

Adalah The Legal Center for Arab Minority Rights in Israel

عدالة المركز القانوني لحقوق الأقليات العربية في إسرائيل
עזאלה המרכז המשפטי לזכויות המיעוט הערבי בישראל



Israel's Human Rights Violations as a Breach of its Obligations Under the EU-Israel Action Plan Paper Submitted to the European Parliament's Sub-Committee on Human Rights, 19 June 2006

The discriminatory laws and policies which are discussed in this paper demonstrate Israel's severe violations of human rights, which are a fundamental component of the European Neighbourhood Policy and the EU-Israel Action Plan, as well as a severe breach of Israel's obligations under the EU-Israel Association Agreement, in particular Article 2, which provides that, "Relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles, which guides their internal and international policy and constitutes an essential element of this Agreement."

**The Nationality and Entry into Israel Law (Temporary Order) 2003:
Threat to Citizenship Status of Palestinian Citizens of Israel**

The Nationality and Entry into Israel Law [hereafter: the law], enacted in July 2003, denies Palestinian citizens of Israel the right to acquire any status in Israel for their spouses from the OPTs solely on the basis of their national belonging. Since the enactment of the law, which anchors into law a Cabinet decision from May 2002, it has forced thousands of families to separate, live outside of Israel, or live illegally within Israel under constant risk of arrest and deportation. Adalah filed a petition to the Supreme Court of Israel in August 2003,¹ challenging the constitutionality of the racist law and demanding its cancellation.

The Knesset has extended the law three times, despite its definition as a "temporary order." Amendments to the law, enacted in July 2005, provide very limited exceptions to its sweeping applicability and fail to remedy its severe infringements of rights protected by international human rights law and Israeli domestic law. The amendments allow individuals to apply at most for temporary visit permits in Israel, still barring applications for residency and citizenship, leaving them ineligible for work permits, social benefits, etc. The amendments also impose additional arbitrary criteria including age and gender-related stipulations which sweepingly ban applications for temporary visit permits from all Palestinian men under 35 and all Palestinian women under 25 years of age. A further amendment provides that no status will be granted to Palestinians related to an individual whom security officials suggest *might constitute* a security threat to the state. Thus, the most basic of human rights can be revoked purely on the basis of family relations.

Adalah has repeatedly challenged the state's claim that the law was enacted as a justified security measure. The state claims that the law is an essential security measure because Palestinians from the OPTs who have obtained residency status in Israel via family unification "have been increasingly involved in terror activity." However, the state could point to only 25 individuals, from a group of many thousands of status-receivers, whom it interrogated for alleged involvement in terror activity, without providing full details. Adalah responded that, even if reliable, the numbers constitute a minute number of people, and thus the law is completely disproportionate. Further, the state has at its disposal many other tools and mechanisms, which grant the government wide authority to conduct criminal and security checks on all status-seekers.

¹ See, H.C. 7052/03, *Adalah, et. al., v. Minister of Interior, et. al.* The petition was filed in Adalah's own name and on behalf of two families affected by the law, the Chairperson of the High Follow-up Committee for the Arab Citizens in Israel, and eight Arab Members of Knesset.

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On 14 May 2006, almost three years since the enactment of the law, a 6-5 majority of the Supreme Court dismissed the petition filed by Adalah and six other petitions joined to it by the Court. Although a majority of the Justices agreed with Chief Justice Aharon Barak that the law disproportionately violates the right of Israeli citizens to family life and human dignity and the right of Arab citizens to equality, only five of the Justices gave the legal remedy of revoking the law. Thus, the Court failed in its most important task: to protect against the violation of human rights and to provide a legal remedy to injured individuals.

The law severely violates human rights and fundamental freedoms under domestic and international law, including the rights to equality, liberty, privacy, and family life, as protected by, *inter alia*, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Universal Declaration of Human Rights (UDHR), the International Convention on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of Discrimination Against Women (CEDAW). The law blatantly violates the right to equality through its discrimination against Palestinian citizens of Israel, the vast majority of Israeli citizens who marry Palestinian from the OPTs. It is discriminatory against Palestinians from the OPTs since it does not apply to Jewish settlers in the OPTs or the spouses of Israeli citizens who are residents of any other place. Moreover, international human rights law particularly prohibits discrimination relating to nationality and ethnic origin with regard to the right to citizenship, in particular Articles 1.3 and 3 of the ICERD. The law also violates provisions of the UDHR, ICESCR, ICCPR, CRC and CEDAW affording special protection to the family as the fundamental unit of society.

