

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



26 November 2006

Ms. Louise Arbour
UN High Commissioner for Human Rights
Office of the High Commissioner for Human Rights
UNOG-OHCR
1211 Geneva 10
SWITZERLAND

Re: Five Key Issues of Concern - Palestinians in Israel and the OPTs

Dear High Commissioner,

On the occasion of your recent visit to Israel/Palestine, we would like to take this opportunity to present you with information regarding legal developments related to the human rights of the Palestinian Arab minority in Israel. While Adalah's cases before the Israeli courts deal with many issues of discrimination against Palestinian citizens of Israel, we would like to draw your attention in this letter to five specific issues, four of which relate to Palestinians in Israel, and one to Palestinians in the 1967 Occupied Palestinian Territories (OPTs). We also request your continued involvement in and investigation into these matters, in your capacity as the UN High Commissioner for Human Rights.

Background: Palestinian Arab citizens of Israel are an indigenous group who became a national, ethnic, linguistic, and religious minority in their homeland following the establishment of the state of Israel in 1948. Arab citizens of Israel are a part of the Palestinian people who also live in the West Bank, Gaza Strip and the Diaspora. Arab citizens comprise approximately 20% of Israel's total population, numbering over a million people, who live predominantly in villages, towns, and mixed Arab-Jewish cities in the Galilee region in the north, the Triangle area in central Israel, and in the Naqab (Negev) desert in the south. Israel has not sought to assimilate or integrate the Arab population, and has treated them as second-class citizens, marginalizing or excluding them from public life. More than 20 discriminatory laws currently operate against Arab citizens, and government policies often lead to *de facto* discrimination.

1. The Nationality and Entry into Israel Law: Threat to Citizenship Status of Arab Citizens of Israel

The Nationality and Entry into Israel Law (2003), denies Palestinian citizens of Israel the right to acquire any status in Israel for their spouses from the OPTs on a discriminatory basis, 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, challenging the constitutionality of the racist law and demanding its cancellation. Adalah argued that the law severely violates human rights and fundamental freedoms under domestic and international law, including the rights to equality, liberty, privacy, and family life, and is completely disproportionate to the alleged security concerns used to justify its enactment. 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. Various UN human rights treaty bodies 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. On 14 May 2006, a 6-5 majority of the Supreme Court rejected the petition and six other petitions joined to it. Significantly, six Justices accepted the petitioners' argument that the law disproportionately violates the constitutional rights to family life and equality, including former Chief Justice Aharon Barak and current Chief Justice Dorit Benisch, but only five justices voted to revoke 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

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individuals. The government is planning to submit a new comprehensive bill on citizenship in the coming months, which will also address the issue of family unification. Adalah is monitoring developments concerning this expected legislation.

For more information, see: "6-5 Majority of Supreme Court Approves Most Racist Law in State of Israel, Preventing Families' Unification on the Basis of National Belonging: Arab-Palestinian"

<http://www.adalah.org/eng/pressreleases/pr.php?file=06_05_14>

and: "Adalah's Initial Comments on the Supreme Court's Ruling on the Nationality and Entry into Israel Law" <<http://www.adalah.org/newsletter/eng/may06/1.pdf>>

2. Culture of Impunity: Mahash's Failure to Investigate and Criminally Prosecute Police Officers and Commanders Responsible for the October 2000 Killings

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 recommended no indictments against any police officer or commander. Further, the report clearly contradicts and ignores the Or Commission's central findings regarding responsibility for the deaths. Prof. Philip Alston, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, in his report to the 62nd Session of the Commission on Human Rights, cited from a letter he sent to the Israeli government in September 2005 that, "Five years after the fatal shooting of 13 Arab men by Israeli police forces and after a commission of inquiry set up by your Excellency's Government concluded that the use of force in these cases had been excessive, a decision has been taken by the Government not to hold anyone accountable for their deaths." The letter insisted that families be provided with the right to challenge the decision and asked for the state to respond regarding how it intends to proceed. In October 2006, after examining thousands of pages of documents and other evidentiary material presented to the Or Commission and collected by Mahash, Adalah, the legal representative of the families of the deceased, submitted a comprehensive report, entitled "The Accused," to the Attorney General. 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. Correspondence between Adalah and the Attorney General is continuing in this case.

