



## Adalah

### Land Rights and the Indigenous Palestinian Arab Citizens of Israel: Recent Cases in Law, Land and Planning

Submitted to the Secretariat, UN Working Group on Indigenous Populations  
26 April 2004

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## INTRODUCTION

Adalah submits this preliminary report on *Land Rights and the Indigenous Palestinian Arab Citizens of Israel: Recent Cases in Law, Land and Planning* for consideration by the United Nations Working Group on Indigenous Populations (UNWGIP). Specifically, Adalah is responding to a request for NGO contributions to a UNWGIP working paper dealing with the **principle of free, prior and informed consent of indigenous populations in relation to development affecting their lands and natural resources**. Adalah understands that this working paper will serve as a framework for the drafting of a legal commentary by the UNWGIP.

This report marks Adalah's first contribution to the work of the UNWGIP, and with it, the organization hopes to establish a dialogue with the UNWGIP and to place the issue of land rights of Palestinian Arab citizens of Israel on the UNWGIP's agenda.

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 Palestinian 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 rights; religious rights; women's rights; and prisoners' rights. Adalah's main activities are bringing cases before Israeli courts and various state authorities; advocating for legislation; providing legal consultation to individuals, NGOs, and Arab institutions; appealing to international institutions and forums; organizing study days, seminars, and workshops; publishing reports on legal issues; and training stagiaires, law students, and new Arab lawyers in the field of human rights.

## OVERVIEW

Palestinian Arab citizens of Israel are an **indigenous group** who became a national, ethnic, linguistic, and religious minority in their own homeland following the establishment of the state of Israel in 1948. The "Arab citizens of Israel" or the "Arab minority" or the

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“Palestinians in Israel” are a part of the Palestinian people who also live in the West Bank, Gaza Strip and the Diaspora. Arabic is their native language, and they belong to three religious communities – Muslim, Christians and Druze. They live predominantly in villages, towns, and mixed Arab-Jewish cities in the Galilee region in the north, the Triangle area in central Israel, and in the Naqab (Negev) desert in the south.

Since the establishment of the state in 1948, successive Israeli governments have enacted land laws and pursued land planning, allocation and settlement policies that have resulted in the confiscation of Arab-owned land, the displacement of Arab citizens from their homes, and the unjust and unequal allocation of land resources. Through the vigorous implementation of these laws and policies, today, **93% of all land in Israel is under direct state control**. The Israel Lands Administration (ILA), a governmental body established by law, administers all “Israel lands.” These lands belong to the (i) State of Israel - 71% (15.3 million dunams); (ii) Development Authority - 16% (2.5 million dunams); and (iii) the Jewish National Fund (JNF) - 17% (2.6 million dunams).<sup>1</sup>

State control of land makes state land policies extremely significant to the development of the Arab minority in Israel. The **clear inequality** between Jewish and Arab citizens of Israel regarding their access to land resources, their land rights, and their abilities to use the resource of land to develop their communities is exemplified by the following data:<sup>2</sup>

- Arab citizens of Israel comprise close to 20% of the total population of the state.
- They privately own about 3.5% of the total land in the state.
- Arab municipalities have jurisdiction over only 2.5% of the total area of the state.
- In the Galilee, Arab municipalities have jurisdiction over 16.1% of the land, while Arab citizens comprise 72% of the population. In the northern Naqab region, Arab municipalities have jurisdiction over 1.9% of the land, while Arab citizens comprise 25.2% of the population.
- About one-half of the private lands owned by Arab citizens of Israel in 1948 have been confiscated by the state.
- Land allocation for public purposes in all of the Arab towns and villages is under the minimum national standard.
- In practice, Arab citizens of Israel are blocked from purchasing or leasing land in about 80% of the area of the state.
- The Arab population in Israel increased six-fold between 1948 and 2000, but in the same period, the land under its control has shrunk. The state has not allowed the Arab minority to establish new towns. As a result, the building density in Arab municipalities has increased 16-fold, and the population density 12-fold, between 1948 and 2000.
- Tens of old Arab villages are “unrecognized” and the state is trying to evacuate them.

