Adalah The Legal Center for Arab Minority Rights in Israel
عـــدالـــــة الـــمـركـــز الـقـانـونـي لحـقـوق الأقـلـيـــة الـعـربـيـة فـي اسـرائـيـل
עדאלה המרכז המשפטי לזכויות המיעוט הערבי בישראל

ADALAH'S SUPREME COURT LITIGATION DOCKET – 2003

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MISSION

Adalah ("Justice" in Arabic) is an independent human rights organization, registered in Israel. It is a non-profit, non-governmental, and non-partisan legal center. Established in November 1996, it serves Arab citizens of Israel, numbering over one million people or close to 20% of the population. Adalah works to protect human rights in general, and the rights of the Arab minority in particular. Adalah's main goals are to achieve equal individual and collective rights for the Arab minority in Israel in different fields including land rights; civil and political rights; cultural, social, and economic and rights; religious rights; women's rights; and prisoners' rights.

In order to achieve these goals, Adalah:

- Brings cases before Israeli courts and various state authorities regarding the rights of the Arab minority.
- Advocates for legislation that will ensure equal individual and collective rights for the Arab minority.
- Provides legal consultation to individuals, non-governmental organizations, and Arab institutions.
- Appeals to international institutions and forums in order to promote the rights of the Arab minority in particular, and human rights in general.
- Organizes study days, seminars, and workshops, and publishes reports on legal issues concerning the rights of the Arab minority in particular, and human rights in general.
- Trains stagiaires (legal apprentices), law students, and new Arab lawyers in the field of human rights.

SUPREME COURT LITIGATION

LAND RIGHTS

Seeking Cancellation of Discriminatory ILA Land Distribution Decision. In 10/03, Adalah filed a petition and a motion for an injunction to the Supreme Court on behalf the National Committee of Arab Mayors and in its own name against the Israel Lands Administration (ILA), the Minister of Finance, and the Minister of Industry and Trade. The petitioners' asked the Court to cancel a recent ILA decision, approved by the government, that awards a 90% discount on the price of leasing lands managed by the ILA to discharged Israeli soldiers and individuals who have completed one year of national service. The ILA decision applies to small towns and villages in the Galilee (north) and the Naqab (south) that also have been designated by the government as National Priority Areas "A" and "B"; none of the selected towns are Arab. Towns classified as "A" or "B" priority areas receive substantial, lucrative benefits such as extra educational funding, additional mortgage grants and tax exemptions to residents, and tax breaks to local industries.

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In the petition, Adalah argued that the ILA's decision discriminates against Arab citizens of Israel on the basis of national belonging. Arab citizens are exempt from and do not serve in the army or perform national service, and thus, they are completely excluded from the group who would enjoy this extremely valuable benefit - the ability to purchase leasing rights to state-controlled land for a fraction of its value. As such, the decision violates their rights to equality and housing. Further, Adalah contended, there is no clear link between the qualifying criteria of military service and the stated aim of the decision, which is to bring residents to the Galilee and the Naqab. Rather, by conditioning this benefit on military service, it appears that the actual aim of this decision is to direct more Jewish citizens of the state to these regions. Adalah also argued that the ILA's decision is discriminatory and arbitrary, as it applies exclusively to Jewish towns and villages and fails to consider relevant socio-economic factors in affording such a benefit. Very few small Arab villages in the Galilee and in the Naqab fall with National Priority Areas "A" and "B," even though they rank lowest on all socio-economic indices and suffer from severe land and housing problems, and they were excluded from the ILA's decision.

In 10/03, the Court denied the motion for injunction, thus, rejecting the petitioners' request to freeze the implementation of the ILA decision. At a hearing in 12/03, the Court decided to join this petition to another petition filed by Adalah, which has been pending since 1998. The latter case challenges the government's authority to determine the National Priority Areas list, without clear objective criteria or legislation (see below, H.C. 2773/98). The Court also ordered the respondents to reply to all issues raised in the petition within 40 days, and decided that the cases will be heard before an expanded panel of seven justices. The Association for Civil Rights in Israel (ACRI) has also filed a petition challenging the ILA decision (H.C. 10248/03, *Association for Civil Rights in Israel v. Israel Lands Administration, et. al.*), which was joined by the Court to these cases.

H.C. 9289/03, *Adalah, et. al. v. Israel Lands Administration, et. al.* (case pending).

CIVIL AND POLITICAL RIGHTS

Political Participation

Elections Disqualifications Cases. When the coalition government collapsed and new elections were called in November 2002, several right-wing members of Knesset (MKs) announced that they would seek to disqualify some or all of the Arab MKs and political parties from running in the 2003 general elections. While the marginalization of the Arab political leadership is not a new phenomenon, since the beginning of al-Aqsa Intifada in late September 2000 and the October 2000 protest demonstrations in Israel, anti-Arab racism in Israeli society has worsened considerably.

Over the last three years, Arab political leaders have been subjected to numerous investigations into their activities and speech. MK Dr. Azmi Bishara was criminally indicted for his political speech, while the Knesset voted to limit the immunity of MK Dr. Ahmad Tibi, placing restrictions on his freedom of movement as an MK. New laws have also been passed to limit the political participation rights of the Arab minority in Israel. Significantly, an amendment was passed in May 2002 to Section 7A of the Basic Law: The Knesset, apparently targeting Arab political leaders. Section 7A, as amended, provides that: (a) "Any candidate list or any single candidate running for the Knesset elections will not participate in the election if the direct or indirect goals or actions of the candidate list or of the candidate is one of the following: (1) denial of the existence of the State of Israel as a Jewish and democratic state; (2) incitement to racism; or (3) support of armed struggle of an enemy state or of a terrorist organization against the State of Israel."

In an unprecedented move, Attorney General Elyakim Rubenstein submitted a motion to the Central Elections Committee (CEC) in mid-12/02 to ban the National Democratic Assembly (NDA) party list, led by MK Bishara, from participating in the elections. Numerous other disqualification motions were filed by right-wing MKs and political parties against Arab MKs Azmi Bishara, 'Abd al-Malek Dahamshe (United Arab List), and Ahmad Tibi (Arab Movement for Renewal), as individual candidates, and against three political party lists – the NDA, the United Arab List, and the joint Democratic Front for Peace and Equality-Arab Movement for Renewal (AMR) list.

The motions to disqualify the Arab MKs and political party lists were submitted pursuant to Sections 7A(a)(1) and (3), The Basic Law: The Knesset. These motions primarily raised two arguments. The first argument alleged that based on their political speeches and actions, which indicate that they oppose the occupation and legitimize the resistance to the occupation in the West Bank and Gaza, they are "supporting the armed struggle of terrorist organizations against Israel." The second argument, raised mainly against the NDA and MK Bishara, claimed that advocating for a secular, non-ethnic "state of all its citizens," denies the character of the state as Jewish and democratic.

Adalah represented all of the Arab political leaders and political party lists before the CEC, and later, based on the CEC's decisions, represented the NDA party and MK Bishara as well as MK Tibi before the Supreme Court. On 27 December 2002, Adalah filed four sets of reply briefs to the CEC, challenging the disqualification motions. Extensive materials were prepared and submitted, amounting to almost 200,000 pages. Adalah also represented the political leaders and party lists at the CEC hearings held on 30-31 December 2002.