Following the enactment of the law, in September 2003, the European Parliament stated that it, “Condemns the approval by the Knesset of a draft law prohibiting Palestinians from obtaining Israeli citizenship by marriage; calls on the Israeli government not to ratify or apply this discriminatory and racist law.”² In August 2003, the European Commission noted that the law “establishes a discriminatory regime to the detriment of Palestinians in the highly sensitive area of family rights.”³ Various UN committees have also condemned the law and called on Israel to revoke the ban on family unification, including the UN Human Rights, CERD and CEDAW Committees. International human rights organizations the International Federation for Human Rights, Amnesty International, Human Rights Watch and the International Commission of Jurists have all also condemned the Supreme Court’s decision not to revoke the legislation.

For over four years, since the Cabinet decision of May 2002, this racist legislation has compelled thousands of couples to live separately, thousands of children to lived cut off from one of their parents, and many families to live together secretly under constant fear of expulsion. This law is the most racist legislation in the State of Israel; in 1980, for example, a South African court during Apartheid refused to approve orders similar to the law, as they breach the right to a family. As the Supreme Court did not to revoke the law, these families have been left without an effective legal remedy, and the international community now bears a grave responsibility to seek to secure an effective legal remedy for the families damaged by this law.

Culture of Impunity

A. The No-Compensation Law

In July 2005, the Knesset passed new amendments to the Civil Wrongs (Liability of the State) Law - 2005, which prevent Palestinians from obtaining compensation from Israel for damages caused to them by the Israeli security forces, even those inflicted outside of the context of a military operation (with minor exceptions). The amendments deny residents of the OPTs, citizens of “Enemy States,” and activists or

² *European Parliament resolution on human rights in the world in 2002 and European Union's human rights policy* (2002/2011(INI)), para. 40.

³ European Commission, Delegation of the EC to the State of Israel, Press Release, 4 August 2003.

members of “a Terrorist Organization,” the right to sue Israel in Israeli courts. The amended law grants the Minister of Defense the authority to proclaim any area outside the State of Israel a “Conflict Zone,” even if no war-related activity has taken place there, thereby denying those who sustain injury within the area the right to seek compensation from Israeli courts. The law operates retroactively in cases of damages sustained since 29 September 2000, the beginning of the Second Intifada, and for pending claims.

On 1 September 2005, Adalah and eight other human rights organizations in Israel and the OPTs filed a petition to the Supreme Court⁴ demanding that it declare the new amendments void. The petitioners argued that the law grossly violates fundamental principles of international humanitarian law and international human rights law, which apply in the OPTs. It also breaches basic rights in contravention of Israel’s Basic Law: Human Dignity and Liberty, and is therefore unconstitutional. The law sends out a dangerous message that the lives and rights of those injured in a “Conflict Zone” have no value, as the courts will not come to their aid, and those who caused their injuries will face no punishment. As a result, the law is both immoral and racist. The law *de facto* terminates the monitoring of the Israeli military’s activities in the OPTs, discourages investigations and bringing those responsible for cases of death or injury before the courts, including in cases in which damages were caused by random or deliberate opening of fire, torture and abuse, and looting and theft of civilian property. The law thus violates the fundamental rights to life, bodily integrity, equality, dignity and property, and the constitutional right of access to the courts.

The law’s initiators claim that each party must bear the costs for its own damages: Israel for damages sustained by its citizens and the Palestinians for damages incurred by Palestinians. This is a sweeping statement that not only has no basis in international law, but also relies on the assumption of equivalence in power between the Israelis and Palestinians, which clearly ignores the reality that the relationship between the two parties 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 humanitarian law and international human rights law, and afford protection to the civilians in the occupied territory. The Supreme Court denied a motion for injunction filed with the petition to prevent the implementation of the law pending a decision on the petition, leaving affected victims without an effective legal remedy. The first hearing on the case will be heard in July 2006, following repeated requests made by the state for its postponement.

