



Adalah - The Legal Center for Arab Minority Rights in Israel

DISCRIMINATORY LAWS AND BILLS IN ISRAEL 2009-2012

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INTRODUCTION

The elections in February 2009 brought in the 18th Knesset and saw one of the most right-wing government coalitions in the history of Israel come to power. Members of Knesset (MKs) immediately introduced a flood of discriminatory legislation that directly or indirectly targets Palestinian Arab citizens of Israel, as well as Palestinians in the Occupied Palestinian Territory (OPT) and the Palestinian refugees. These new laws and bills, which were promulgated on a very frequent basis, seek, inter alia: to dispossess Arab citizens of Israel and exclude them from the land; turn their citizenship from a right into a conditional privilege; limit the ability of Arab citizens and their parliamentary representatives to participate in the political life of the country; criminalize political acts or speech that question the Jewish or Zionist nature of the state; and privilege Jewish Israeli citizens in the allocation of state resources.

Some of the legislation is specifically designed to preempt, circumvent or overturn Supreme Court decisions that have provided some rights protections or redress to Arab citizens. Another new legislative trend was the state's use of budget allocation to limit constitutional rights, e.g. by cutting state support to programs or organizations based on political or ideological views.

State practices and policies that discriminate against Arab citizens of Israel are not new but have been pursued since the establishment of the state; however, under the Netanyahu government of 2009-2012 a large number of these policies were legislated into law.

This paper lists 20 new laws and 11 main bills that discriminate against the Palestinian minority in Israel, threaten their rights as citizens of the state, and in some cases harm the rights of Palestinians living under Occupation in the OPT. It also includes a series of bills that have been introduced in order drastically to restrict the activities of and foreign governmental funding to human rights organizations, legislation that would cause particular harm to Arab human rights organizations in Israel. While this paper does not cover the entire body of discriminatory legislation introduced in the Knesset, it lists major bills, including those that have been approved by the Ministerial Committee on Legislation.

This wave of legislation that stifles freedoms of association and expression and discriminates on the basis of national belonging is, unfortunately, an accurate reflection of an Israeli public and political discourse that views Palestinian citizens of the state and their political representatives as threats to the basic nature or existence of the state. The new legislation consequently accompanies a series of criminal indictments and punitive measures instigated by the Attorney General and the Knesset against Arab MKs. Adalah is closely following these troubling developments, and in several cases has filed petitions to the Supreme Court to challenge the constitutionality of these discriminatory laws.

LAND AND PLANNING RIGHTS

New Laws

1. Amendment no. 7 (2009) to the Israel Land Administration (ILA) Law (1960)

The law, enacted by the Knesset on 10 August 2009, institutes broad land privatization. Much of the land owned by the Palestinian refugees and internally-displaced persons (currently held by the state as “absentees’ property”) can be sold off to private investors under the law and thus placed beyond future restitution claims, together with some of the land of destroyed and evacuated Arab villages, and land otherwise confiscated from Palestinian citizens. This land, which totals an estimated 800,000 dunams, includes refugees’ properties that are today located in the mixed Arab-Jewish cities and land that has been developed or is zoned for development in master plans. The new law also gives decisive weight (6 out of 13 members) to representatives of the Jewish National Fund (JNF) in the new Land Authority Council, to replace the Israel Land Administration (ILA), which manages 93% of the land in Israel.¹

2. Amendment no. 3 (2010) to The Land (Acquisition for Public Purposes) Ordinance (1943)

This British Mandate-era law allows the Finance Minister to confiscate land for “public purposes”. The state has used this law extensively to confiscate Palestinian-owned land in Israel, in conjunction with other laws such as the Land Acquisition Law (1953) and the Absentees’ Property Law (1950). The new amendment, which passed on 15 February 2010, confirms state ownership of land confiscated under this law, even where it has not been used to serve the original confiscation purpose. It allows the state not to use the confiscated land for the original confiscation purpose for 17 years, and prevents landowners from demanding the return of confiscated land not used for the original confiscation purpose if it has been transferred to a third party or if more than 25 years have elapsed since the confiscation. The amendment expands the Finance Minister’s authority to confiscate land for “public purposes,” which under the law includes the establishment and development of towns, and allows the Minister to declare new such purposes. The new law was designed to prevent Arab citizens of Israel from submitting lawsuits to reclaim confiscated land: over 25 years have passed since the confiscation of the vast majority of Palestinian land, and large tracts have been transferred to third parties, including Zionist institutions like the JNF. This law circumvents the Supreme Court’s decision in the Karsik case,² which obliged the state authorities to return confiscated land that had not been used for the original purpose of its confiscation.

3. Amendment no. 4 (2010) to the Negev Development Authority Law (1991): Individual settlements

“Individual settlements” are a tool used by the state to provide individual Jewish Israeli families with hundreds and sometimes thousands of dunams of land for their exclusive use, and thereby to keep it out of the reach of Arab citizens of Israel in the Naqab (Negev). There are around 60 individual settlements in the Naqab, stretching over a total of 81,000 dunams. Often, these settlements were established without permits and in violation of the planning laws. The amendment, which passed on 22 July 2010, provides legal mechanisms for the recognition of all individual settlements in the Naqab, and grants the Negev Development Authority the power to recommend that the Israel Land Administration allocate lands for individual settlements. The amendment followed an Israeli Supreme Court ruling in June 2010 that allowed for the recognition of individual settlements in the Naqab covered by the “Wine Path Plan”. The court delivered the ruling on a petition filed against the Wine Path Plan by Adalah, Bimkom and the Negev Coexistence Forum in 2006.³ While the amendment affords official status to the individual settlements, which have been connected to all basic services from the moment of their establishment, neighboring unrecognized Arab Bedouin villages in the Naqab are denied official status and their inhabitants, though all citizens of Israel, are denied the most basic of services, including clean drinking water. In its judgment, the court decided not to address the petitioners’ arguments concerning the unequal distribution of land in the Naqab or the discrimination against the unrecognized villages entailed by the plan.

1 Adalah submitted a Supreme Court petition in 2004 demanding the cancellation of an ILA policy permitting the marketing and allocation of JNF-controlled lands by the ILA (a state agency) through bids open only to Jewish individuals. See HCJ 9205/04, Adalah v. Israel Land Administration (ILA), et al. (case pending).