The CEC, chaired by Supreme Court Justice Mishael Heshin, was comprised of 41 representatives of all political parties in the last Knesset. There were eight representatives of the Labor party, six Likud, five Shas, three Meretz, two Shinui, two Center, two National Union, two United Torah Judaism, and one each for all of the remaining parties. Five representatives of the Arab political parties were members of the CEC. Contrary to CEC Chairman Justice Heshin, who voted against the disqualifications, the majority of CEC members voted to ban the NDA list, MK Bishara and MK Tibi from participating in the elections. The CEC approved the candidacy of MK 'Abd al-Malek Dahamshe, as well as the participation of the UAL and the joint Democratic Front for Peace and Equality-AMR list.

Result: An expanded Supreme Court panel of 11 justices reviewed the disqualifications and heard Adalah's appeal against the decision to ban the NDA in early January 2003. On 9 January 2003, the Supreme Court overturned the decisions of the CEC, rejecting the requests to disqualify the NDA, MK Bishara, and MK Tibi from participating in the elections. The Supreme Court issued a substantive, written decision on these cases on 15 May 2003. The Court did not rule on Adalah's arguments relating to the violation of separation of powers or the overbreadth and vagueness of the amendments. Nor did the Court provide any interpretation for the new provision of "supporting terror." Rather, the Court ruled that the disqualification motions presented no factual basis upon which to disqualify the candidates or the parties.

Election Confirmation 11280/02, *Central Elections Committee v. Ahmad Tibi*; Election Confirmation 50/03, *Central Elections Committee v. Azmi Bishara*; Election Appeal 131/03, *Balad - The National Democratic Assembly v. Central Elections Committee* (decisions delivered 9 January 2003 and 15 May 2003).

For the complete text of Adalah's four reply briefs submitted to the CEC in Hebrew, an English summary of the reply briefs, and all other documentation concerning the elections disqualification cases, see http://www.adalah.org/eng/elections2003.php.

The State of Israel v. MK Azmi Bishara – The Indictments. On 7 November 2001, the Knesset voted to lift the immunity of MK Azmi Bishara, head of the National Democratic Assembly (NDA) party. This move came at the request of Attorney General Elyakim Rubenstein in order to initiate two criminal prosecutions against MK Bishara.

Syria Visits Case - MK Bishara and two of his parliamentary assistants were charged under Article 18(d) of the Emergency Regulations (Foreign Travel) (1948) for organizing a series of visits for elderly Palestinian citizens of Israel to travel to Syria to visit refugee relatives they had not seen since 1948. Adalah represented MK Bishara and his parliamentary aides before a three-judge panel in the Magistrate Court in Natserat Illit. After oral hearings and the filing of numerous written briefs, on 1 April 2003, the Court unanimously decided to dismiss the indictment against MK Bishara, accepting Adalah's argument that Article 17(c) of the Emergency Regulations exempts MKs from prosecution for this offense. The Court, however, refused to dismiss the indictments pending against MK Bishara's two parliamentary assistants, finding that the immunity of an MK does not protect them. In 6/03, Adalah filed a motion to the AG requesting that he exercise his discretion and withdraw the indictment against MK Bishara's two parliamentary aides, arguing that after the Court's decision relating to MK Bishara, there is a lack of public interest in pursuing the prosecution. The AG rejected Adalah's request. The case is pending.

Political Speeches Case. In this case, MK Bishara is charged with two counts of allegedly "supporting a terrorist organization," namely Hezbollah, based on political speeches he made, in violation of sections 4(a), 4(b) and 4(g) of the Prevention of Terrorism Ordinance (1948). In these public speeches, made in Umm al-Fahem (2000) and in Syria (2001), MK Bishara analyzed the factors that led to the end of the Israeli occupation of South Lebanon and spoke about the realities of the continued Israeli occupation of the Palestinian territories. According to the AG, MK Bishara's speeches were not legitimate expressions of political opinions, but a call to adopt terrorist methods against Israeli citizens and the Israeli government, in order to change government policies; parliamentary immunity was not intended to protect MKs who make such speeches and therefore it was correct for MK Bishara's immunity to be lifted; and the Magistrate Court does not have the jurisdiction to rule on the legality of removing MK Bishara's immunity by the Knesset.

After numerous hearings and written submissions, the Court ruled, in a half-page decision delivered in 11/03, not to dismiss the indictment against MK Bishara. The Court stated that there is no need to decide on MK Bishara's preliminary arguments regarding his parliamentary immunity, among other issues, at this stage stating that they relate to "factual questions, which belong in the main part of the case and not within the framework of preliminary arguments." The Court also determined that "the aforementioned arguments have no place in the preliminary stage but rather following the hearing the evidence of the case," and further stated that, "detailed reasons will be given as necessary in the body of the verdict, which will be provided hereafter." Adalah has filed a petition to the Supreme Court (see below).

In the course of these representations, Adalah filed two petitions to the Supreme Court:

Request to Annul Prior Supreme Court Judgment Concerning the National Democratic Assembly Party (NDA) and the 1999 Knesset Elections. A petition and appeal were filed in 3/02 on behalf of MK Bishara and the NDA party against Avner Erlich and others, seeking the extraordinary remedy of canceling a 1999 Supreme Court judgment. While the Supreme Court dismissed the original appeal seeking the NDA's disqualification from running in the 1999 Knesset elections, the Court noted in its ruling, *inter alia*, that MK Bishara and the NDA party had been "dangerously close to the line that should not be crossed." Adalah argued that the Court had no jurisdiction to discuss the merits of Erlich's appeal seeking to disqualify the NDA party from the 1999 national elections; that the proceedings were fundamentally unfair as MK Bishara was not afforded the right to be heard; and that the ruling is being used in a prejudicial manner in the context of the criminal cases pending against MK Bishara.

Result: In 2/03, the Supreme Court issued a *de facto* cancellation of statements made in its 1999 decision. The Court stated that the statements contained in the Erlich case against MK Bishara and the NDA cannot be used against them because of the undisputed facts that they were not present at the hearing, were not notified by the Court, and did not have the opportunity to explain or to respond to allegations against them. Based on the Court's statement, agreed upon by the parties, Adalah withdrew the petition. While the 1999 Supreme Court decision was not cancelled, the new judgment effectively deprives it of any legal authority.

H.C. 2247/02, *MK Azmi Bishara, et. al. v. Avner Erlich, et. al.* (decision delivered on 17 February 2003).

MK Bishara's Political Speeches Case: Parliamentary Immunity is a Per Se Matter of Law. Shortly after the Magistrate Court's refusal to dismiss the indictment against MK Bishara in the "political speeches cases," in 12/03, Adalah filed a petition to the Supreme Court challenging this decision on his behalf. The petition, along with a motion to stay the proceedings in the Magistrate Court pending a final outcome of the case, was brought against the AG, the Knesset, and the Magistrate Court. The petition seeks a ruling by the Supreme Court on the issue of immunity.

Adalah had raised several preliminary arguments before the Magistrate Court as to why the "political speeches" indictment is legally flawed and must be dismissed. A key argument raised is that there is no legal basis for the lifting of MK Bishara's immunity. The lifting of MK Bishara's immunity is the first time that an MK has been stripped of his immunity for voicing political dissent in the course of performing his duties as an elected, public representative. The two speeches delivered by MK Bishara, Adalah argued, fall within the scope of his parliamentary immunity and are classical cases of political speech, which enjoy full legal protection. In addition, Adalah argued, MK Bishara's political speeches were made in fulfillment of his role as an elected political representative, and as such, he cannot be criminally prosecuted for expressing opinions in accordance with the political party agenda of which he was elected. Adalah also contended that MK Bishara also made identical speeches in the Knesset, for which no indictments were sought, prior to the delivery of the Umm al-Fahem and Syria speeches.