B. The Or Commission – Mahash’s Investigations

In November 2000, the Israeli government established the official Or Commission of Inquiry to investigate the tragic causes and circumstances of the killing of 13 unarmed Palestinian citizens of Israel by security forces and injury of hundreds of others during protest demonstrations in October 2000. The Or Commission’s final report, issued in September 2003, recommended that the Ministry of Justice Police Investigation Unit (“Mahash”) investigate the killings. The Commission found no justification for opening fire, deemed the use of live ammunition and snipers unjustified in every instance, and found chief police commanders responsible for the unjustified use of excessive force. In September 2005, Mahash released its final report of the investigation, in which it failed to determine responsibility for the deaths: Mahash recommended that no indictments be issued against any police officer or commander. As Adalah, the legal representative of the families of the deceased argued, Mahash’s report clearly contradicts and ignores the Or Commission’s central findings regarding responsibility for the deaths. Numerous Israeli political leaders, academics, legal scholars and media outlets strongly criticized Mahash’s report. On 27 March 2006, Professor Phillip Alston, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary

⁴ See, H.C. 8276/05, *Adalah, et. al. v. The Minister of Defense, et. al.* The petition was submitted by HaMoked, Adalah, ACRI, Al-Haq, The Palestinian Centre for Human Rights, B’Tselem, Physicians for Human Rights, The Public Committee Against Torture in Israel, Rabbis for Human Rights.

Executions, issued his report to the 62nd Session of the Commission on Human Rights,⁵ raising concerns over Israel's failure to properly investigate the fatal shootings during October 2000.

Prof. Alston challenged Mahash's claims that it had closed the investigation because individual cases either lacked sufficient evidence or that the circumstances of the case called for the degree of force used by police officers, and that the lack of sufficient evidence in certain cases was due to the lack of cooperation of the victims' families. Prof. Alston points out that, in certain cases, the Or Commission presented sufficient evidence to warrant an indictment. Prof. Alston stated that the behavior of police officers and commanders during the demonstrations and Israel's failure to properly investigate the killings runs contrary to Article 3 of the UNDHR, Article 6 of the ICCPR, and Principle 9 of the UN Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions.

In a letter sent to the government in September 2005, Prof. Alston insisted that the victims' families be provided with the right to challenge the decision and asked for the state to respond regarding how it intends to proceed with the appeal. In its response to the letter, in January 2006, the state reported on its decision to assign the Deputy State Attorney the responsibility of re-examining Mahash's decision to close the investigations. Adalah notes that the state failed to mention Attorney General (AG) Menachem Mazuz's inappropriate public endorsement of Mahash's report, which undermines his objectivity in this regard. Further, Adalah notes that the impartiality of the Deputy State Attorney is questionable as his supervisor, Eran Shendar, was the Director of Mahash during October 2000 and bears the main responsibility for Mahash's omissions and failures to investigate the killings immediately after the events.⁶ It is Adalah's position that the victims' families and the entire Israeli public are entitled to an impartial, thorough investigation, and that Israel must hold those responsible to account and bring them to justice.

Arab Bedouin in the Naqab (Negev): Land and Planning

Over the last three years, the government has reinforced efforts to alter the demographic reality on the ground in the Naqab region in the south of Israel. This "new generation" of policies being implemented by the state represents a strategic innovation in Israel's attempts to minimize the amount of land held by Palestinian citizens of Israel. Over the years, the state applied indirect pressure on the community by simply not providing basic infrastructure and services to the unrecognized Arab villages in the Naqab (and continues to do so). Today, however, the government also seeks to directly and collectively re-locate and concentrate the Arab Bedouin living in the unrecognized villages in a select number of recognized towns and to encourage intensive Jewish settlement of the remaining area.

Whilst increasing Jewish settlement in the Naqab has also long been on the agenda of Israeli governments, policy changes elsewhere (e.g., the disengagement from Gaza and parts of the northern West Bank, the Separation Wall, etc.) are likely to be contributing to the intensification of current efforts (e.g., increasing numbers of home demolitions and evacuation orders,). In this climate of transition, the land rights of Arab Bedouin citizens of Israel living in the Naqab are especially vulnerable. Two cases are illustrative:

(1) In April 2004, the state issued civil lawsuits to evacuate the 1,500 residents of the unrecognized Bedouin village of Atir-Umm Al-Hieran. Adalah is representing the residents in 27 evacuation lawsuits.⁷ In February 2005, Adalah sent a letter to the AG, Interior Minister and Minister of Industry, Trade and Labor, demanding the cancellation of the 27 lawsuits, and the recognition of the village in the regional planning for the area. In these cases, the state is requesting that evacuation orders be issued against the villagers,