2 HCJ 2390/96 Karsik v. The State of Israel (decision delivered 13 February 2001).

3 HCJ 2817/06, Adalah, et al. v. The National Council for Planning and Building, et al. (decision delivered 15 June 2010), available at: http://www.old-adalah.org/newsletter/eng/jun10/docs/decision2817_06.pdf (decision in Hebrew). For more information, see Adalah’s Press Briefing, 28 June 2010: http://www.adalah.org/eng/pressreleases/pr.php?file=27_06_10_2

4. The Law to Amend the Cooperative Societies Ordinance (no. 8) (2011) (“The Admissions Committees Law”)

Enacted on 22 March 2011, the Admissions Committees Law legalizes “admission committees”, which operate in nearly 475 small community towns (up to 400 family units) built on state land in the Naqab and Galilee. The law gives admission committees full discretion to accept or reject applicants, thereby controlling who is eligible to live there. The committees are composed of five members, one of whom must be a representative of either the Jewish Agency or the World Zionist Organization. Both of these institutions are quasi-governmental entities which openly declare that they work exclusively for the benefit of Jewish people. The law allows these committees to reject applicants deemed “unsuitable to the social life of the community... or the social and cultural fabric of the town,” thereby legitimizing the exclusion of entire groups, including Arab citizens of Israel. The ILA instituted the arbitrary and exclusionary criterion of “social suitability” in order to bypass the landmark Supreme Court decision in Qa’dan from 2000,⁴ in which the court ruled that the state’s use of the Jewish Agency to exclude Arab citizens from state land constituted discrimination against them on the basis of nationality. The law also authorizes admissions committees to adopt criteria determined by individual community towns based on their claimed “special characteristics”, for example, communities which have defined themselves as having a “Zionist vision”.

In March 2011, Adalah and the Association for Civil Rights in Israel (ACRI) filed petitions to the Supreme Court seeking the cancellation of the law.⁵ In his response to the petitions in January 2012, the Attorney General (AG) asked the court to dismiss the cases on the grounds that they were premature and theoretical, as the law itself had not so far been used to bar any applicant from these small communities. The AG added that the law permitted the towns to screen applicants based on their “suitability to the community” and whether they would fit into the social-cultural fabric of the towns (which are all Jewish communities). The state also argued that the law forbids exclusion based on race, religion, gender, or nationality. The AG’s position is extremely problematic as it justifies discrimination against people who wish to live in small community towns, which are extremely numerous and constitute 46% of all communities in Israel and 65% of all rural communities, and all stand on public land. This law will inevitably lead to discrimination against Arab citizens, as well as to the exclusion of other marginalized groups such as gays, the disabled, single parents, and the Mizrahim. A Supreme Court hearing on the petition is scheduled for 4 December 2012.

5. Amendment no. 3 (2011) to the Israel Lands Law (1960)

The law, passed on 5 April 2011, prevents any person or party, public or private, from selling land or renting property for a period of more than five years or from bequeathing or transferring private ownership rights in Israel to persons designated as “foreigners”. Under the law, foreigners are any persons who are not residents or citizens of Israel, or not Jews, who have the automatic right to immigrate to Israel under the Law of Return (1950). Under the law, Palestinian refugees – the original owners of the land, who are entitled to the return of and to their properties under international law – are classified as “foreigners”, along with all other persons who do not hold Israeli citizenship or residency, with the exception of Jewish people. In the past, Israeli law had considered the Palestinian refugees as “absentees”, whose property and property rights Israel undertook before the international community as a “custodian” to preserve until the conclusion of a political solution to the conflict between Israel and the Palestinians.⁶

4 H CJ 6698/95, Qa’dan v. The Israel Land Administration, et al., P.D. 54(1) 258, decision delivered March 2000, available in English at: http://elyon1.court.gov.il/files_eng/95/980/066/a14/95066980.a14.pdf

5 H CJ 2504/11, Adalah, et al. v. The Knesset, et al. (case pending). Adalah represented the Zubeidat family in a separate petition, filed to the Supreme Court in 2007, challenge the policy and operation of admissions committees. The Zubeidats, an Arab family, were rejected from living in the community town of Rakefet after the admissions committee disqualified them on the humiliating grounds of “social unsuitability.” In September 2011, following a new decision by the ILA, the Supreme Court ordered Rakefet to admit the Zubeidats. H CJ 8036/07, Fatima Ebriq Zubeidat, et al. v. The Israel Land Administration, et al. See Adalah’s Press Briefing, 14 September 2011: http://www.adalah.org/eng/pressreleases/pr.php?file=14_09_11

6 For a commentary on the law, see Adalah Attorneys Haneen Naamnih and Suhad Bishara, “The Law of the Promised Land 2011 – Between Absentees and Foreigners,” Adalah’s Newsletter, Vol. 82, May 2011, available at: http://www.adalah.org/upfiles/2011/Haneen_Suhad_Promised_Land.pdf

Pending Bills

6. The Memorandum of Law for Regulation of the Settlement of the Bedouin in the Negev (2012) (“Praver Plan Bill”)

This bill was issued on 3 January 2012 following the approval of the report issued by the government-appointed Praver Committee.^{7,8} If passed, the bill will lead to the forced displacement of tens of thousands of Arab Bedouin citizens of Israel from their homes and land in the unrecognized villages in the Naqab (Negev). In some cases, Arab Bedouin have been living in these villages since before the State of Israel existed; in other cases the villages were established following the expulsion and relocation of the Arab Bedouin by the military government whose rule was imposed on them after Israel’s establishment. The Bedouin citizen affected by this latest bill will be concentrated in government-planned townships, which are unsuited to their traditional way of life, and offered meager compensation. The bill has three main components: it sets planning arrangements for permanent Arab Bedouin settlement within a clearly demarcated area in the Naqab; it sets forth a socio-economic development plan for existing recognized towns for the absorption of the displaced population; and it determines the eligibility requirements for submitting land ownership claims and receiving compensation, albeit minimal. After the bill was published, the government initiated a public hearing period, supervised by Minister Benny Begin. Adalah and ACRI submitted a legal objection to the bill in April 2012.

7 The government approved the recommendations on 11 September 2011. Adalah’s overview and analysis of the recommendations is available at: <http://www.adalah.org/upfiles/2011/Overview%20and%20Analysis%20of%20the%20Praver%20Committee%20Report%20Recommendations%20Final.pdf>

8 For all of Adalah’s publications, analysis and documentation regarding the forced displacement of Arab Bedouin citizens, see our Special Report at: <http://adalah.org/eng/?mod=articles&ID=1589>

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

New Laws

7. The Economic Efficiency Law (Legislative Amendments for Implementing the Economic Plan for 2009-2010) (2009)

A. National Priority Areas

One chapter of this law concerns “National Priority Areas” (NPAs). The law continues to grant the government sweeping discretion to classify towns, villages and wider areas as NPAs and subsequently to allocate enormous state resources to them, even without the obligation to announce criteria for or against their inclusion. This section was passed in spite of a landmark Israeli Supreme Court decision delivered in 2006⁹ in which the court ruled unconstitutional a government decision from 1998 which classified 553 Jewish towns and only four small Arab villages as NPAs with “A” status in the field of education.¹⁰ In June 2010, after four years of non-compliance by the state and additional litigation, Adalah filed a new petition and a motion for contempt of court to the Supreme Court against the Prime Minister.¹¹ In February 2011, the Supreme Court dismissed the petition after the Attorney General’s Office announced that the government was no longer using the prohibited governmental decision, and that the new law did not extend its validity.¹²

