. Racial Profiling**

### a. Airports

In June 2006, Adalah learned of new directives reportedly issued by the General Security Services (GSS or the Shabak) barring Arab citizens of Israel from traveling on internal flights operated by the Israeli airline “Tamir Flights”, allegedly due to the unavailability of machinery for scanning travelers’ luggage. Adalah, in a letter to the Prime Minister and the Minister of Transport, demanded that the new directives be immediately annulled, and that directives and guidelines for the conduct of searches at airports, which the aviation authorities have thus far refused to publish, should be made available. Adalah argued that the directives are based on racist criteria and constitute collective and illegal discrimination in their blatant targeting of Arabs as a permanent security threat solely on the basis of their national belonging. Adalah emphasized that the state’s insistence on defining Arab citizens as “potential assailants” purely because of their national belonging is a form of collective punishment, which contradicts the basic principles of Israeli and international law, and encourages and perpetuates hatred and hostility towards them from mainstream Israeli society. In June 2006, the airline stated that Arab citizens had been allowed back on its flights after the machinery had been repaired. After receiving the state’s reply that the issue had been resolved, Adalah replied in July 2006 demanding a clear position from the state on the legal arguments raised by the case.

The routine discrimination which Arab citizens of Israel endure at every airport in Israel has been revealed through the complaints regularly filed by Arab air passengers.<sup>37</sup> For example, on 16 November 2006, Prof. Nadera Shalhoub-Kevorkian, a Palestinian citizen of Israel who lectures in Criminology at the Hebrew University faced a humiliating and degrading ordeal at Ben-Gurion International Airport in Israel while trying to board a flight to Tunisia to attend an academic conference on women’s rights. Prof. Kevorkian’s taxi was searched for almost 40 minutes continuously upon arrival at the airport. After entering the airport several security personnel searched her suitcase, computer case and handbag. All of her personal belongings were strewn along a long counter. One of the security guards made degrading comments about her underwear in Hebrew. Her reading materials for the conference were scattered on the floor. During the process, she was not allowed access to her mobile cell phones. Prof. Kevorkian was

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<sup>37</sup> The Arab Association for Human Rights and the Centre Against Racism, “Suspected Citizens: Racial Profiling Against Arab Passengers by Israeli Airports and Airlines,” December 2006, available at: <http://www.arabhra.org/publications/reports/index.htm>

then told that she would not be allowed to take her laptop onto the flight with her. She asked to speak to the superior officer, who confirmed that she was not permitted to do so, even after she explained that it was crucial in order for her to prepare for the conference and that she was concerned about it being stolen. The superior officer spoke abrasively and sarcastically to her. As a result of her insulting experience, Prof. Kevorkian suffered chest pains, dizziness and feelings of nausea, as well as humiliation. She did not board the flight or attend the conference. No mention was made to her at any time of suspicious objects having been found in her possession. Adalah is representing Prof. Kevorkian.

b. Conditioning the Entry of Arab Activists to the Hebrew University on Presentation of “Character References” Based on Criminal Records

In October 2006, Adalah learned from representatives of the Alternative Information Center (AIC) that the Hebrew University in Jerusalem had conditioned the entry of Arab visitors on the presentation of a “character references”. The AIC was informed of this policy by the “Intilict” private security company after submitting an application to set up a publications stall at the university, at which a number Arab activists were supposed to work. The company, which was approached by the Hebrew University’s Students’ Union regarding the AIC’s request, stated that, “Each participant who will enter the Hebrew University and who is a **minority member** is required to present a character reference” [emphasis added]. To date, contrary to the claim of the University’s Legal Advisor, only Arab individuals have been asked to produce character references in order to enter the campus. Furthermore, according to the AIC, a telephone inquiry to the security unit of Hebrew University revealed that directives actually exist conditioning the entry into the University of an Arab individual, and not any other person, on the presentation of a character reference. These directives constitute blatant racial discrimination, which is a grave violation of the ICERD. Entry to the Hebrew University, an institution of higher learning which also provides services to the general public, must be granted without discrimination based on race or any other “suspect class” categorization of individuals. On behalf of the AIC, Adalah sent a letter in October 2006 to the university demanding that the racist and discriminatory directives be cancelled.

**3. Appointment of Far-Right Politician Avigdor Lieberman as Minister for Strategic Threats and Deputy Prime Minister**

In October 2006, with the support of Prime Minister Ehud Olmert, the Knesset approved the appointment of far-right politician MK Avigdor Lieberman of the *Yisrael Beiteinu* (Israel Our Home) political party as Minister for Strategic Threats and Deputy Prime Minister. An editorial article published by *Ha’aretz* on 24 October 2006 stated that: “The choice of the most unrestrained and irresponsible man around for this job constitutes a strategic threat in its own right.” Due to the appointment of Lieberman, however, only one MK, Ophir Pines-Paz of the Labor Party, resigned from his position as Minister of Science, Culture and Sport. With this appointment, *Yisrael Beiteinu*, which currently holds 11 seats in the Knesset, moved from the opposition to the *Kadima*-led coalition government. Lieberman, who lives in a settlement in the West Bank, is a staunch opponent of any peace process or the granting of any territorial concessions to the Palestinians, and has most notoriously advocated for the “transfer” of Palestinian citizens of Israel from the country. According to Lieberman’s plan, the “Wadi Ara” area in the center of Israel, which is densely populated by Palestinian citizens of the state, would be transferred to the Palestinian Authority (PA), and Israel would annex major Jewish settlement areas in the West Bank. Under the plan, roughly one-third of Palestinian citizens of Israel would be stripped of their citizenship, and a “loyalty test” would be required of those who wished to remain. In addition, Palestinian citizens of Israel committed to making Israel “a state of all its citizens” would be stripped of their rights to vote in elections. In May 2006, during a speech in the Knesset, Lieberman called for the execution of any Arab MK who holds meetings with representatives of the PA’s Hamas-led government.