Adalah argued that the lifting of MK Bishara's immunity by the Knesset was illegal in the first instance, as was his subsequent indictment by the AG. Further, Adalah contended that the Magistrate Court also erred in that it should have provided a reasoned decision concerning the preliminary arguments, particularly on the issue of immunity, which is a *per se* matter of law. Moreover, it is a basic right of an accused in a criminal proceeding to know the reasons why a court has rejected his arguments. This principle gains greater significance where the issue before the court is a violation of a constitutional right, such as the right for immunity of an elected parliamentarian (MK). Under the law, substantive immunity includes political statements made by members of Knesset both in the Knesset and at public gatherings outside of the Knesset. A Supreme Court hearing on the petition has been scheduled for 29 March 2004.

H.C. 11225/03, *MK Azmi Bishara, et. al. v. The Attorney General, et. al.* (case pending).

All documentation related to MK Bishara's cases can be found on Adalah's website at: http://www.adalah.org/eng/bishara.php.

Right to Demonstrate against the War on Iraq. Adalah filed a petition in 4/03 on behalf of two protest demonstration organizers against the Israel Police and the Police Commander of the Amakim Region, Moshe Waldman. The petitioners applied to the police for a permit to demonstrate in major thoroughfares in Haifa against the US-led War on Iraq. Two days prior to the proposed demonstration date, the police issued directives restricting the protest to minor roads. Petition withdrawn after the Attorney General's office contacted Adalah and guaranteed that the respondents would allow the demonstration to proceed on the proposed route.

H.C. 3479/03, ***Hisham Nafa', et. al. v. Israel Police and Moshe Waldman, Commander of the Amakim Region*** **(petition withdrawn).**

Right to Commemorate al-Nakba. Petition submitted by Adalah in 5/03 on behalf of the Association for the Defense of the Rights for the Internally Displaced Persons in Israel against the Haifa Police. The Association sought a permit in 3/03 to demonstrate on Israel's Independence Day, which is also the day that al-Nakba is commemorated. For the Palestinian people, al-Nakba marks the "catastrophe" of 1948 - the losses of life, property, and the national home. Al-Nakba is part of Palestinian history, culture, and identity, and, for Palestinians, maintaining a memory of al-Nakba is essential to upholding one's dignity. The police refused to grant the organizers a permit, rejecting the proposed route of the demonstration and prohibiting the raising of the Palestinian flag by the protestors. Adalah, on behalf of the organizers, challenged the restrictions imposed on the demonstration by the police. Initially, the Court scheduled a hearing for the day after the proposed march. Adalah then filed a motion for an injunction against this decision and the next day, the date of the planned march, the Court rejected the petition. The Court stated that: "Without needing to go into the petitioners' arguments, the Court rejects the petition because the issues addressed do not justify convening a Court hearing on Independence Day."

H.C. 4130/03, ***Association for the Defense of the Rights for the Internally Displaced Persons in Israel, et. al. v. Haifa Police, et. al.*** **(petition dismissed).**

Fair Representation for Arab Citizens on Municipal Merger Committees: A petition was filed in 5/03 on behalf of the National Committee of Arab Mayors and in Adalah's own name against the Minister of Interior, demanding fair representation for Arab citizens of Israel on regional hearing committees appointed to consider public responses to the government's proposed municipal merger legislation. Although 23 of 62 (37%) municipal mergers proposed by the government involve Arab municipalities, at the time of the filing of the petition, there was only one Arab member out of a total of 37 members on the committees. Adalah argued that the failure to provide fair representation for Arab citizens violates the principle of equality, and that the committees will not be able to give suitable consideration to issues which impact the unique needs and concerns of Arab towns and villages. In response to the petition, the state declared that it would add four more Arab members to the hearing committees dealing with the proposed mergers of Arab municipalities. In 5/03, Adalah informed the Court that although five Arab members are not a sufficient number to ensure fair representation, pursuant to these new developments, Adalah would withdraw the petition. The Court ordered state to pay NIS 7,500 in legal expenses.

H.C. 4110/03, ***Adalah and the National Committee of Arab Mayors v. the Minister of Interior*** **(petition withdrawn).**

Family Unification

Seeking Cancellation of the Government's Discriminatory Decision to Prevent Family Unification for Palestinian Spouses of Israeli Citizens. A petition was filed in 5/02 on behalf of 57 individuals (14 families) against the Prime Minister, the Minister of Interior, and the Director of the Population Bureau challenging the government's decision to prohibit family unification of any non-citizen spouse of an Israeli citizen who is a resident of the Palestinian Authority or of Palestinian origin or descent. Thousands of families, namely Arab citizens of Israel, the Israeli citizens who marry Palestinians, are affected by this decision. The petition argued that the "race-based" decision violates the petitioners' rights to dignity, equality and privacy; harms the petitioners' right to marry and found a family; and contradicts domestic and international human rights law. In 5/02 and 7/02, the Court issued temporary injunctions prohibiting the deportation of 13 Palestinian spouses until the issuance of a final judgment. At the same time, the Supreme Court refused to accept a single group petition and instructed Adalah to submit separate petitions for each family in 8/02. The Court also issued an *order nisi.* Adalah submitted the individual petitions as well as two additional petitions on behalf of two families in 3/03.

At a hearing in 7/03, the Court stated that the petitions raise a principle question that is disconnected from the legislative process that began following the submission of the petition, and had yet to be completed. The Court instructed the state to provide an update as to the legislative progress of the government's new proposed bill regarding an amendment to the Nationality Law - 1952. The state committed to extend the residency permits of some of the petitioners. Later in 7/03, the Knesset enacted an amendment to the law, similar to the government decision, prohibiting the granting of citizenship or residency status to Palestinians from the Occupied Territories married to Israeli citizens. The Association for Civil Rights in Israel also filed a petition against the Interior Ministry's policy and the government's decision (H.C. 4022/02, *Association for Civil Rights in Israel et. al. v. Minister of Interior*).

H.C. 4608/02, *Awad, et. al. v. The Prime Minister of Israel, et. al.* (cases pending).

Challenging the Constitutionality of the Amendment to the Citizenship Law Banning Family Unification. In 8/03, Adalah submitted a petition and a motion for injunction challenging the constitutionality of a new law entitled, "Nationality and Entry into Israel Law (Temporary Order) - 2003," which was passed on 31 July 2003. Similar to the government's May 2002 decision (see Adalah's petition H.C. 4608/02 above), the amendment to the Nationality Law – 1952 prohibits the granting of residency or citizenship status to Palestinians from the Occupied Territories who are married to Israeli citizens. The law affects thousands of families comprised of tens of thousands of individuals. The petition was filed in Adalah's own name and on behalf of the El-Sana and Tbilah families; the Chairperson of the High Follow-up Committee for the Arab Citizens in Israel; and all of the Arab MKs from the Democratic Front for Peace and Equality-Arab Movement for Renewal, the National Democratic Assembly, and the United Arab List political parties.