B. Child Vaccinations and Child Allowances

A separate section of the law stipulates that children who do not receive the vaccinations recommended by the Ministry of Health will no longer be provided with state financial support in the form of child allowances. This provision mainly affects Arab Bedouin children living in the Naqab (Negev), since most of the children who do not receive the vaccinations belong to this community due to the inaccessibility of health care in their villages. The provision therefore discriminates against them on the basis of their national belonging. In 2010, the Ministry of Health closed down “mother and child” clinics, which administer these vaccinations, in three Arab Bedouin towns and only reopened them after Supreme Court litigation by Adalah.¹³ Adalah submitted a petition to the Israeli Supreme Court on 7 October 2010 demanding the annulment of the amendment, which came into effect on 15 December 2010.¹⁴

8. Law to Strip Payments from a Current or Former Member of Knesset due to a Crime (2011)

Under this law, enacted on 17 February 2011, the Knesset may withhold salary payments and pensions from current or former MKs who are declared by the Attorney General to be suspects, defendants or persons convicted of a crime that is punishable by at least ten years’ imprisonment, and who do not appear at a criminal trial or investigation against them, including for reasons of being outside the country. The alleged crime should have been committed in full or in part during the period in which the person was an MK. The law was drafted in response to the exile of former Arab MK Dr. Azmi Bishara (the former head of the Balad/Tajammaa political party), who left Israel in March 2007 after police announced he was suspected of giving information to Hezbollah during the Second Lebanon War. The state has never filed an indictment against Dr. Bishara or pointed to any clear evidence against him. These facts indicate the arbitrary nature of the law: even MKs against whom there is no clear evidence could be harmed and lose their pensions.

9 H CJ 2773/98 and H CJ 11163/03, The High Follow-Up Committee for Arab Citizens in Israel v. The Prime Minister of Israel (decision delivered February 2006; case brought by Adalah). The Supreme Court’s decision is available in English at: http://elyon1.court.gov.il/files_eng/03/630/111/a18/03111630.a18.pdf

10 For more information on the earlier litigation, see Adalah’s Press Briefing, 12 March 2006: http://www.adalah.org/eng/pressreleases/pr.php?file=06_03_12

11 H CJ 4788/10, The High Follow-Up Committee, et al. v. The Government of Israel (case dismissed 2 February 2011).

12 See Adalah’s Press Briefing, 24 February 2011: http://www.adalah.org/eng/pressreleases/pr.php?file=24_02_11

13 H CJ 10054/09, Wadad El-Hawashly, et al. v. The Ministry of Health. For more information, see Adalah’s Press Briefing, 24 November 2011: http://www.adalah.org/eng/pressreleases/24_11_11.html

14 H CJ 7245/10, Adalah v. The Minister of Welfare and Social Affairs (case pending, order to show cause granted). For more information see Adalah’s Press Briefing, 15 September 2011: http://www.adalah.org/eng/pressreleases/pr.php?file=15_09_11

9. Amendment no. 12 (2010) to the Absorption of Discharged Soldiers Law (1994)

According to the law, enacted in July 2010, any registered university or college student who has completed his or her military service and is a resident of a designated “National Priority Area” such as the Naqab, the Galilee or the illegal Jewish settlements in the West Bank, will be granted a “compensation package”. This package includes tuition for the first year of higher academic education, a year of free preparatory academic education, and additional benefits in areas like student housing. This benefits package goes far beyond and adds to the already extensive educational benefits package that discharged soldiers in Israel enjoy. The overwhelming majority of Palestinian Arab citizens of Israel are exempt from military service for historical and political reasons, and they are thereby excluded from these state-allocated benefits and discriminated against on the basis of their national belonging. This law follows an amendment (Amendment No. 7)¹⁵ made in 2008 to the same law, which anchors the use of the military service criterion in determining eligibility for student dormitories in all higher education institutions into law, and grants broad discretion to these institutions to grant additional economic benefits to discharged soldiers, notwithstanding the benefits provided to them under any other law.¹⁶

Pending Bills

10. The Rights of Those who Performed Military or National Service Bill (2010)

This bill,¹⁷ which passed a preliminary reading in the Knesset on 5 July 2010, grants additional benefits to individuals who performed military or alternative national service. These benefits add yet more privileges to those already legislated in Amendments No. 7 and 12 to the Absorption of Discharged Soldiers Law, detailed above. The bill relates to a number of benefits, including the payment of tuition fees for higher education, the right to employment, and the right to purchase property or land. For example, under the bill a person who has served in the military would be entitled to financial support to help cover his or her study at an institute of higher education, and would be exempted from paying fees to the state for a year after completing his or her service. Persons who performed military or alternative national service would also receive assistance in purchasing a first home. In addition, if passed, the bill would provide for plots of land and housing units to be allocated specifically to former soldiers. Under this legislation, the aforementioned benefits are provided on the premise that military service and alternative national service demonstrate a person’s loyalty to the state, which is rewarded through the additional benefits. Since the majority of Arab citizens of Israel are exempted from performing military or national service for historical and political reasons, discriminating against those who do not enlist is effectively a proxy for denying benefits to the Arab minority in Israel.

11. Civil Service Law (Appointments) – Amendment (Affirmative Action) Bill (2009)

Under this bill,¹⁸ which passed a preliminary reading in the Knesset on 26 January 2011, persons who have served in the Israeli army or performed alternative national service will be given preferential treatment in hiring for civil service positions. According to the proposed legislation, if two otherwise equally-qualified persons apply for a civil service position, one of whom performed military or alternative national service and one who did not, preference should be given to the former candidate, regardless of whether or not the service performed is relevant to the position in question. Thus the bill grants additional benefits to former soldiers, in contradiction to Article 15A(a) of the Civil Service Law (Appointments) – 1959 (as amended in 2000), which stipulates that every governmental ministry should ensure adequate representation for the Arab minority in Israel in its offices. The law discriminates against members of the Arab minority, the vast majority of whom do not perform military service. Arab citizens of Israel are already underrepresented in the civil service and are very seldom promoted to decision-making positions.¹⁹ The Attorney General has announced his opposition to this bill.

15 Amendment no. 7 (2008) to the Absorption of Discharged Soldiers Law (1994), available in Hebrew at: [http://adalah.org/Public/files/English/Legal_Advocacy/Discriminatory_Laws/Absorption_of_Discharged_Soldiers_Law_\(1994\)_Amendment_No_7_Benefits_for_Discharged_Soldiers_\(2008\).pdf](http://adalah.org/Public/files/English/Legal_Advocacy/Discriminatory_Laws/Absorption_of_Discharged_Soldiers_Law_(1994)_Amendment_No_7_Benefits_for_Discharged_Soldiers_(2008).pdf)

16 The 2008 amendment was passed in order to circumvent a precedent-setting decision by the Haifa District Court, which accepted a petition filed by Adalah on behalf of three Arab students from the University of Haifa. The court ruled that the use of the criterion of military service in determining eligibility for student dormitories discriminated against Arab students. The petition argued that the university was not authorized to add benefits to discharged soldiers that exceed those granted to them by the Absorption of Discharged Soldiers Law. Civil Lawsuit (Haifa District Court) 217/05, Naamnih, et al. v. The University of Haifa (decision delivered August 2006).