### **Lack of Community Participation in Planning**

The Planning and Building Law – 1965 governs all aspects of land planning in Israel. This law envisions community participation in planning solely in terms of objections to local and regional master plans and procedures. There are two main problems with this approach:

**(1) Limited Legal Standing to Challenge Land Plans** - Under Article 100 of the Planning and Building Law – 1965, those with an interest in the land and those who are damaged by the plan may submit objections. In addition, the law specifies that local committees, local councils, government ministries, and public bodies authorized by the Interior Ministry may object. Ten public bodies are enumerated in law, all of which are Jewish-Zionist entities; very recently, one Arab NGO obtained this status.<sup>3</sup>

**(2) No Real Community Participation in Planning – Community Participation Comes on the Background of Conflict between Citizens and the Israeli Authorities** – Interested and affected

individuals have the opportunity to object to a plan only after it is essentially completed. Unlike other countries and cities in the world, community groups are not involved in the process from the beginning, unless they already have some representation on various steering committees or editing committees. The Arab minority in Israel is severely under-represented and/or lacks any representation on various local, regional and national planning committees. There is no obligation to notify of planning processes underway. Thus, citizens cannot affect the main land planning policies or decisions.

The lack of community participation in planning is much more critical for the Arab minority for the following reasons: (1) They are marginalized in all aspects; (2) They are out of the circle of decision-making essentially on all official levels; and (3) They are considered as a hostile group by the authorities because of their mere existence, their geographical spread, and their higher demographic growth vis-à-vis Jewish citizens of the state. These factors significantly affect the planning system and the state's concept of planning from 1948 through the present.

Moreover, as an indigenous people, since 1948, the Arab minority has been in a constant process of regression in all aspects, especially land, planning and development. From the massive confiscation of lands since 1948, through the restrictive policies and plans governing the jurisdiction of Arab municipalities, to unjust land allocation – all of these factors have brought about a situation of mistrust and suspicion toward the Israeli authorities, especially the planning authorities. In 2003, Adalah conducted a survey of 500 Arab citizens of Israel from across the country, which sought to examine their trust or lack of trust in different governmental authorities, including the planning authorities. Of those individuals surveyed, 88% answered that they do not trust the Israeli planning authorities. There are almost completely divergent positions as to how Arab citizens of Israel see the system and how the authorities see the Arab minority.

During the last two-three years, the state has developed a **“new generation” of means to implement land and planning policies targeting, in particular, the Arab Bedouin in the Naqab.** These policies differ to some degree from those pursued in the past both in their scope and in their intensity. Take for instance the issue of the unrecognized Arab villages in the Naqab. About 45 unrecognized Arab villages exist in the Naqab with no official status: They are excluded from state planning and government maps, they neither have local councils nor belong to other local governing bodies, and they receive little to no basic government services such as electricity, water, telephone lines, educational or health facilities. Whereas the state simply failed to provide basic infrastructure and services to unrecognized Arab villages in the Naqab and continues to do so, today, the state is also directly and collectively attempting to relocate the more than 70,000 Arab Bedouin living in these villages. For example, beginning in 2002, the Israel Lands Administration (ILA) has sprayed some 24,000 dunams of land cultivated by Arab Bedouin farmers with toxic chemicals, and in 2003, the authorities demolished some 120 buildings, mostly homes, in the unrecognized villages. Further, the state is seeking to bypass the process of land registration begun in 1971, which would nullify without review, previously filed land ownership claims and is establishing seven new government-planned towns for the Arab Bedouin with the specific purpose of concentrating them on a minimal amount of land. At the same time, the state is advancing with decisions and plans to create new Jewish towns throughout the Naqab, to legalize and establish new Jewish “individual settlements” over large tracks of land, and is offering enormous financial incentives to Jewish citizens to move to and reside in the Naqab – all in order to ensure the exclusive Jewish use of “state land.”

Another recent trend is that the planning system in Israel, which should be independent, is becoming more and more of an **implementation body for governmental decisions** regarding land planning. This new approach marginalizes the Arab minority in Israel even more, as the

political system continually takes the lead rather than professional planning bodies. This dynamic does not leave much space for Arab community participation in the planning system. In response to this trend, the Arab minority is increasingly using “**organized, collective objections**” to proposed land plans, some examples of which are cited in this report. The development of the collective objection is becoming more of a tool to struggle for minimal living conditions, a struggle against governmental policies, rather than for real community participation in planning or for sustainable development. Arabs are included in land plans but from the perspective that the community constitutes a problem or a threat. What we have is majority planning for the majority, which looks at space as an empty space. This dynamic illustrates the huge gap between what the Arabs demand as a minority and the concept of planning as a process of development and to improve the welfare of society. The demands are very basic - to a house - rather than something much more advanced like public spaces, open spaces ... a town, village or even a city becomes only a housing space and not a living space.