In the petition, Adalah argued that the law violates the rights of equality, liberty and privacy, as well as due process (due to its retroactive application), as it limits the ability of Israeli citizens', namely Arab citizens of Israel, to exercise these rights based on the ethnicity of their spouses. The law also exclusively and solely targets Palestinians from the Occupied Territories; the general policy for residency and citizenship status in Israel for all other "foreign spouses" remains unchanged. As such, the law is clearly discriminatory and racist. Adalah requested that the Supreme Court cancel the law, and instate alternative procedures for the granting of citizenship and residency status in Israel for Palestinian spouses of Israeli citizens. Adalah also asked the Supreme Court to freeze the implementation of the law pending a final decision on the case; the Court declined to do so.

In 11/03, the Court issued an *order nisi* compelling the state to explain why the new ban on family unification law should not be declared null and void. The Court also issued injunctions preventing the deportation of three Palestinian spouses married to Arab citizens of Israel, until it delivers a final judgment on the petitions. Numerous petitions have been filed against the new law by individual petitioners as well as the Association for Civil Rights in Israel and the Meretz political party (see e.g., H.C. 7102/03, *MK Zahava Gal-On, et. al. v. Attorney General, et. al.* and H.C. 8099/03, *The Association for Civil Rights in Israel v. Minister of Interior, et. al.*). The Supreme Court has joined all of these cases, and has decided that an enlarged panel of 13 justices will hear them and deliver the final decision.

H.C. 7052/03, *Adalah, et. al. v. Minister of Interior, et. al.* (case pending).

For more information, including the petitions and the law in Hebrew and English, see Adalah's special web report – Family Unification – available at: http://www.adalah.org/eng/famunif.php.

Criminal Cases

Unjust and Unduly Severe Sentence for Bereaved Father. In 3/01, at one of the opening hearings of the Or Commission of Inquiry (appointed by the government to investigate the causes and results of the October 2000 protest demonstrations, which included the killing of 13 Arab citizens of Israel by the police), Mr. Abdel Menem Abu Saleh struck Police Sergeant Guy Raif after hearing surprise evidence that the latter had been involved in the killing of his son, Walid Abdel Menem Abu Saleh. Mr. Abu Saleh was subsequently indicted for assault. In 11/01, Adalah submitted a motion to the AG requesting the dismissal of the indictment, arguing that Mr. Abu Saleh attacked Sgt. Raif on impulse, without premeditation; that the case was exceptional, in that Mr. Abu Saleh had not been warned that evidence would be presented suggesting that Sgt. Raif had fired live rounds at his son; and that it was grievously unjust that there had been no criminal investigation into Sgt. Raif's conduct during the events of October 2000, while the father of one of the victims in those events was indicted. The AG rejected the motion. Adalah represented Mr. Abu Saleh at trial and he was convicted in 5/02. In 7/02, he was sentenced to two months of community service. The state appealed the sentence to the District Court in 12/02, seeking a six-month community service term. The District Court granted the state's appeal.

Result: In 1/03, Adalah filed a motion to the Supreme Court for permission to appeal against the District Court's erroneous decision to increase Mr. Abu Saleh's sentence. One of the main legal arguments raised by Adalah was that despite the fact that an appeal by the state had already been heard in the case, Mr. Abu Saleh had not yet exercised his right of appeal, and thus, the Supreme Court should hear it. This fundamental due process right of appeal, Adalah argued, is also a "constitutional right," and follows from the Basic Law: Human Dignity and Liberty (1992), as well as Supreme Court precedent. The Supreme Court rejected the motion. In its decision, issued in 1/03, the Court did not address the issue of Mr. Abu Saleh's constitutional right of appeal and ignored the special circumstances of the case, contending that he had been given an adequate opportunity to present his arguments at hearings before the lower courts.

Criminal Appeal Permission 968/03, *Abdel Menem Abu Saleh v. the State of Israel* (motion denied).

CULTURAL, SOCIAL AND ECONOMIC RIGHTS

Language Rights

Use of Arabic on Signs in Mixed Cities. A joint petition with the Association for Civil Rights in Israel (ACRI) was filed in 6/99 against the mixed Arab-Jewish cities of Tel Aviv-Jaffa, Ramle, Lod, Akka (Acre), and Natseret Illit, demanding that these municipalities add Arabic to all traffic, warning and other informational signs in their jurisdiction. At the time of the petition's filing, the signs appeared only in Hebrew and/or in English. The petitioners' argued that since Arabic is an official language in Israel together with the Hebrew, according to Article 82 of the Palestine Order-in-Council (1922) the municipalities must post signs in at least both languages. This law, which was originally codified under the British Mandate, was later adopted by the Knesset and became part of Israeli law. By request of the Court, the AG joined the case as a respondent, and submitted a legal opinion in which he defended the partial and discretionary use of Arabic by the municipalities, and emphasized the superior status of Hebrew, despite the identical official status of both languages.

Result # 1: In 7/02, the Supreme Court ruled, 2-1, in favor of the petitioners' request. Chief Justice Aharon Barak and Justice Dalia Dorner delivered the majority opinion. Chief Justice Barak reasoned that the right to equality, the freedom to use one's own language, and the special status of the Arabic language as opposed to other minority languages in Israel, mandated that the mixed-city municipalities use Arabic on their informational signs. Justice Dorner, in reaching the same result, relied on Article 82 of the Palestine Order-in-Council (1922), namely, the official status of the Arabic language in Israel. Justice Mishael Heshin, who wrote a minority opinion, argued that the majority decision constitutes the recognition of collective rights for the Arab minority that finds no basis in Israeli law. In his opinion, this politically sensitive issue is non-justiciable, and the appropriate forum to deal with the matter is the Knesset. Despite this favorable ruling, the Court did not decide that the Arabic language is equal in status to the Hebrew language; in fact, all three justices stressed the superiority and dominance of the Hebrew language in Israel.

Result # 2 - Following the Court's decision, in 8/02 and 9/02, the municipalities and the AG requested a second hearing. They claimed that an additional hearing on the case should be held as the Court's judgment sets forth a precedent as to the official status of the Arabic language and recognizes collective rights for the Arab minority in Israel. In 8/03, the Supreme Court delivered its decision on the request for a second hearing. In the four-page judgment, Justice Matza ruled that the Court's 2002 decision did not constitute a broad precedent regarding the status of the Arabic language in Israel. He explained that the decision applies only to the mixed-city municipalities, especially since the judgment of the majority - Justices Barak and Dorner - relied on different arguments and legal bases, although they arrived at the same outcome regarding the case. Further, Justice Matza stated that the denial of the request for a second hearing relates directly to the socio-political character of the issue, namely, that the requesters have "other venues," more suitable than the Supreme Court, to contend with this issue.

H.C. 4112/99, *Adalah, et. al. v. The Municipalities of Tel Aviv-Jaffa, et. al.* (decision delivered 25 July 2002; request for a second hearing denied on 14 August 2003).

Publication of Public Announcements in the Arabic Language Press: After the Haifa District Court refused to accept jurisdiction regarding this matter, a petition was filed in 3/01 against the Haifa Municipality demanding that it publish its public announcements in the Arabic language press. The petition argued that the Municipality's practice of only publishing informational and services ads in the Hebrew press discriminates against Arab citizens of Israel living in Haifa (about 14% of the city's population) concerning the receipt of vital information about the Municipality's services, disregards the safety of residents, and violates the law, which requires that all authorities in the country respect the

status of Arabic as an official language of the state. In 2/02, the Supreme Court asked the AG to join the case as a respondent and to submit his opinion on the matter. In 6/02, after receiving the AG's opinion, the Court decided to postpone hearings on the case until after it issued a ruling on H.C. 4112/99 (see above). In 1/04, the Court issued an *order nisi.*

H.C. 1114/01, *Adalah, et. al. v. Haifa Municipality* (case pending).