17 Legislative bill no. P/18/2405.

18 Legislative bill no. P/18/1823.

19 See Adalah, “The Inequality Report,” March 2011, p. 27, available at: http://www.adalah.org/upfiles/2011/Adalah_The_Inequality_Report_March_2011.pdf

CIVIL AND POLITICAL RIGHTS

New Laws

12. The Regional Councils Law (Date of General Elections) (1994) Special Amendment No. 6 (2009)

The law, enacted on 16 November 2009, grants the Interior Minister absolute power to declare the postponement of the first elections to a regional council following its establishment, for an indefinite period of time. The law previously stipulated that elections must be held within four years of the establishment of a new regional council. The Knesset passed the law shortly before elections were due to take place to the Abu Basma Regional Council, which includes ten Arab Bedouin villages in the Naqab (combined pop: 25,000) and was established over eight years ago. The result of the law is that no elections have been held and local people are being denied the right to elect their own representatives. The current government-appointed council, which is comprised of a majority of Jewish Israeli members and was appointed by the Interior Minister, remains in place. On 27 April 2010, Adalah and ACRI petitioned the Supreme Court of Israel to demand the cancellation of the amendment and to ask the court to order the Interior Minister to announce the holding of democratic elections in the regional council immediately.²⁰ The organizations argued that the law represented a grave infringement of democratic values and a breach of the state's duty to ensure regular, transparent and democratic elections. At a hearing on the case held in February 2011, the Supreme Court ordered that elections to the Abu Basma Regional Council should be held no later than 4 December 2012.²¹ In October 2012, two months before the expected elections, the Ministry of the Interior adopted a recommendation issued by its own Razin Boundary Committee to split the Abu Basma Regional Council into two separate councils. The split will delay elections for several more years.

13. Amendment no. 10 (2011) to the Citizenship Law (1952)

Enacted on 28 March 2011, the law allows courts to revoke the citizenship of persons convicted of treason, espionage, assisting the enemy in time of war, or acts of terrorism as defined under the Prohibition on Terrorist Financing Law (2005), if asked to do so by the Minister of the Interior, as part of a criminal sentence. Citizenship can only be revoked if the defendant has dual citizenship or resides outside Israel (in which case the law creates an assumption that such a person has dual citizenship). If a person does not have dual citizenship or reside abroad, then he or she will be granted residency status in Israel instead of citizenship, a downgrading that severely restricts his/her rights to political participation. On 26 October 2010, Adalah wrote to the Chair of the Knesset's Internal Affairs and Environment Committee asking him not to support the law. Adalah argued that the legitimate path for dealing with such alleged crimes was the criminal law, and that the proposed law targeted Arab citizens of Israel and made their citizenship conditional, in keeping with the right-wing political rallying-cry of "no citizenship, no loyalty". This new amendment follows a prior amendment made to the Citizenship Law in 2008, which provides that citizenship may be revoked for "breach of trust or disloyalty to the state".²² The revocation of citizenship is one of the most extreme punitive measures at the disposal of states, and may result in cruel and disproportionate punishment, particularly when pursued against a particular group of citizens.

20 H CJ 3183/10, Hussein Rafeea, et al. v. The Minister of the Interior, et al. See Adalah's Press Briefing, 27 April 2010: http://www.adalah.org/eng/pressreleases/pr.php?file=27_04_10

21 See Adalah's Press Briefing on the Supreme Court hearing, 22 February 2011: http://www.adalah.org/eng/pressreleases/pr.php?file=22_02_11

22 See, e.g., Amendment No. 9 (Authority for Revoking Citizenship) (2008) to article 11 of the Citizenship Law (1952). "Breach of trust" is broadly defined and even includes the mere act of naturalization or obtaining permanent residency status in one of nine Arab and Muslim states which are listed in the law, or the Gaza Strip. The law allows for the revocation of citizenship without requiring a criminal conviction.

14. Amendment no. 40 (2011) to the “Budgets Foundations Law (1985) – Reducing Budget or Support due to Activity that is Contrary to the Principles of the State” (“The Nakba Law”)

The Nakba Law, enacted on 22 March 2011, authorizes the Finance Minister to reduce state funding or support to an institution if it holds an activity that is deemed to deny the existence of Israel as a “Jewish and democratic state”, or commemorates “Israel’s Independence Day or the day on which the state was established as a day of mourning”. Palestinians traditionally mark Israel’s official Independence Day (15 May) as a national day of mourning and organize commemorative events on it. The law also violates the principle of equality and the rights of Arab citizens to freedom of expression and to preserve their history and culture. On 4 May 2011, Adalah, ACRI, the parents of school children and school alumni filed a petition against the law to the Supreme Court, requesting that it find the Nakba Law unconstitutional. The Supreme Court rejected the petition in January 2012, ruling that the case was premature as the law had not been used against any specific institution.²³

15. Law for Prevention of Damage to the State of Israel through Boycott (2011) (“Anti-Boycott Law”)

The Anti-Boycott Law, passed on 11 July 2011, prohibits the public promotion of boycott by Israeli citizens and organizations against Israeli institutions or illegal Israeli settlements in the West Bank. It enables the filing of civil lawsuits against anyone who calls for boycott, and creates a new “civil wrong” or tort. The law also provides for the revocation of tax exemptions and other legal rights and benefits from Israeli associations if they call for or engage in boycott, as well as academic, cultural and scientific institutions that receive state support. The court may also award compensation, including punitive damages, even if no actual damage is proven. Furthermore, the law provides that Israeli businesses which publicly declare that they will not buy supplies or goods manufactured in the OPT may have their state-sponsored benefits revoked. As such, the law severely restricts freedom of expression and targets non-violent political opposition to the Occupation.²⁴ Adalah and ACRI submitted a petition to the Israeli Supreme Court in March 2012 on behalf of leading human rights organizations and Israeli and Palestinian groups affected by the law seeking its cancellation.²⁵

16. Termination of Proceedings and Deletion of Records in the Disengagement Plan Law (2010) (“Pardon Law”)

The Pardon Law, enacted by the Knesset on 25 January 2010,²⁶ exempts anyone who was convicted in relation to their opposition to Israel’s 2005 Gaza disengagement plan from legal sanction, provided they have not received a prison sentence. It expanded the early amnesty granted by the Attorney General, in which he terminated proceedings against first-time offenders accused of minor offenses. Under the law, charges will be dropped and offenses will be deleted from any criminal records, at the offender’s request.²⁷ This law establishes a separate legal process for people who were charged when demonstrating against the disengagement plan that is different from the legal process for people charged at other political demonstrations, and thus effectively discriminates on ideological grounds. Palestinian Arab citizens in particular are subjected to severe physical and verbal abuse when they demonstrate, especially at events related to their political or ideological beliefs. On 23 February 2012, the Supreme Court rejected a petition calling for the cancellation of the law.²⁸

