

Background Document for:

Oral intervention¹ submitted by Habitat International Coalition and Adalah: The Legal Center for Arab Minority Rights in Israel on:

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Habitat International Coalition (HIC) and its member organization in Israel, Adalah, raise their concern about Israel's discriminatory land allocation policies toward Palestinian Arab citizens of Israel. The Palestinian minority in Israel constitutes nearly 20% of the population, and yet the allocation of public lands by the state overwhelmingly benefits Jewish citizens.

In particular, HIC and Adalah wish to draw the Commission's attention to the policy of the Israel Lands Administration (ILA), a state agency, prohibiting Palestinian citizens of Israel from leasing Jewish National Fund (JNF) lands, all of which fall under the management and administration of the ILA. **As a result of this policy, non-Jewish (in particular, Palestinian citizens) of Israel have no access to 13% of "Israel Lands."**² Allowing the perpetuation of this discriminatory policy will result in the institutionalization of *apartheid*-like human settlements in which citizens of Israel are segregated along racial and ethnic criteria.

Background

Established in 1960, the ILA is the governmental agency that manages and controls over 93% of land in Israel.³ Since 1948, large tracts of Palestinian-Arab-owned land have been confiscated, or otherwise appropriated, under Israeli law and taken into the possession of the state or Zionist institutions, such as the Jewish Agency, the World Zionist Organization and the JNF, for the exclusive use of those holding "Jewish nationality," whether they are citizens of Israel or not. Under Israeli law, this land cannot be sold to individuals, and the ILA allocates leasing rights to "Jewish nationality" holders for 49–98 years. The 19.5 million dunams of land (about 78 million acres) managed by the ILA are comprised of lands controlled by the state, the Development Authority and the JNF.⁴ Israel's Basic Law: Israel Lands (1960) categorizes these lands as "Israel Lands."

According to ILA figures, as of 2003 the JNF claimed ownership over 13% of all "Israel Lands," or a total of 2,555,000 dunams.⁵ To place this figure in historical context, the UN Palestine Commission reported that, as of January 1948, the JNF held only 600,000 dunams, approximately.⁶ It should be emphasized that the JNF claims that it bought 1.25 million dunams of land from the state immediately after the

¹ The oral intervention was delivered before the UNCHR by Adalah Attorney Orna Kohn on behalf of HIC and Adalah on 23 March 2005.

² The problem of access to land is in fact much wider. Due to other land laws and state policies, Palestinian citizens of Israel are in practice blocked from purchasing or leasing land in about 80% of the area of the state. See Oren Yiftachel, "Land, Planning and Inequality: Space Division Between Jews and Arabs in Israel," ADVA Center, November 2000 (Hebrew); and Oren Yiftachel, "Nation-Building and the Division of Space in the Israeli 'Ethnocracy': Settlement, Land and Ethnic Disparities," 21 (3) Tel Aviv University Law Review 637-663, June 1998 (Hebrew).

³ See the website of the ILA at www.mmi.gov.il.

⁴ ILA Annual Report 2003 (Hebrew), available at www.mmi.gov.il/static/p236.html.

⁵ *Ibid.* According to the ILA, the JNF owns: 1,031,000 dunams in the northern district; 403,000 dunams in the central district; 382,000 dunams in the southern district; 508,000 dunams in the Jerusalem district; 207,000 dunams in the Haifa district; and 24,000 dunams in the Tel Aviv district.

⁶ United Nations Palestine Commission, "Considerations Affecting Certain of the Provisions of the General Assembly Resolution on the 'Future Government of Palestine': Control of Land Regulations," 10 January 1948.

establishment of Israel, using donations from Jews from around the world.⁷ These acquisitions totaled close to 2,000,000 dunams, or approximately 78% of the total land currently held by the JNF. These were actually acquired by the JNF from the state in 1949 and 1953.⁸

The majority of this land belonged to Palestinian refugees (i.e., those people who either became refugees during the Israeli-Arab war of 1948–49 and found themselves outside of Israeli-held territory after the war, or those who were displaced from their land but remained within Israel and became citizens of the new state).⁹ Those in the latter group are also known as "present absentees."