Use of Arabic in Israeli Courts: A petition was filed in 1/02 against the Director of the Courts, the Minister of Justice and the Attorney General. The petition asked the Supreme Court to nullify instructions given by the Director of the Courts to the District, Magistrate and Labor Courts that they could no longer charge the state for translation expenses of proceedings and documents in civil cases. Adalah argued that this instruction is illegal, as Arabic is an official language of the state. The petition also demanded: (i) that the state provide a professional translation system, which will ensure prompt and accessible translation services for Arabic speakers during civil court proceedings; (ii) the establishment of a new court rule by which litigants may submit supporting documents to the court in Arabic; and (iii) that judges be required to inform litigants of their right to use Arabic during proceedings.

Result: As a result of the filing of the petition, in 2/02, the Director of the Courts rescinded the instruction, and issued a new one that provided that only in cases of clear need and when there was no other way of managing the hearings, courts could charge the state for translation expenses. At a hearing in 6/03, Adalah argued that the new instruction does not answer the petitioner's demands, as it treats Arabic as a foreign language and not as an official language of the state. Adalah submitted affidavits from lawyers as well as court decisions proving that judges refuse to appoint translators and to charge these expenses to the state, but require the litigants in civil cases to pay for these services. The Supreme Court emphasized that in response to the petition, the Director of Courts had changed the original instruction, and that if Adalah wishes to challenge the new instruction it must first address the respondent with its arguments. Based on this, Adalah withdrew the petition. In 7/03, Adalah sent a letter to the Director of Courts requesting that the new instruction be rescinded.

H.C. 792/02, *Adalah v. The Director of the Courts, et. al.* (petition withdrawn).

Education Rights

Right for Representation/Dismissal of the Head of Bedouin Education Authority (BEA). Adalah filed a petition in 9/01 on behalf of 49 petitioners including parents' committees, pupils and NGOs against the Minister of Education (MOE) and the Head of the BEA, Mr. Moshe Shohat. The petition asked the Court to order the MOE to comprehensively examine Mr. Shohat's management practices, to dismiss him in light of racist statements that he made, and to publicly advertise for his replacement among the Arab community in the Naqab. In an interview with the *Jewish Week*, Mr. Shohat spoke of "bloodthirsty Bedouins who commit polygamy, have thirty children, and continue to expand their illegal settlements, taking over state land" and that, "In their culture, they take care of their needs outdoors. They don't even know how to flush a toilet." Mr. Shohat has served as the Head of the BEA for 16 years. The BEA is the agency appointed by the MOE to manage the education system in the unrecognized villages in the Naqab. After numerous hearings at which the MOE denied having the power to dismiss Mr. Shohat, and subsequent to arguments filed by Adalah, in 7/02, the MOE stated that it intended to recommend the BEA head's dismissal on the basis of mismanagement, uncovered as a result of its investigation after the filing of the petition.

In 3/03, the MOE Director General sent a letter ordering the dismissal of Mr. Shohat. While he remained in his post for several more months, by mid-2003, he was compelled to leave his position. Regarding the issue of Mr. Shohat's replacement, the press reported in 9/03 that an individual was appointed by the

MOE, without a bid and without notification to the petitioners or the Court. After requesting information from the AG's office regarding the state's position on the matter, in 11/03, Adalah filed a motion for an injunction against the appointment. In the motion, Adalah demanded that a bid be published and that a qualified Arab candidate be appointed to the position. The state claimed that the new appointment was temporary, made in the usual course of filling vacant positions. Next hearing scheduled in 2/04.

H.C. 7383/01, ***Megel el-Hawashleh, et. al. v. Minister of Education, et. al.*** **(case pending).**

Demanding Preschool Education for 300 Arab Bedouin Children in the Unrecognized Villages in the Naqab. A petition was filed by Adalah in 4/03 on behalf of 43 children from two unrecognized Arab Bedouin villages in the Naqab, the Regional Council for the Unrecognized Villages in the Naqab, and several parents associations and educational organizations, against the Minister of Education and others. The petitioners' demanded that the state provide free preschool education for children in the two unrecognized villages, in accordance with amendment 16 (1984) to the Compulsory Education Law (1949) and the principle of equality. Adalah argued that by not providing preschools, the state is violating the children's right to education, and that neither budget constraints nor the failure of the Ministry of Interior to issue permits for the construction of schools can be used as justifications for the state's failure to implement the law. At a hearing in 9/03, the state informed the Court that: (i) amendment 16 to the Compulsory Education Law had once again been amended, extending the deadline for implementation from 2001 to 2008; and (ii) that the law's implementing regulations, which authorize the Minister of Education to designate the opening of new classrooms, were frozen under the new economic plan passed by the Knesset in 5/03. As to the equality argument, the Court emphasized that if the state implements the law in other towns or villages, despite the freeze and in a discriminatory manner, Adalah may re-submit the petition for consideration. The Court agreed with the petitioners that the two unrecognized villages should have priority status, when the implementation of the law is resumed. Thus, based on the Court's recommendation, Adalah withdrew the petition.

H.C. 3757/03, ***Ismael Mohammad Abu Guda, et. al. v. Minister of Education, et. al.*** **(petition withdrawn).**

Suitable Classroom Facilities for Hearing-Impaired Arab Children. Adalah filed a petition in 5/03 on behalf of eight hearing impaired Arab children, citizens of Israel, against the Ministry of Education (MOE). Adalah demanded that the MOE reopen two hearing-impaired kindergarten classes at a school in Tirah at which the children had previously studied. In 12/02, the MOE decided to move the children to an unsafe, sub-standard kindergarten classroom. Subsequent refusals by parents to send their children to school under these hazardous conditions led to the closure of the special kindergarten classes by the MOE. Adalah argued that the MOE's decision violates the children's basic rights to education, dignity and equality, as well as conflicts with the stated goals of the Special Education Law (1998). In 7/03, the Court ordered the MOE to locate suitable classrooms within 15 days. The MOE identified classrooms that, while appropriate, needed extensive renovation. The MOE stated that this was the responsibility of the local municipalities. At the final hearing in 8/03, the Supreme Court ordered the MOE and the local municipalities to provide appropriate classrooms within one week, before the beginning of the new school year. It also instructed the MOE to pay NIS 10,000 in legal fees.