23 See Adalah’s Press Briefing, 5 January 2012: http://www.adalah.org/eng/pressreleases/5_1_12.html. See also Sawsan Zaher, “The Prohibition on Teaching the Nakba in the Arab Education System in Israel,” Adalah’s Newsletter, Vol. 74, August/September 2010: <http://www.adalah.org/newsletter/eng/sep10/docs/Sawsan%20Nakba%20English%20final.pdf>

24 In its original form, the bill targeted Israelis, the Palestinian Authority, Palestinians and foreign governments and individuals, seeking to impose heavy fines, economic sanctions and entry bans on supporters of boycott activities. However, when the bill passed a preliminary vote in the Knesset on 14 July 2010, the application of the prohibition to foreign citizens and foreign political entities was cancelled, leaving only a prohibition and fine on Israeli citizens and residents. See, JNews, “Antiboycott bill passes preliminary reading in the Knesset”, 14 July 2010, available at: <http://www.jnews.org.uk/news/antiboycott-bill-passes-preliminary-reading-in-the-knesset>

25 HCJ 2072/12, The Coalition of Women for Peace, et al v. The Minister of Finance, et al. (case pending).

26 The bill, Legislative bill no. L/17/2797, with the author’s explanatory footnotes, is available at: http://adalah.org/Public/files/Hebrew/Legal_Advocacy/Discriminatory_Laws/pardon_law_bill.pdf

27 For media coverage of the law, see Fadi Houry, “Uprooted settlers pardoned by court – why not Palestinians?” +972 Mag, 26 February 2012, available at: <http://972mag.com/uprooted-settlers-pardoned-by-court-why-not-palestinians/36463/>; Chaim Levonson, “Court rejects left-wing petition against disengagement amnesty,” Ha’aretz, 24 February 2012, available at: <http://www.haaretz.com/print-edition/news/court-rejects-left-wing-petition-against-disengagement-amnesty-1.414501>

28 HCJ 1213/10 Eyal Nir, et al. v. The Speaker of the Knesset, et al. (decision delivered 23 February 2012).

Pending Bills

17. Bill to Amend the Citizenship Law (1952): Loyalty Oath (2009)

This proposed amendment²⁹ to the Citizenship Law would require all persons seeking citizenship in Israel via the naturalization process and all Israeli citizens applying for their first ID cards (which is obligatory at the age of 16) to declare an oath of loyalty to Israel as a “Jewish, Zionist, and democratic state, to its symbols and values, and to serve the state in any way demanded, through military service or alternative service, as defined by law.” It would replace the text of the current declaration, which states, “I declare that I will be a loyal citizen of the State of Israel.” Requiring such an oath undermines the status of Arab citizens of Israel by deeming Israel a state for Jews only. The enactment of the amendment may prove to be a slippery slope as, according to numerous other bills introduced in the Knesset, declarations of allegiance to a Jewish and democratic state could soon be required of all ministers, Knesset members, and civil service employees.³⁰ Adalah sent a letter to the Prime Minister, Attorney General, and Justice Minister on 7 October 2010, arguing that the bill specifically targeted Palestinian Arab citizens, whose “non-Jewish” spouses – Palestinians from the OPT and other Arab states – are those who would have to swear the oath. The bill received the government’s endorsement on 10 October 2010 on condition that certain changes be made to its provisions, but does not currently enjoy the support of a Knesset majority.

²⁹ Legislative bill no. P/18/102. This bill is a verbatim resubmission of Legislative bill no. P/17/3046, which was submitted to the 17th Knesset.

³⁰ See, e.g., a currently-proposed amendment to The Basic Law: The Government – Loyalty Oath (Legislative bill no. P/18/5), which stipulates that upon taking office, all ministers must make an oath to the state as a “Jewish, Zionist and democratic state” and to the values and symbols of the state. Ministers are currently required to make an oath only to the state. Two similar bills seeking to amend The Basic Law: The Knesset propose to impose loyalty oaths on MKs. The first (Legislative bill no. P/18/7) requires all MKs to make an oath to the state as a “Jewish, Zionist and democratic state” and to the values and symbols of the state. The second (Legislative bill no. P/18/226) requires MKs to swear allegiance to the State of Israel as a “Jewish and democratic state”. These bills place severe restrictions on the rights of Arab citizens of Israel to political participation.

PRISONERS AND DETAINEES' RIGHTS

New Laws

18. Amendment No. 2 (2010) to the Criminal Procedure Law (Suspects of Security Offenses) (Temporary Order)

This law, enacted on 20 December 2010, is designed to extend the validity of harsh, special detention procedures for persons suspected of committing security offenses. While neutral on its face, in practice the law applies to and is used mainly against Palestinians from Gaza and Palestinian citizens of Israel. The special procedures allow the law enforcement authorities to delay bringing a security suspect before a judge for up to 96 hours after arrest (instead of 48 hours for other detainees). It also allows the courts to extend a security suspect's detention for up to 20 days at a time (instead of 15 days) and to hold extension of detention hearings in his/her absence. In this last respect the law seeks to bypass a Supreme Court decision from February 2010 that struck down article 5 of the Criminal Procedure (Detainees Suspected of Security Offences) (Temporary Order) Law (2006),³¹ which stipulated that security suspects could have their pre-trial detention extended in their absence.³² The law removes a number of essential procedural safeguards from detainees, thus placing them at a greater risk of torture, and ill-treatment, and increasing the likelihood of false confessions.³³

19. Law to Amend the Israeli Prisons Ordinance (no. 40) (2011)

This new law,³⁴ approved by the Knesset on 3 August 2011, contains an overly-broad and unconstitutional article that allows the Israel Prison Service (IPS) to prohibit prisoners involved in "security crimes" from meeting their lawyers if the IPS merely "suspects" that such meetings may lead to the transfer of information relating to a terror organization. The law targets and discriminates against "security prisoners", who are overwhelmingly Palestinians, as well as their lawyers, who are also generally Palestinians. As of August 2012, there were over 4,380 Palestinian political prisoners and detainees being held as "security" prisoners by Israel.

Under the law, the IPS can prevent prisoners' meetings with lawyers for 96 hours (previously 24 hours), a period that could be extended for up to as many as 14 days (previously 5 days) with the approval of the state prosecutor. A district court can extend this prohibition for six months (previously 21 days) and up to maximum period of one year (previously three months). The Supreme Court can extend the ban for unlimited periods after one year (Supreme Court supervision was required after three months under the previous law). These sweeping restrictions further increase prisoners' isolation and prevent them from effectively accessing the courts and obtaining redress.

20. Law to Amend the Israeli Prisons Ordinance (no. 43) (Prisoner Meetings with an Attorney) (2012)

An additional law to amend the Israel Prisons Ordinance was passed on 14 May 2012,³⁵ allowing for restrictions on security prisoners' access to legal counsel. Under the new law, the IPS Director may restrict the number of lawyers able to visit a prisoner or group of prisoners for a period of three months, and to extend the period for an additional three months with the approval of the Attorney General. The law also allows a district court to extend the period of prohibition for up to six months at a time, without examination of any evidence against the prisoner or group of prisoners.³⁶

31 Originally passed by the Knesset as a "temporary order" for 18 months, the law was extended in January 2008 for three years.