This report highlights some of Adalah’s recent land and planning rights cases, which challenge the legality of some discriminatory decisions, plans, and policies before the Israeli courts and the local, regional and national land planning committees. It also details key legal letters sent to government ministers, inter-ministerial committees, and other state agencies. The report is organized around three main themes that characterize Adalah’s cases: **(I) Discrimination in Land Allocation; (II) Discrimination and Injustice in Land Planning; and (III) Dispossession and Displacement.**

## **I. DISCRIMINATION IN LAND ALLOCATION**

Adalah is currently undertaking three legal representations, all of which challenge governmental decisions, regarding discrimination in land allocation: (1) seeking the cancellation of an ILA decision to award a 90% discount on the price of leasing lands to discharged soldiers; (2) challenging the government’s plan to establish 30 new Jewish towns in the Galilee and the Naqab; and (3) objecting to an ILA and regional council plan to establish 30 new “individual settlements” in the Naqab. These cases highlight the various means and mechanisms by which the state is attempting to allocate state-controlled land exclusively for the benefit of Jewish citizens in violation of the principle of equality.

### **1) Seeking the Cancellation of Discriminatory ILA Land Distribution Decision to Award “State Lands” to Discharged Soldiers**

On 19 October 2003, Adalah filed a petition and a motion for an injunction to the Supreme Court of Israel on behalf of 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, suggested 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 specifically listed town and villages with less than 500 housing units in the Galilee (north) and the Naqab (south) that have been designated by the government as National Priority Areas “A” and “B”. Towns classified as “A” or “B” priority areas receive substantial, lucrative benefits such as extra education funding, additional mortgage grants, tax exemptions to residents and tax breaks for local industries.

In the petition, Adalah argued that the ILA decision discriminates against Arab citizens of Israel in land resource allocation on the basis of national belonging. Because Arab citizens are exempt from and do not serve in the military or do national service, they would be completely excluded from enjoying 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, there is no clear link between the qualifying criteria of military service and the stated aim of the decision, which is to increase the population of the Naqab and the Galilee. Rather, by conditioning this benefit on military service, Adalah argued, it appears that the actual aim of the decision is to increase the Jewish population in these regions.

Adalah also argued that the ILA's sole inclusion of Jewish towns and villages in its decision was discriminatory and arbitrary, completely failing to consider relevant socio-economic factors in affording the benefits it promises. Very few small Arab villages in the Galilee and in the Naqab fall within the 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 even they were excluded from the ILA's decision.

At a hearing on 9 December 2003, the Supreme Court denied the motion for injunction, rejecting the petitioners' request to freeze the implementation of the ILA decision. The Court also 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 Area list without clear objective criteria or legislation. The Court also ordered the respondents to reply to all issues raised in the petition against the ILA 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 Supreme Court to these cases.

On 28 March 2004, the state submitted a response to the petition. In its response, the state committed to adding 14 Arab villages in the north to the list – small villages that are currently classified as national priority "A" or "B". No Supreme Court hearing has been scheduled to date.

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

## **2) Challenging the Government's Plan to Establish 30 New Jewish Towns in the Galilee and the Naqab**

On 20 July 2003, Adalah sent a letter to Prime Minister Ariel Sharon, Attorney General Elyakim Rubenstein, and Minister of Industry and Trade Ehud Olmert, who also heads the Israel Lands Administration (ILA) Council, challenging the legality of the Prime Minister's plan to establish 30 new Jewish towns and to increase the number of individual settlements in the Galilee and in the Naqab. In the letter, Adalah urged the Prime Minister to cancel the plan and to draft an alternative plan that would address the significant inequality in land distribution and allocation between the Jewish majority and the Arab minority; apply principles of equality and fairness in the future distribution of land; and take into account the current and future development needs of all citizens of the state.