H.C. 4219/03, ***Hani Aamer et. al. v. Minister of Education et. al.*** **(petition accepted).**

Demanding Education Ministry to Appoint Counselors for Arab Bedouin Students in the Naqab At-Risk of Dropping-Out of School. Adalah submitted a petition in 7/03 in the name of 19 individual petitioners, parents of students aged five to 17, parents' associations, the Follow-up Committee for Arab Education, and in Adalah's own name, against the Ministry of Education (MOE), the Rahat Municipality, and the other six local councils in the Naqab. The petitioners' demanded that the MOE

appoint the required number of counselors for Arab Bedouin students in the Naqab, who are at-risk of dropping out of school. The seven recognized Arab Bedouin towns in the Naqab – Rahat, Lagiyya, Kessife, Tel el-Sebe, Hura, 'Arora, and Segev Shalom - have the highest drop-out rates in the country and the least number of counselor positions to address the problem. For example, in Rahat, ninth-grade students dropped out at a rate of 23.6%, as compared with an overall dropout rate of 6.2% of Jewish ninth graders in the country. According the MOE's own criteria, Rahat should have 15 counselors for at-risk students, while in fact, the largest Arab Bedouin town in the Naqab, has only one counselor. The State Comptroller has repeatedly criticized the MOE for not allocating enough counselor positions for both Arab and Jewish state-run schools. Adalah argued that the MOE's failure to appoint the required number of counselors violates the Compulsory Education Law (1949) and the Rights of Students Law (2000), as well as contributes to the high drop-out rate, and thus, to the wider social and economic problems of the Arab Bedouin towns in the Naqab. Adalah further argued that the MOE is violating the students' right to education, a part of the right to dignity, which is protected by the Basic Law: Human Dignity and Liberty (1992) as well as international human rights treaties to which Israel is a state party.

In 8/03, the Court issued an *order nisi* compelling the state to explain why the MOE does not appoint the required number of counselors for Arab Bedouin students in the Naqab. At this hearing, the state committed to the immediate appointment of four counselors.

H.C. 6671/03, *Munjid Abu Ghanem, et. al. v. Ministry of Education, et. al.* (case pending).

The Right to Water

The Right to Water in the Unrecognized Villages in the Naqab. A petition was filed in 5/01 in Adalah's name and on behalf of the Regional Council for the Unrecognized Villages, the Association of Forty, the Galilee Society, Physicians for Human Rights-Israel, and Arab Bedouin citizens of Israel living in Abu Tlul, Shahbi, Wadi el-Neem, Em Tnan, Em Batin and Drejat (population 750-4,000). The petitioners charged that the Minister of National Infrastructure, the Water Commissioner, the Israeli Water Company, the Minister of Agriculture and Environmental Protection, and the MOI maintained a policy of denying clean and accessible water to thousands of residents of these villages. Most residents of these 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 quite far from their homes. This situation poses health risks to the residents (e.g., dehydration, dysentery, etc.) as well as numerous daily hardships caused by lack of access to water. The petitioners maintained that water, like any other public good, should be divided in an equal, fair and non-arbitrary manner.

The State initially claimed that the villages were "illegal settlements" and that residents were trespassers on state land, who were not entitled to water network connections. However, as a result of the filing of the petition, an inter-ministerial Water Committee was formed in 10/01 to examine the water situation in the villages. Adalah provided numerous submissions to the Water Committee detailing the particular water situation in each village.

Result: The petition was dismissed in 2/03, after the state reported that water access points had been added for five of the seven villages named in the petition. Adalah stressed that these measures are still not sufficient to meet the residents' needs or to achieve their rights, as distant water points and improvised access to water is not unlike the current situation. The appropriate solution is to connect the unrecognized villages to the water network. While entire unrecognized Arab villages are deprived of adequate access to water, individual Jewish Israeli families, living on vast, expansive ranches in the Naqab, are promptly provided with water access and other services.

Follow-up: To date, Adalah has filed two motions to the Water Committee in an attempt to gain additional water access points for the residents of the unrecognized villages. In 4/03, one motion was filed on behalf of 62 families from Drejat, 17 families from El-Gara, and five families from Abu Grinat. While most requests were denied, some water points were added for Abu Ginat. In 9/03, a second motion was filed on behalf of 18 families from Al Hawashle, 15 families from Abu Msaed, 11 families from El-Ganami; and 17 families from Al-Atrash. To date, no response was received to this motion.

H.C. 3586/01, *The Regional Council for Unrecognized Villages in the Naqab, et. al. v. The Minister of National Infrastructure, et. al.* (decision delivered 16 February 2003).

Economic Rights

Exclusion of Arab Towns from the National Priority List (NPL). Adalah filed a petition in 5/98 in its own name and on behalf of the High Follow-up Committee for Arab Citizens in Israel and the Follow-up Committee on Arab Education against the Prime Minister seeking the cancellation of a 1998 governmental decision. The decision divides the country into national priority areas in an arbitrary and discriminatory manner, without legislative authorization or clear objective criteria. The national priority areas list classifies selected towns as "A" or "B" or "no status." Residents of these areas receive enormous personal economic benefits such as additional mortgage grants and loans, tax exemptions, and educational benefits such as free pre-schools for children, additional hours of schooling, fully funded computer labs by the MOE, and exemption of fees for exams. The government assigns priority status almost exclusively to Jewish development and border towns, and to settlements in the 1967 Occupied Territories. While this governmental decision classified 553 towns and villages as national priority "A," only four small Arab villages were included.

Adalah argued that the government lacks authority to divide the country into national priority areas: it is against the rule of law. The economic benefits provided to these selected towns and individual residents are of such a magnitude as to require statutory legislation that authorizes their provision and sets forth specific objective criteria for their distribution. The government's scheme lacks such criteria. Further, Adalah contended that the purpose of designating certain towns as national priority areas is to help poorer towns to develop economically. Although Arab towns and villages in Israel rank lowest in all socio-economic indices according to official government statistics, they are almost completely excluded. Moreover, Adalah argued that the government's division is based on arbitrary geographical considerations. For example, although the disparity in educational attainment levels and the quality of facilities between Jewish and Arab schools is overwhelming, Migdal HaEmek and Natserat Illit (two Jewish towns in the north) receive priority "A" educational benefits, while eleven other neighboring Arab towns and villages do not receive these benefits. Adalah demanded that these eleven villages be classified as priority "A" for the purpose of receiving educational benefits. The fact that the government did not include Arab towns and villages in priority "A" for educational benefits constitutes discrimination on the basis of nationality.

After numerous hearings and the filing of written submissions over the years, in 12/02, the Supreme Court ordered the state to explain why it should not cancel the decision excluding Arab towns from the national priorities areas list. Then at a hearing in 12/03, the Court asked Adalah to submit a new petition in order for the Court to have one document that includes all the developments in the case since 1998. At that hearing, the Court also issued an *order nisi*, in advance of the filing of the new petition, and directed the AG's office to reply within 45 days. The Court also decided that the case will be heard by seven justices. Adalah filed a new petition on 22 December 2003.

H.C. 2773/98, *The High Follow-up Committee on Arab Citizens in Israel, et. al. v. the Prime Minister of Israel* (case pending).

Unequal Distribution of Balance Grants to Jewish and Arab Municipalities. A petition was filed in 7/01 on behalf of the National Committee of Arab Mayors against the Ministry of Interior, the Ministry of Finance and the Prime Minister, seeking equal, objective criteria to be used by the government in distributing balance grants to municipalities. The budget deficits of Arab municipalities account for 45% of the total deficits of all municipalities in Israel. A complex method of calculating the distribution of these grants, which differs for Arab and Jewish towns, leads to discrimination in budget allocation. The State argued that, based on its calculations, there was no discrimination in the distribution method; on the contrary, there is a policy of affirmative action that awards Arab municipalities 21.5% of the budget grants, which is greater than the percentage of Arab citizens of Israel. Adalah rejected this claim and argued that in order to ensure a minimum of basic services for their residents, funding allotments for the Arab municipalities should be among the highest in the country, since these towns consistently rank lowest on all social and economic indices. The percentage-of-the-population criterion is not a relevant consideration in this instance; rather, distributions should be based on economic need. Additional arguments were submitted and hearings held in 2002, and the Court issued an *order nisi* in 6/02. At a hearing held in 1/04, the state declared that within two weeks, it will submit a new formula for calculating the grants based on clear standards. The Court ordered the petitioners to respond to the state's submission within ten days of receipt.