32 HCJ 2028/08, The Public Committee Against Torture in Israel, et al. v. The Minister of Justice (petition withdrawn 24 March 2009). For more information, see Adalah's Press Briefing, 23 February 2010: http://www.adalah.org/eng/pressreleases/pr.php?file=23_02_10

33 Adalah sent a letter to the Knesset's Constitution, Law and Justice Committee on 21 October 2010 to demand that the bill be rejected.

34 Formerly legislative bill no. P/18/558, approved 3 August 2011.

35 Law to Amend the Israeli Prisons Ordinance (no. 43) (2012).

36 On 13 May 2012, Adalah sent a letter to all Members of Knesset urging them to reject the bill. See Adalah's Press Briefing, 23 May 2012: <http://www.adalah.org/eng/?mod=articles&ID=1754>

21. Amendment no. 6 to the Criminal Procedure Law (Interrogation of Suspects) (2012)

This amendment, passed by the Knesset on 4 July 2012, extends the period of an exemption made to the Criminal Procedure Law, which allows the interrogations of “security suspects” not to be recorded; almost all of “security detainees” are Palestinians from the OPT or Palestinian citizens of Israel. The law, passed in 2002, required the police to make audiovisual recordings of interrogations of suspects charged with crimes carrying a minimum sentence of at least ten years. The law established a schedule for its gradual implementation, with recordings of interrogations of “security suspects” to become mandatory from 2008, under Article 17. That year, however, the Knesset passed a temporary order³⁷ extending the exemption until July 2012, ten years after the law was originally enacted. With the passing of amendment no. 6, the exemption is extended until July 2015. Notably, the requirement to make audiovisual recordings of interrogations applies to the police and the Israel Security Agency (ISA) (also known as the GSS or Shabak).³⁸ On 21 December 2010, Adalah, together with Physicians for Human Rights-Israel, Al Mezan and the Public Committee Against Torture in Israel (PCATI), filed a petition to the Supreme Court requesting that the exemption be cancelled.³⁹

Pending Bills

22. The “Shalit Laws”

Several proposed bills, collectively known as the “Shalit laws,” are currently pending before the Knesset and seek to impose further severe restrictions on Palestinian security prisoners held in Israeli prisons. The purpose of these restrictions was originally to bring pressure to bear on Hamas to release captured Israeli soldier Gilad Shalit. Following the release of Shalit and the prisoner swap deal of October 2011, the fate of these bills remains unclear. They have all passed a preliminary vote in the Knesset plenum and enjoy strong, broad-based support among MKs.

- The Preventing Visits Bill – 2009⁴⁰ seeks to impose a blanket ban on prisoners who belong to an organization designated as a terror organization from receiving visits in prison.⁴¹
- The Restriction of Visitation for a Security Prisoner Bill – 2010⁴² proposes that any prisoner who belongs to an organization designated as a terror organization that holds an Israeli captive should be denied visits in prison and the right to meet a lawyer.
- The Release of Captives and Kidnapped Persons Bill – 2009⁴³ states that if an organization designated as a terror organization holds an Israeli captive and demands the release of a specific prisoner held in an Israeli prison, then this prisoner should be placed in “absolute isolation and be prevented from contact with another human being”.
- The Imprisonment of Requested Prisoners – 2009⁴⁴ states that any prisoner whose release is conditioned on the release of an Israeli held captive by an organization designated as a terror organization should be denied any right that could be restricted on security reasoning, held in isolation indefinitely and not be entitled to early release or parole. Once such prisoners have served their sentences, they should be declared a detainee and continue to be held.

37 Amendment no. 4 (2008) to the Criminal Procedure Law (Interrogating Suspects). The original Hebrew text is available at: http://www.nevo.co.il/Law_word/law14/law-2158.pdf

38 For more information, see Adalah and partners’ submission to the UN Committee Against Torture, “List of Issues Prior to Reporting by the Committee Against Torture,” March 2012, pp. 5-6, available at: http://www.stoptorture.org.il/files/Israeli%20Organizations%20_CAT%20LOIPR%202012_1.pdf

39 HCJ 9416/10, Adalah, et al. v. The Ministry of Public Security (case pending).

40 Legislative bill no. P/18/735, passed by the Knesset by a 52-10 majority, with 1 abstention.

41 In accordance with this bill, such prisoners would only be entitled to visits by the International Committee of the Red Cross (ICRC), and these would be limited to once every three months.

42 Legislative bill no. P/18/2396, passed by the Knesset by a 51-10 majority.

43 Legislative bill no. P/18/829, passed by the Knesset by a 53-9 majority.

44 Legislative bill no. P/18/758, passed by the Knesset by a 54-10 majority, with 1 abstention.

23. Bill to Fight Terrorism (2011)

This expansive bill, spanning over 105 pages of provisions and explanatory notes, threatens to enact into law various existing procedures, and to authorize new ones, which are applied discriminatorily against Palestinians from the OPT and Palestinian citizens of Israel, allegedly in the name of fighting terror. The bill seeks to entrench many emergency regulations currently in effect in Israeli law, some of which date back to the British Mandatory period, in a move that will significantly undermine the rights of “security detainees”.⁴⁵ The bill includes additional draconian measures for investigating detainees accused of security offenses; provides for the extensive use of secret evidence in court; limits detainees’ access to judicial review; weakens the evidentiary requirements on the state in these cases; establishes new criminal offenses, including for any public expression of support or sympathy with a terrorist group⁴⁶; and sharply increases the maximum sentences people convicted of such offenses. Moreover, the bill uses the following, troublingly vague definition of terrorism and terrorist organizations: “a group of people who act to execute an act of terrorism or to enable or promote the execution of an act of terrorism.”⁴⁷ The bill was first published by the Ministry of Justice on 21 April 2010, and then it passed first reading in the Knesset plenary on 3 August 2011.⁴⁸

45 Israeli authorities often invoke the Prevention of Terrorism Ordinance (1948) and the Prohibition on Terror Financing Law (2004) in security procedures. These are supplemented by the Defense Regulations (Times of Emergency) (1945), the Incarceration of Unlawful Combatants Law (2002), and the Criminal Procedure Law (Detainee Suspected of Security Offense) (Temporary Order) (2006).

46 Under the bill, three year prison sentences would be given to anyone who waves a flag, displays a symbol, or publishes a slogan of a terrorist group.