See: "Adalah Submits "The Accused" and Demands Investigation into "Mahash" for Breach of Trust and Damaging Public Confidence"

<http://www.adalah.org/eng/pressreleases/pr.php?file=06_10_15>

and: "Summary of the Findings and Conclusions of Adalah's 'The Accused' Report"

<<http://www.adalah.org/features/october2000/accused-s-en.pdf>>

3. Culture of Impunity: 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 the OPTs from obtaining compensation from Israel for deaths, injuries or other 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 members of "a Terrorist Organization," the right to sue Israel in Israeli courts. The amended law grants the Defense Minister 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 Israel. In addition, the law operates retroactively for damages sustained since the beginning of the Second Intifada on 29 September 2000,

and for pending claims. In September 2005, Adalah, HaMoked, and the Association for Civil Rights in Israel together with five other Palestinian and Israeli organizations petitioned the Supreme Court demanding that it declare the new amendments void, arguing that the law grossly violates fundamental principles of international humanitarian law and international human rights law, which apply in the OPTs, and is unconstitutional. The law is immoral and racist, as it sends out a dangerous message that the lives and rights of Palestinians injured in a "Conflict Zone" are valueless, as the courts will not assist them, and those responsible will go punished. The law also *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 of random or deliberate opening of fire, torture and abuse, and looting and theft of civilian property, thereby violating the fundamental rights to life, bodily integrity, equality, dignity and property, and the constitutional right of access to the courts. The Supreme Court, by an expanded panel of 9 justices, will issue its decision on the case in December 2006.

See: "Israeli High Court of Justice, in an Expanded Panel of Nine Justices, to Hear Petition Filed by Nine Human Rights Organizations: Cancel Law Preventing Palestinians from Filing Claims for Damages against the State" <http://www.adalah.org/eng/pressreleases/pr.php?file=06_08_29-1>

4. Home Demolitions in the "Unrecognized" Arab Bedouin Villages in the Naqab

Over the last few years, Israel has reinforced efforts to alter the demographic reality in the Naqab (Negev) region in southern Israel. A "new generation" of policies represents a strategic innovation in Israel's attempts to minimize the amount of land held by Palestinian citizens of the state. Over the years, the state has and continues to apply indirect pressure on the community by simply not providing basic infrastructure and services to the "unrecognized" Arab Bedouin villages. Today, the state also seeks to directly re-locate and concentrate the Bedouin in a small number of government-planned towns and to encourage intensive Jewish settlement of the remaining area. One such policy involves the state's procedural misuse of the planning and building laws through the routine filing of *ex parte* "Requests for Demolition Orders Without Conviction." These orders are automatically issued by the courts against homes, based solely on the state's request without the presence of or hearing from any of the affected parties, despite the fact that the identities of the home owners, contrary to the state's claims, are often known to the authorities. In July and August 2006, the Beer el-Sabe Magistrate Court issued six *ex parte* demolition orders on the homes of six families from the unrecognized village of Al-Sura. Al-Sura existed before 1948, following which the residents were not asked to leave the village; nor did the state attempt to seize the land. In September 2006, police began preparing to implement six *ex parte* demolition orders issued on six houses in the unrecognized village of Umm al-Hieran, which was established in 1956, 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. Adalah is challenging the orders in both cases before the Beer el-Sabe Magistrate Court, arguing that the practice of issuing *ex parte* demolition orders results in violations of the rights to housing, a component of the constitutional right to dignity, and to due process and to be heard.