H.C. 6223/01, National Committee of Arab Mayors, et. al. v. Ministry of the Interior, et. al. (case pending).

Equal Access to Governmental "Ofeq" Program Funds to Alleviate High Unemployment. Adalah filed a petition was filed in 7/02 with the Tel Aviv University Law Clinic on behalf of the National Committee of Arab Mayors, the local councils of Kufr Manda, Ein Mahel and Kesife, and in Adalah's own name, against the Directors' Committee for Fighting Unemployment in Settlements with High Unemployment Rates, the government of Israel, and all of the ministries. Petitioners challenged the government's arbitrary and discriminatory exclusion of Arab municipalities from the NIS 1.44 billion (about US $306 million) "Ofeq" program, which aims to improve areas where residents suffer from high unemployment rates and other low socio-economic living conditions. Of the 11 localities chosen for the program, only one is an Arab town, Tel el-Sebe (Tel Sheva), a government-planned town located in the Naqab with a population of 10,000. According to June 2002 official statistics, however, of the 25 towns with the highest unemployment rates in the country, all are Arab. Petitioners' argued that clear, objective criteria, based on socio-economic standards, should be used for selection.

In 11/02, the Court issued an *order nisi.* In 3/03, in response to the petition, the state argued that Arab municipalities should not be included in the "Ofeq" program because they receive similar benefits under the government's Multi-Year Plan for Development of Arab-Sector Communities. However, the state admitted that it does not know exactly how much money each Arab town has received for which project or projects under the Multi-Year Plan. At a Court hearing in 10/03, the state argued that the petition is moot as the 2004 state budget does not include additional funding to continue implementing the Ofeq program or to add any new towns to the program. However, the state also admitted that a few towns will continue to receive program funds through 2005, while implementation will continue in Lod and Akka through 2006. The Court stated at this hearing that it would issue a ruling shortly.

H.C. 6488/02, ***The National Committee of Arab Mayors, et. al. v. The Director's Committee for Fighting Unemployment in Settlements with High Unemployment Rates, et. al.*** **(case pending).**

Discriminatory Budget Cuts in Child Allowances: A petition was filed in 6/02 on behalf of the National Committee for Arab Mayors and in Adalah's own name against Avraham Burg, then-Chair of the Knesset and others. The petitioners asked the Court to declare unconstitutional an amendment to the National Insurance Law (1995) that mandates a 4% cut in child allowances for all citizens of Israel, and

an additional 20% cut for families in which neither parent served in the army. The majority of Arab citizens of Israel are exempt from and do not join the military, and thus would be most severely affected by these cuts. Adalah argued that the new law amounts to intentional discrimination against Arab citizens of Israel and violates the right to equality; that its effect would be to increase the already dramatic rate of poverty of Arab families and children; and that it is illegitimate in a democratic society to make the enjoyment of equal civil rights conditional on military service. Numerous petitions were filed to the Court challenging the new law, including case filed by ACRI, the National Council for the Child, and several religious organizations. The Court joined all of these cases for hearings and decision.

In 10/02, the National Insurance Institute published new data indicating that the new law would affect 375,000 families, as opposed to its original calculation of 223,000. In response to this new information, Adalah requested and the Court issued an injunction to stay the implementation of the law. In 3/03, at a Supreme Court hearing on the case, Adalah challenged the AG's claim that even if the budget cuts may be discriminatory, they are legitimate and proportional. In 5/03, the Knesset passed the government's new economic plan, which proposes cuts in child allowances for all families over a longer period time. The state subsequently submitted a motion to the Court claiming that the case should be dismissed, as the issue is moot. Adalah filed a response in 6/03 requesting that the Court issue a judgment on the petition arguing that the issue of using military service to discriminate against Arab citizens of Israel is a principle, constitutional matter that is still unresolved between the parties; and that it is an inappropriate time for the state to request dismissal of the case, as all Court hearings have concluded.

Result: In 7/03, the Court decided to dismiss the petition, as the relevant provision of the law was cancelled by the Knesset's passage of the new economic plan.

H.C. 4822/02, *The National Committee of Arab Mayors and Adalah v. Avraham Burg, Chair of the Knesset, et. al.*) (petition dismissed).

RELIGIOUS RIGHTS

The Right to Pray in the Big Mosque. A petition was filed in 8/02 on behalf of the Association for Support and Defense of Bedouin Rights in Israel, the Islamic Committee in the Naqab, 23 Palestinian citizens of Israel, and in Adalah's own name against the Municipality of Beer el Sebe (Beer Sheva), the Development Authority, the Ministry of Religious Affairs, and the Minister of Science. The petitioners asked the Court to order the respondents to allow Muslims to pray in the Big Mosque in Beer el Sebe, the only mosque in the city. From 1906-1948, the building was used as a mosque; after the establishment of the State, the mosque was used as a court and prison, and later as a museum. Since 1991, it has stood empty and neglected. The petition argued that free access to the mosque is protected by freedom of religion and the right to dignity. At a hearing in 5/03, the state committed to establishing an inter-ministerial committee to examine the issue. The Court ordered the state to submit a notice within one month regarding the composition of the committee, the scope of its work, and a timetable as to when its recommendations will be issued. The state requested and received two postponements.

In 9/03, the Prime Minister's Office submitted eight proposed names for the inter-ministerial committee. All representatives proposed come from the Prime Minister's Office (Chair), the Ministry of Internal Security, the Ministry of Interior the Ministry of Industry and Trade, the Ministry of Religious Affairs, the Ministry of Education, the Israel Lands Administration, and the GSS; none are Arab or Muslim. In 10/03, Adalah challenged the composition of the committee, and in response, the Prime Minister's Office stated that it would include one representative of the Muslim community. The AG's Office then informed the Court that the committee was finalized. Adalah responded by suggesting five representatives, and is awaiting a reply from the Court. In 1/04, Adalah learned that the Municipality of

Beer el-Sebe published a bid for the renovation of the Big Mosque into a museum. If confirmed, Adalah will take appropriate legal action against this move.

H.C. 7311/02, ***Association for Support and Defense of Bedouin Rights in Israel, et. al. v. The Municipality of Beer Sheva, et. al.*** **(case pending).**

WOMEN'S RIGHTS

Affirmative Action for Arab Citizens on Governmental Corporate Boards. A petition was filed in 12/01 in Adalah's name against the Prime Minister and several other ministers. The petition asked the Court to order the respondents to fully implement affirmative action policies as required by law. Amendment 6 to the Governmental Companies Law (1975), passed in 1993, requires equal representation for all women in Israel on the boards of directors of government-owned companies. Amendment 11 to this same law, passed in June 2000, states that: "In the board of directors of governmental companies, adequate representation will be given to the Arab population." Despite these laws and Supreme Court litigation by the Israel Women's Network in 1994, as of 12/02, less than 1% of sitting board members were Arab women citizens of Israel. Arab citizens, men and women, held only about 5.5% of board positions as of 12/02. While Israeli Jewish women's representation increased from 7% to 37% between 1994-2002, there was no increase in the representation of Arab women.