47 See the Israel Democracy Institute, “New Comprehensive Counter-terrorism Memorandum Bill,” May 2010, available at: http://www.idi.org.il/sites/english/ResearchAndPrograms/NationalSecurityandDemocracy/Terrorism_and_Democracy/Newsletters/Pages/17th%20newsletter/1/1.aspx

48 For more information, see ACRI, “Counter-Terrorism Bill: Undemocratic Emergency Regulations Could Become Permanent Law,” 4 August 2011, available at: <http://www.acri.org.il/en/?p=2999>; the Israel Democracy Institute, “Roundtable: The Counter-Terrorism Memorandum Bill,” 2 October 2010, available at: <http://www.idi.org.il/sites/english/ResearchAndPrograms/NationalSecurityandDemocracy/Pages/Counter-TerrorismMemorandumBill.aspx>

FREEDOM OF ASSOCIATION

The following series of laws and bills seek to curtail the freedom of association and expression rights of NGOs in Israel. This legislation was introduced mainly in response to claims that the work of these NGOs in defense of the rights of Palestinians constituted a deliberate campaign to “delegitimize” Israel following the publication of the Goldstone Report in September 2009.⁴⁹ In addition to these laws and bills, two separate proposals to establish parliamentary committees of inquiry into the funding and activities of human rights organizations were also put forward in early 2011. Due to local and international criticism, Netanyahu announced that he no longer supported these inquiries, and in July 2011 the Knesset rejected both proposals.

New Laws

24. Law on Disclosure Requirements for Recipients of Support from a Foreign State Entity (2011) (“Foreign Government Funding Law”)

The Knesset passed the law on 21 February 2011. It imposes invasive reporting requirements on NGOs, requiring them to submit and publish quarterly reports on any funding received from foreign governments or publicly-funded foreign donors, including information on any oral or written undertakings made to the funders. These details must also be published on the websites of the NGOs themselves, the Ministry of Justice, and the Registrar of Associations. While the law’s declared purpose is transparency, these provisions are superfluous since every NGO in Israel is already required under Israeli law to list its donors and other financial information on its website and to report annually to the government, specifying where foreign governments have donated money.⁵⁰ Its purpose is rather to harm human rights NGOs, as these restrictions may discourage foreign government funding. By contrast, Jewish Israeli settler groups do not receive such funding but are privately funded, and are therefore unaffected by the legislation. Furthermore, the law specifically exempts The World Zionist Organization, the Jewish Agency for Israel, the United Israel Appeal, the Jewish National Fund and their subsidiary corporations from its provisions. Thus the bill is inherently discriminatory. Palestinian NGOs in Israel and all NGOs that promote Palestinian rights are particularly vulnerable since they do not seek funding from Israeli governmental sources and have more limited access to private funding.⁵¹

Pending Bills

25. Bill on Income of Public Institutions Receiving Donations from Foreign State Entity (Legislative Amendments) (2011) (“Bill on Foreign Funding of NGOs”)

This new bill, presented on 30 November 2011, threatens NGOs with closure, especially human rights organizations, by severely restricting access to foreign government funds.⁵² It applies if the goals or actions of an NGO, “negate the existence of the State of Israel as a ‘Jewish and democratic State’”; incite racism; support armed struggle against the State of Israel; support the indictment of elected officials or Israeli soldiers in international courts; call for refusal to serve in the Israeli military; and/or support a boycott of the State of Israel or its citizens.⁵³ The bill divides NGOs registered in Israel into three categories: (1) those that will be completely banned from receiving foreign government

49 See, e.g., The Reut Institute, “Building a Political Firewall Against Israel’s Delegitimization”, March 2010, available at: <http://www.reut-institute.org/data/uploads/PDFVer/20100310%20Delegitimacy%20Eng.pdf>

50 The Association for Civil Rights in Israel (ACRI) has cautioned against the “misuse of (purported) transparency and reporting mechanisms for the purpose of negatively impacting the legal and legitimate activities of individuals, groups or bodies of various sorts, and against utilizing these tools to eliminate and silence political or ideological opponents.” See ACRI’s position paper on the bill, 23 February 2010, available at: <http://www.acri.org.il/en/2010/02/25/acri-responds-to-proposed-transparency-bill/>

51 For more information, see JNews, “MKs push for further pressure on human rights groups as restrictive legislation progresses”, 10 March 2011, available at: <http://www.jnews.org.uk/news/mks-push-for-further-pressure-on-human-rights-groups-as-restrictive-legislation-progresses>

52 The new bill combined Legislative bill no. P/18/2917, submitted by MK Fania Kirshenbaum, and Legislative bill no. P/18/3346, submitted by MK Ofir Akunis.

53 JNews. “New bill restricting foreign funding to Israeli NGOs back on agenda.” 1 December 2011, available at: <http://www.jnews.org.uk/news/new-bill-restricting-foreign-funding-to-israeli-ngos-back-on-agenda>

funding, namely NGOs deemed to be “political organizations”; (2) those that are not “political organizations” but do not receive funding from the Israeli government, and which must pay a 45% tax on foreign funding under the legislation; and (3) those that do receive (or have received) funding from the government of Israel, which can continue to receive foreign funding. The bill violates the rights of freedom of association and expression of human rights organizations in Israel which seek through democratic means to challenge discrimination, improve the political, legal, and social status of Palestinians in Israel, and/or promote the concept of Israel as a democratic state for all its citizens. The bill was frozen in December 2011 following strong international criticism.

26. The Associations (Amutot) Law (Amendment – Exceptions to the Registration and Activity of an Association) (2010) (“Universal Jurisdiction Bill”)

This bill, introduced in April 2010, seeks to outlaw associations that provide information to foreigners or are involved in litigation abroad against senior officials of the Israeli government and/or army chiefs for war crimes.⁵⁴ The bill would prohibit the registration of any NGO if “there are reasonable grounds to conclude that the association is providing information to foreign entities or is involved in legal proceedings abroad against senior Israeli government officials or IDF [Israeli military] officers, for war crimes.” An existing NGO would be shut down under the proposed law for engaging in such activity. The text of the bill refers directly to the Goldstone Report to justify its provisions. Because it essentially seeks to conceal information or suspicions of a crime, it contradicts the customary norms of international criminal law and international humanitarian law. It constitutes a dangerous attack on human rights organizations and anyone opposed to war crimes. It is a private member’s bill that has not yet been approved by the government.

27. Preserving the Values of the State of Israel Bill (Amendment Legislation) (2009) (“Jewish and Democratic State Bill”)

This private member’s bill would authorize the Registrar of Associations and the Registrar of Companies to close down associations or companies if their goals or actions are deemed to be against the state as a “Jewish and democratic” state.⁵⁵ The bill, proposed in 2009, violates the rights of freedom of association and expression of all Arab organizations in Israel which seek through democratic means to challenge discrimination, improve the political, legal, and social status of Palestinians in Israel, and/or promote the concept of Israel as a democratic state for all its citizens. It asks them to express their loyalty to the Jewish state and thereby seeks to limit the rights of the Arab minority. The bill bears similarities to Section 7A of the Basic Law: The Knesset (1985), which asks that every Arab political party list not deny the existence of Israel as a “Jewish and democratic” state, an un-democratic provision that has been used in every recent general election to attempt to disqualify Arab political parties from running. The bill seeks to undermine the daily operation of Arab organizations and put them under ultra-nationalist, ideological investigation, and threatens their legitimate activities. The Ministerial Committee for Legislation decided in early November 2010 that the text should be modified, in coordination with the Minister of Justice.