The JNF's Special Status

The JNF enjoys a special status under a series of Israeli laws and agreements with the state of Israel. For example, the state concluded a covenant with the JNF in 1961 declaring that all JNF-owned lands would be administered by the ILA, subject to the Memorandum and Articles of Association of the JNF (Keren Kayemeth Le-Israel, in Hebrew). The JNF's objectives, as set forth in its Memorandum are: "To purchase, acquire on lease or in exchange, etc...in...the State of Israel in any area within the jurisdiction of the Government of Israel or any part thereof, for the purpose of settling Jews on such lands and properties." The JNF interprets the Memorandum as prohibiting the allocation of its lands to "non-Jews." This prohibition is discriminatory in its nature and effect, and contributes to the ongoing conflict.

Israeli law also confers upon the fund privileges usually reserved for a public authority. For example, Article 4a of the ILA Law (1960) provides that the JNF will hold 50% of the seats on the ILA Council, the policy-making body of the ILA. This provision affords the JNF a substantial role in formulating Israel's land policies over 93% of the territory of the state. Additionally, while "Israel Lands" may not be sold, the Israel Lands Law (1960) allows these lands to be transferred between the state and the JNF as an exception to this general rule. Furthermore, for the purposes of confiscating land, the JNF enjoys the same status as a Local Authority according to Article 6 of the JNF Law – 1953 and Article 22 of the Lands Ordinance (Acquisition for Public Purposes) - 1943.

The discriminatory consequences of the JNF's special status, which the UN Committee on Economic, Social and Cultural Rights has recognized,¹⁰ is that, practically speaking, it executes many governmental functions despite its discriminatory charter. Meanwhile, this discriminatory institution operates in several of the Member States of this Commission, registered as a tax-exempt charitable organization.

Challenging Institutionalized Discrimination as Practiced by the ILA and the JNF

On 13 October 2004, Adalah submitted a petition to the Supreme Court of Israel against the ILA, the JNF and the Minister of Finance (MOF), demanding the cancellation of an ILA policy and a regulation promulgated by the MOF, which effectively permit the ILA's marketing and allocation of JNF lands through bids open only to Jewish citizens.¹¹ Adalah also asked the Court to issue a temporary injunction ordering the ILA to freeze all open tenders and tenders shortly to be opened for the marketing of JNF lands, and to ban the lease of these lands pending a final decision on the petition.

⁷ See JNF response, December 2004, to (High Court) H.C. 9205/04, *Adalah, et. al. v. The Israel Lands Administration, et. al.* (case pending).

⁸ See Arnon Golan, "The Acquisition of Arab Land by Jewish Settlements in the War of Independence" in *Catedra*, Vol. 63 (1992), pp. 122-154 (Hebrew); Yifa'at Holtzman-Gazit, "The Use of Law as a Status Symbol: The Jewish National Fund Law – 1953 and the Struggle of the JNF to Establish its Position in the State" in *Iyoni Mishpat* Vol. 26, pp. 601-644, July 2002 (Hebrew).

⁹ *Ibid.* A. Golan and Y. Holtzman-Gazit.

¹⁰ "Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel," E/C.12/1/Add.27, 4 December 1998, para. 11.

¹¹ See H.C. 9205/04, *Adalah, et. al. v. The Israel Lands Administration, et. al.* (case pending). Bids for JNF-owned lands in the North and the Galilee have been frozen since 20 October 2004, when the JNF announced the freezing of new and existing tenders in these areas pending a hearing date or the issuance of a further decision by the Supreme Court. The Association for Civil Rights in Israel and the Arab Center for Alternative Planning also filed a petition to the Supreme Court in October 2004 challenging the ILA policy as discriminatory. See H.C. 9010/04, *The Arab Center for Alternative Planning, et. al. v. The Israel Lands Administration, et. al.* (case pending).

In a letter to Adalah dated 15 August 2004, the ILA acknowledged that tenders for JNF lands are only open to individuals enjoying the privileged status of "Jewish nationality." According to the ILA, the reason for this policy is that it must uphold the Covenant signed between the state of Israel and the JNF, under which it is obliged to respect the JNF's objectives, as set out in its Memorandum and Articles of Association.

In its written response to the petition, submitted to the Supreme Court in December 2004, Chairman of the Board of the JNF in Israel Yeheil Leket stated on behalf of the JNF that:

The JNF is not the trustee of the general public in Israel. Its loyalty is given to the Jewish people in the Diaspora and in the state of Israel... (p. 34)

...