Result: In 4/03, the Court dismissed the petition. Despite the fact that Adalah included a list of over 70 qualified professionals in the petition, the Court agreed with the state's contention that it is difficult to find suitable Arab candidates for board positions. The Court ruled, however, that it is the responsibility of the government to seek out qualified Arab candidates for appointment to the boards of directors of governmental companies, and stated that it would consider further petitions on the matter if the state does not fulfill its promises. Following the Court's decision, a coalition to increase the representation of Arab citizens of Israel, especially women, on the boards of directors of governmental companies was established. Coalition members include Adalah, ACRI, Sikkuy, Kian, and the Working Group for Equality and Personal Status Issues.

H.C. 10026/01, ***Adalah v. Prime Minister, et. al.*** **(petition dismissed; decision delivered 2 April 2003).**

Demanding that the Ministry of Labor and Social Affairs Open a Secured Shelter for Young Arab Women. Adalah filed a petition in 10/03 on behalf of three feminist NGOs – Women Against Violence, Assiwar, and Kian – and in its own name, against the Minister of Labor and Social Affairs asking the Supreme Court to compel the Minister to immediately open a secured shelter for teenaged Arab young women. In 5/03, the Minister closed the only state-funded secured shelter serving Arab young women in danger of physical abuse; those who were judged by the courts to be a threat to themselves or others; and as an alternative to incarceration for juvenile offenders. The Minister did not initiate a comparable service option to meet the needs of young Arab women, and many of the shelter's residents were left with no place to go. Adalah argued that the failure to open such a shelter violates the principle of equality on the basis of gender and national belonging. Arab women citizens of Israel form a distinct sub-group, and thus, are discriminated against in that young Arab women are the only group not provided with an appropriate shelter. The Ministry funds secured shelters for Jewish teenaged girls, for Jewish teenaged boys, and for Arab teenaged boys. Adalah further argued that the Minister's policy violates the rule of law, as under Israeli law, appropriate alternatives must be available to the courts for at-risk teenagers. The only shelter options now available for teenaged Arab women – assignment to a shelter for Jewish youth, imprisonment, or care in a less secured environment – present a range of intractable problems.

The Court ordered the respondents to reply to the petition within 30 days. In 11/03, the state submitted a response, which stated that the Ministry published a bid to rent a building in the north for the purpose of opening a closed shelter for Arab girls, and asked the Court to postpone hearing the case for six months. Adalah then filed a reply objecting to the delay, arguing that there was no reason for it and that it would harm the teenagers. Moreover, the state did not commit to the opening of the shelter within six months. The next court hearing scheduled for 2/04.

H.C. 9111/03, *Women Against Violence, et. al. v. Minister of Labor and Social Affairs* (case pending).

EMERGENCY AGENDA – OCCUPIED TERRITORIES

At the end of March 2002, the Israeli army staged a massive military invasion of Palestinian cities and towns throughout the 1967 Occupied Territories. While the Israeli government's declared aim in carrying out this invasion was to "root out the terrorist infrastructure," these very heavy military attacks on the Palestinian population caused scores of civilian deaths, thousands of injuries, and widespread destruction of civilian property. In response to these events, Adalah adopted an emergency agenda, filing seven petitions and a writ of habeas corpus to the Supreme Court; submitting numerous pre-petitions to the Legal Advisor to the Israeli Army and the Attorney General; conducting international advocacy; and initiating local and international media outreach. Among the Israeli army practices contested were the denial of medical treatment for the sick and wounded, denial of access of medical personnel and humanitarian organizations to Palestinian cities and villages, the demolition of homes in the Jenin refugee camp, the shelling of civilians and civilian targets (hospitals, schools, homes, mosques, etc.), the denial of the right to a dignified burial of the dead, and the inhumane treatment of 1,000 Palestinian detainees at the Ansar III detention center.

While such work is outside of Adalah's traditional mandate, Adalah believed that it was crucial to bring legal challenges in humanitarian cases against the Israeli army's actions and to raise local and international awareness about these gross violations of international human rights and humanitarian law committed against Palestinian society and civil society institutions in the 1967 Occupied Territories. As an Arab legal center that works before the Israeli courts, Adalah was in a unique position to be able to assist Palestinian human rights NGOs and the Palestinian people in the Occupied Territories, at a time of dire emergency and great need. In submitting these legal challenges, Adalah was aware of the slim chances that the Supreme Court would rule against the Israeli army while the hostilities were ongoing. However, the goals were to force some judicial review of the Israeli army's practices; to compel the state to respond to these claims (filing petitions was one of the only tools to get official information); to create a documented record of these events; and to generate local and international attention to these gross human rights violations, some of which constituted "war crimes" against Palestinian civilians. From the group of cases that were filed, one remains pending before the Supreme Court.

Seven Human Rights Organizations Demand that the Israeli Army Stop Using Palestinian Civilians as Human Shields. Adalah filed this petition in its own name and on behalf of LAW, ACRI, Physicians for Human Rights-Israel, B'Tselem, The Public Committee Against Torture in Israel, and HaMoked in 5/02 against the Commander of the Israeli Army in the West Bank; the Chief of Staff of the Israeli Army; the Minister of Defense; and the Prime Minister. The petitioners' argued that the army's use of Palestinian civilians as human shields and/or as hostages is inhumane treatment and violates the right to life, physical integrity, and dignity. The petitioners' further argued that this practice constituted a "grave breach" of the Geneva Convention (IV) and thus, amounted to a war crime. As a result of the filing of the petition, the army issued orders prohibiting this practice. In 8/02, after the death of a Palestinian young man used as a human shield by the Israeli army during the course of military

operations, Adalah filed another motion for an injunction; an immediate injunction was issued prohibiting 'neighbor practice.' In 11/02, a motion was filed for contempt of court after evidence emerged that the army was continuing to use civilians as human shields. The state responded to the petition and motion for contempt in 12/02. The state also informed the Court that the army had adopted a new order called "prior warning" whereby Palestinian civilians could be used as "assistants," if they agree to the request and the commander in the field determines that there is no danger to the civilian.

In 1/03, the Supreme Court limited the scope of the injunction, permitting the army to act in accordance with the new order. The petitioners' challenged the legality of the prior warning order, arguing that this practice is the same as using a civilian as a human shield; that international humanitarian law absolutely prohibits an occupying power from using civilians in the military operations of its forces; that all "assistance" is inherently dangerous; and that no Palestinian would voluntarily agree to assist an occupying army in carrying out its operation. The state claimed that the purpose and actual implementation of the "prior warning" order is humanitarian, aimed at saving the lives of both Palestinians and Israeli soldiers. In 7/03, the Supreme Court refused to extend the scope of the injunction to include a prohibition on the use of "prior warning" practices. The Court ruled that it will deliver a final judgment at a future date, and that it may issue such a ruling with an expanded panel of justices.

H.C. 3799/02, *Adalah, et. al. v. Yitzhak Eitan, Commander of the Israeli Army in the West Bank, et. al.* (case pending).

For more information on Adalah's Emergency Agenda-Occupied Territories, see our special web reports for English translations of Supreme Court petitions, state responses, and Supreme Court decisions, as well as key reports published by local and international human rights organizations at http://www.adalah.org/eng/optagenda.php and http://www.adalah.org/eng/humanshields.php.