⁵⁴ Legislative bill no. P/18/2456.

⁵⁵ Legislative bill no. P/18/1220. The bill was discussed by the Ministerial Committee for Legislation on 7 November 2010.

OCCUPIED PALESTINIAN TERRITORY (OPT)

New Laws

28. Amendment No. 8 (2012) to the Civil Wrongs (Liability of the State) Law (1952)

This law, passed in the Knesset on 16 July 2012, introduces near-insurmountable obstacles to justice, accountability and redress for civilian victims harmed by acts of the security forces carried out in the OPT, even acts that violate international law, and consolidates the immunity of the state from tort actions brought against it. The law widely exempts Israel from its liability for injuries and damages inflicted on Palestinians in or from the OPT by the Israeli military. First, the amendment redefines the term “act of war” by replacing a paragraph that required there to be imminent danger to the life and body of Israeli soldiers with the provision that an act of war should be considered such in “terms of its nature; including the purpose, location, or the danger on the security force as a result of conducting the operation”. Second, the amendment added a new rule that gives the state the ability to invoke the “no liability” for an act of war defense as a preliminary argument. If it does, the court must consider the argument and give its decision according to the argument (without hearing evidence of any kind). If the court decides that the act is indeed an act of war, the case will be dismissed without evidence being heard. Third, in the original law the state was exempted from its responsibility for injuries and damages inflicted on residents of enemy states, to which the amendment adds “persons who are not citizens or residents of Israel, and are residents of a territory outside Israel that has been declared an ‘enemy territory’ in a governmental decree.” This provision would apply to the Gaza Strip, for example, which has been declared an “enemy entity” by Israel. Here, the new amendment contradicts the Supreme Court’s ruling from 2006, in which the court struck down an earlier provision that sweepingly exempted the state from liability from damages resulting from acts of war carried out in areas declared by the Defense Minister as “conflict zones”.⁵⁶ Moreover, this new exemption applies retroactively to 12 September 2005, the date of Israel’s “Disengagement” from Gaza, allowing cases pending before the courts to be dismissed. Fourth, the amendment designates the courts in the Southern and Jerusalem Districts as the only courts with the authority to preside over relevant cases, even though it is significantly easier for large numbers of lawyers and Palestinian plaintiffs to access courts in other districts.

29. Law to Amend the Income Tax Ordinance (no. 191) (2012)

The law, which passed in July 2012, grants a 35% tax exemption on donations to institutions that promote “Zionist settlement”. The law differentiates between public institutions on political and ideological grounds, contradicting the intended purpose of tax benefits to serve social goals such as promoting education, culture and religion. This proposed distinction violates the principle of equality between public institutions, regardless of the basis of their work. Significantly, the benefit applies to institutions that promote the establishment or expansion of settlements in the West Bank, including East Jerusalem, which are considered illegal under international law.

⁵⁶ HCJ 8276/05, Adalah, et al. v. The Minister of Defense, et al. (decision delivered 12 December 2006).

Pending Bills

30. Bill Preserving the Rights of Builders in Judea and Samaria [the Occupied West Bank] (2011)

This bill seeks retroactively to legalize settlements constructed in the OPT on private Palestinian land. All settlements in the OPT are illegal under international law. The proposed bill comes in the wake of a number of judgments recently issued by the Israeli Supreme Court that ordered the dismantling of settlements built on private Palestinian land.^{57, 58} The bills attempt to circumvent these Supreme Court decisions and undermine the rule of law. In the official explanatory notes, the bill openly criticizes the Supreme Court's decisions. The bill,⁵⁹ which was initiated by MK Yaakov Katz and 14 other MKs, would legislate that any settlement construction which received state approval or state assistance – including developing infrastructure, providing financial incentives, or advertising the construction of new structures – would be considered to be on state land. It also declares that if a person thought “in good faith” that he was the owner of the land when he built the structure, that he should be considered as such. The bill was scheduled to be voted on in the Knesset on 23 May 2012, but was postponed due to fears of international condemnation and pressure in case of its approval.

31. Bill to Amend the Prohibition of Discrimination in Products, Services and Entry into Places of Entertainment and Public Places Law (Prohibition of discrimination on grounds of place of residence) (2011)

This bill seeks to add “place of residence” to a list of prohibited considerations taken into consideration in establishing whether there is discrimination in supplying a product or public service. The bill provides a simple test in order to determine discrimination: the distance test. According to the test, discrimination on grounds of place of residence will be deemed to have taken place when a defendant refuses to supply a product or public service to someone who asked to receive them in his/her place of residence or business, while accepting to provide the same service to another person who lives somewhere else at similar distance, in the same circumstances and conditions. In this regard, “place of residence” can apply to any location in Israel and the OPT. This failure to distinguish between Israel and the OPT is invalid, however, since the bill ignores the fact that each of these areas has its own set of rules and laws. In addition, and more importantly, the law deliberately disregards the fact that a person may refuse to enter the OPT for ideological or security reasons or refuse to do business with and sell to the settlements for ideological reasons. The bill passed a preliminary vote in the Knesset in July 2012.

57 In one such ruling, the court ordered the demolition of five homes in the neighbourhood of Ulpana in the Beit El settlement. The court ordered the state to demolish the buildings by 1 May 2012. HCJ 9060/08, Abdul Ghani Yasin Khaled Abdallah v. The Minister of Defense (decision delivered 21 September 2011). On 7 May 2012, the Supreme Court rejected an extraordinary request by the state to cancel the decision and reopen the case, ordering the state to implement the decision by 1 July 2012. See Yesh Din, “Illegal Construction in the Ulpana neighborhood”, available at: <http://www.yesh-din.org/hotspotview.asp?postid=18>

58 In August 2011, the Supreme Court ordered the demolition of the Migron outpost. HCJ 8887/06, Yousef Musa Abdul Razek al-Nabut, et al. v. The Minister of Defense, et al. (decision delivered 2 August 2011). In March 2012, following an attempt to avoid implementing the ruling, the court rejected a revised arrangement promoted by the government. See Chaim Levinson, “Israel Supreme Court rejects compromise deal on West Bank settlement of Migron,” Ha’aretz, 25 March 2012, available at: <http://www.haaretz.com/news/national/israel-supreme-court-rejects-compromise-deal-on-west-bank-settlement-of-migron-1.420631>

59 Legislative Bill no. P/18/3643, submitted to the Knesset on 14 November 2011.

Adalah is an independent human rights organization and legal center that has been at the forefront of promoting and defending the rights of Palestinians in Israel and the Occupied Palestinian Territory (OPT) for over fifteen years. Its work includes challenging discriminatory and racist laws against Palestinian citizens of Israel, advocating for basic services and against home demolitions and evictions in the unrecognized Arab Bedouin villages in the Naqab (Negev), and pursuing accountability for victims of Israeli military operations in the OPT.

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