⁵ Available at <<http://www.adalah.org/intladvocacy/2005UNSpecRapp.pdf>>

⁶ For more information see, *Adalah's Newsletter*, Special Edition, Volume 17, September 2005. Available at <<http://www.adalah.org/newsletter/eng/sep05-s/sep05-s.html>>

⁷ Civil File 3326/04, *The State of Israel and the Israel Lands Administration v. Ibrahim Farhood Abu el-Qian, et. al.* (Beer el-Sabe Magistrate Court) (+ legal representation on 26 additional civil files).

based primarily on the claim that they are using state land without permission and need to be prevented from using it in the future. The residents of Umm al-Hieran and Atir were forced by order of the Military Government to move to their present location in 1956. Numbering over 1,000 persons, the residents of the village had previously lived in Wadi Zuballa, which now lies within the jurisdiction of a kibbutz. The residents received no warnings letters, evacuation or demolition orders before 1 July 2003. In April 2004, almost fifty years after the establishment of the village, they were sent evacuation orders on the pretext that they are illegally residing on state-owned land. Some even received demolition orders. A preliminary hearing in the civil suits was held in June 2005 before the Beer el-Sabe Magistrate Court.⁸

(2) On 30 March 2006, Adalah submitted a petition to the Supreme Court⁹ against the National Council for Planning and Building (NCPB) and the Israel Land Administration, demanding the cancellation of the “Wine Path Plan.”¹⁰ The plan seeks to establish expansive ranches or “individual settlements” in the Naqab for Jewish citizens on tens of thousands of dunams of land, and to prevent the use and development of the land by Arab citizens of Israel. Individual families generally live in the settlements, often without permits and in violation of planning and building laws and regulations. The plan involves the inequitable distribution of vast and lucrative portions of land in the Naqab, without clear, objective criteria; prevents equal access to the land for the entire population of the region; is not based on factual data about the local Bedouin population; and, by retroactively legalizing the seizure of “state lands,” is unconstitutional. Fifty-nine individual settlements currently exist in the Naqab, stretching over more than 81,000 dunams of land.

The plan seeks to establish thirty individual settlements by retroactively legalizing existing settlements and allowing for the construction of new ones. The state’s approach to individual settlements stands in stark contrast to its policy toward the unrecognized villages in the Naqab. While individual settlements are afforded official status and provided with all basic services, at the public expense,¹¹ the unrecognized villages are denied this status and its inhabitants forced live without basic services, including connections to the municipal water supply, electrical and telecommunication networks, and access roads. Many individual settlements are located in close proximity to unrecognized villages, in which tens of thousands of Arab citizens of Israel live in dire socio-economic conditions as a result of the state’s discriminatory policies. Therefore, the plan severely violates the fundamental rights of Arab citizens living in the Naqab, opposing the principles of equality, justice in land allocation and sustainable development.¹² The petitioners emphasized that the planners of the National Master Plan (TAMA 35) have objected to the establishment of individual settlements.¹³ The petitioners further contended that the plan’s purpose is dehumanizing and indicative of the state’s view of Arab citizens living in the Naqab as a “problem” for which it seeks to implement “solutions” through discriminatory planning policies designed to promote their marginalization.

In light of the above, Adalah calls upon the European Parliament to urge Israel to:

- Revoke the aforementioned discriminatory laws and policies;
- Abide by its obligations under international human rights law and international humanitarian law;
- Respect its commitments with regard to the EU-Israel Association Agreement and the principles of the European Neighbourhood Policy.

⁸ For more information see, Hana Hamdan, Adalah Urban and Regional Planner, “The Policy of Settlement and ‘Spatial Judaization’ in the Naqab,” *Adalah’s Newsletter*, Vol. 11, March 2005. Available at <<http://www.adalah.org/newsletter/eng/mar05/mar05.html>>

⁹ H.C. 2817/06, *Adalah, et. al. v. The National Council for Planning and Building, et. al.*

¹⁰ *Regional Master Plan TAMAM 4/14/42: Partial District Master Plan for the Southern District – Amendment No. 42.*

¹¹ The State Comptroller raised the state’s inappropriate actions in his audit and Annual Report No. 50b, 2000.

¹² For more information see, Hana Hamdan, Adalah Urban and Regional Planner, “Individual Settlement in the Naqab: The Exclusion of the Arab Minority,” *Adalah’s Newsletter*, Vol. 10, February 2005. Available at <<http://www.adalah.org/newsletter/eng/feb05/fet.pdf>>

¹³ The planners submitted an expert opinion to the NCPB on 20 July 1999.