The JNF, in relation to being an owner of land, is not a public body that works for the benefit of all citizens of the state. The loyalty of the JNF is given to the Jewish people and only to them is the JNF obligated. The JNF, as the owner of the JNF land, does not have a duty to practice equality towards all citizens of the state. (p. 38)

After the filing of the petition the JNF also commissioned and published a survey in January 2005, finding that, "more than 70% of the Jewish public in Israel is opposed to allocating JNF land to non-Jews."¹²

Although the state has not yet submitted its response to the petition to the Supreme Court, *Ha'aretz*, an Israeli daily newspaper, reported that Attorney General (AG) Menachem Mazuz decided on 26 January 2005, that the ILA cannot discriminate against Palestinian citizens of Israel in the marketing and allocation of the lands it manages, even those lands belonging to the JNF.¹³ However, AG Mazuz reportedly decided that whenever a "non-Jewish" citizen of Israel wins a land tender for a plot of JNF-owned land, the ILA will compensate the JNF with an equal amount of land.

It is the position of HIC and Adalah that, as a public agency established under law, the ILA is not permitted to adopt discriminatory positions that violate the human rights to equality and dignity, or to be a subcontractor for discrimination on the basis of nationality against Palestinian citizens of Israel. These rights are protected by the UDHR and international human rights conventions ratified by Israel, in particular Articles 2, 3 and 26 of the ICCPR and Article 2(2) of the ICESCR. Further, Israel's land allocation policies amount to racial discrimination, and thus violate Articles 1, 2, 3 and 5 of ICERD. As the UN Committee on Economic, Social and Cultural Rights found in its concluding observations on Israel, paragraph 11 of 4 December 1998:

The Committee notes with grave concern that the Status Law of 1952 authorizes the World Zionist Organization/Jewish Agency and its subsidiaries, including the Jewish National Fund, to control most of the land in Israel, since these institutions are chartered to benefit Jews exclusively. Despite the fact that the institutions are chartered under private law, the State of Israel nevertheless has a decisive influence on their policies and thus remains responsible for their activities. A State party cannot divest itself of its obligations under the Covenant by privatizing governmental functions. The Committee takes the view that large-scale and systematic confiscation of Palestinian land and property by the State and the transfer of that property to these agencies constitute an institutionalized form of discrimination because these agencies by definition would deny the use of these properties to non-Jews. Thus, these practices constitute a breach of Israel's obligations under the Covenant.

The ILA's policy of discrimination is dangerous, irrational and extremist, and sends a negative, harmful and humiliating message to Palestinian citizens of Israel. HIC and Adalah also oppose the AG's proposed "land exchange" between the ILA and the JNF, since this exchange would allow for the continuation of

¹² Yuval Yoaz and Amiram Barkat, "AG Mazuz Rules JNF Land Can Now be Sold to Arabs," *Ha'aretz* [English edition] (27 January 2005).

¹³ *Ibid.*

discrimination against Palestinian citizens of the state. The state cannot transfer land to any entity which does not respect the fundamental rights of citizens, the Basic Laws of Israel, and international human rights law.

The JNF and the United Nations

In July 2004, the JNF acquired NGO status with the UN Department of Public Information.¹⁴ As an organization that publicly acknowledges that it “does not have a duty to practice equality towards all citizens of the state,” the JNF operates contrary to the principles of the UN Charter, which emphasizes respect for human rights and equality, a prerequisite for regional peace and security.

HIC and Adalah call on the Commission on Human Rights to recognize that mechanisms of institutionalized discrimination operate in various forms. This civil society collective, therefore, urges the Commission to investigate the state of Israel’s discriminatory land allocation policies which violate international human rights law. Such an investigation should:

- Reaffirm the principles of nondiscrimination on grounds of nationality.
- Urge the Israeli Government to cease its discriminatory land allocation practices using institutions such as the JNF, and to apply covenanted principles of equality, just distribution and fairness.
- Inform the ECOSOC of the discriminatory nature and official status of the JNF, particularly in view of its putative nongovernmental status.

¹⁴ See JNF Press Release, “JNF Approved as United Nations Non Governmental Organizational,” 16 July 2004, available at: www.jnf.org/site/PageServer?pagename=PR_UN_NGO_Status.