See: Adalah Challenges Six Home Demolition Orders Issued against Arab Bedouin Families Living in Al-Sura <http://www.adalah.org/eng/pressreleases/pr.php?file=06_10_11>

and: Beer el-Sabe Magistrate Court Orders Freeze of Six Ex Parte Home Demolition Orders in Umm al-Hieran <http://www.adalah.org/eng/pressreleases/pr.php?file=06_10_31>

5. Discriminatory War Compensation Scheme

In July and August 2006, northern Israel faced emergency conditions as a result of the second Lebanon War. Missiles hit many communities, 43 civilians were killed and injured, and about 12,000 buildings were damaged and destroyed. As a result, many small and large businesses shut down, employees did not go to their workplaces, and the supply of goods and services came to a halt. In the wake of the war, the Finance Minister issued the amended Property Tax Regulations and Restitution Fund (Compensation Payments) (Direct and Indirect War Damage) (Temporary Order) (2006). The order defined northern communities as "restricted towns" or "border towns," arbitrarily awarding a higher rate of compensation to the latter group and discriminating against the former. The order also excluded four Arab villages - Arab al-Aramshe, Fasuta, Ma'alia and Jesh (Gush Halav) - located very close to the border with Lebanon from the designation of "border towns," despite the fact that all four suffered serious damages during the war and

are surrounded by Jewish towns granted 'border towns' status and thus greater compensation. In September 2006, Adalah petitioned the Supreme Court on behalf of the High Follow-up Committee for Arab Citizens of Israel and Arab NGOs, challenging the state's compensation scheme for war damages as discriminatory against Arab towns in the north of Israel and Arab citizens of Israel. Adalah demanded the setting of clear, transparent and equitable criteria for the granting of "border town" status, and the application of an equal method of compensation to all towns and villages exposed to the same dangers during the war. The case is pending.

See: "The High Follow-up Committee for Arab Citizens of Israel, Adalah and Arab NGOs Petition Supreme Court Challenging the State's Discriminatory Compensation Scheme for War Damages"
<http://www.adalah.org/eng/pressreleases/pr.php?file=06_09_14>

The UN CERD Committee, in its "List of Issues" released in July 2006, directed specific questions to the Government of Israel on four of the five subjects presented in this letter. Specifically, the Committee inquired about and requested more information on: (1) Whether its concerns over the Nationality and Entry into Israel Law (2003) were taken into account by the Supreme Court in its decision of 14 May 2006 to uphold the law; (2) The status of the prosecution of individuals responsible for the deaths of Palestinian citizens of Israel during the October 2000 demonstrations; (3) How the Civil Torts (Liability of the State) Law – 2005, which almost completely blocks the ability of Palestinians in the OPTs to obtain compensation for damage or injury caused by the Israeli security forces, is compatible with the principle of non-discrimination; and (4) Why the state plans to relocate Arab Bedouin citizens of Israel from the unrecognized villages in the Naqab rather than to recognize their villages, what the legal and planning criteria governing the recognition of localities are, and whether these are equally applied. The Committee will review Israel's compliance with the ICERD during its February/March 2007 session.

We respectfully request your investigation into all of these matters. Please do not hesitate to contact us should you have any questions or require any additional information. We appreciate your attention to these crucial issues and we would appreciate information on any actions you may take in this regard.

Sincerely,

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About Adalah

Adalah is an independent human rights organization located in Israel. Established in 1996, Adalah works to protect human rights in general and the rights of Palestinian citizens of Israel in particular. Adalah's main goals are to achieve equal individual and collective rights for the Palestinians in Israel in different fields including land and planning rights; civil and political rights; cultural, social, and economic rights; religious rights; women's rights; and prisoners' rights. Adalah litigates cases before Israeli courts and intervenes with various state authorities; advocates for legislation; provides legal consultation to individuals, NGOs, and Arab institutions; appeals to international institutions and fora; publishes reports on

legal issues; and trains law students and new lawyers in the field of human rights. Adalah works from two offices - Shafa'amr in the Galilee in the north and Beer el-Sabe (Beer Sheva) in the south.

Website: www.adalah.org.