Reporting on the plan on 20 July 2003, *Ha'aretz* called it "the largest settlement effort inside the Green Line in the last 25 years." Quoting high-ranking government officials, *Ha'aretz* reported that the new towns "are conceived of as assisting in the distribution of the population away from the center, in preserving state lands, and in providing protection for the borders." However, the newspaper also noted several examples of new town plans situated very close to existing Arab towns and villages, apparently to restrict the latter's growth. In addition, according to the Prime Minister's advisor on settlements, Uzi Kern, the individual settlement holders will be in charge of large tracks of land and serve as "local security guard." *Ha'aretz* likened the plan to the setting up of new villages in the south by then-Housing Minister Sharon in the 1990s. This "political and demographic" approach, namely, "to create a contiguous Jewish area preventing Bedouin takeover

of lands within the Green Line,” is being applied to construction plans with strong support from the Jewish Agency, according to the newspaper.

In the letter, Adalah argued that the plan ignores the current situation and future development needs of Arab citizens of Israel. It fails to consider the severe overcrowding, the lack of housing and available land for residential building and industry, and the lack of public space in Arab villages and towns. Since the establishment of the state in 1948, the jurisdiction of Arab municipalities has almost not increased, despite a six-fold increase in the Arab population. Adalah further argued that the plan discriminates against the Arab minority as it seeks to allocate “state land” exclusively for the benefit of Jewish citizens of the state. Land is a public resource, essential for economic and social development, Adalah contended, that must be allocated fairly and equitably. Further, as a public authority, the government must act for the benefit and interest of the state’s entire population in the distribution of resources. It is obligated to collect and use relevant data, evaluate it, and set goals in accordance with the principle of equality in decisions that it makes.

Adalah also argued the plan violates the Planning and Building Law - 1965, as it would retroactively ‘legalize’ illegally established ‘individual settlements’ and increase the number of them. This approach also constitutes discrimination against the Arab minority, as it fails to set forth a plan for the ‘legalization’ of a large number of unrecognized Arab villages, many of which existed prior to the establishment of the state. The planning authorities have systematically excluded the unrecognized Arab villages from all local and national infrastructure development plans, thus, prohibiting residents from being able to obtain permits to build.

In a response dated 17 August 2003, the Legal Advisor to the Prime Minister’s Office denied that planned settlements were intended only for Jewish citizens of the state. Adalah countered by subsequently submitting transcripts of statements made on a radio program by an official in the Prime Minister’s Office, who explicitly emphasized that the settlements are intended solely for Jewish citizens of Israel. On 24 November 2003, Adalah learned that the Prime Minister’s Office moved the issue to the Supreme Court section of the Attorney General’s Office. This office responded on 22 April 2004, noting that the National Council for Planning and Building made a recent decision concerning this issue (without providing information as to this decision) and that further consultation and consideration is needed before replying substantively to Adalah’s letter.

### **3) Objecting to Proposed ILA and Ramat Ha’Negev Regional Council Plan to Establish 30 “Individual Settlements” in the Naqab**

As detailed above, one the government’s main policies is to establish “individual settlements” to ensure that “state land” is exclusively used for the benefit of Jewish citizens of the state. One manifestation of this policy is the proposed “Wine Path Plan” in the Naqab.

On 2 March 2004, Adalah appeared before the National Council for Planning and Building (NCPB) to raise objections against the proposed “Wine Path Plan” for the central Naqab. The 32-member NCPB is a statutory body, established by the Planning and Building Law - 1965, which currently sits within the Ministry of Interior. It is the highest planning authority in the state, mandated to review and decide upon national and district levels plans.

The ILA and the Ramat Ha’Negev Regional Council initiated the “Wine Path Plan,” which would affect tens of thousands of dunams of land. The stated goals of the plan are: “(a) designating spaces for the development of the Wine Path area in Ramat HaNegev, combining tourist, agricultural, and scenic uses, and setting instructions for preserving and developing them”; and (b) setting purposes and permitted uses in the Wine Path area in Ramat HaNegev for the establishment of up to 30 “agricultural tourist farms.” To meet these goals, the plan seeks to retroactively legalize and re-designate so-called “individual farms” and to establish 30 “individual settlements” for residential and other building purposes, such as for restaurants, shops, motels, etc.

The existing illegal “individual settlements” are large parcels of land, which have been given to Jewish citizens of the state for their use, over the years, by the ILA and regional councils, without a bid. The grazing fields in the individual settlement holdings in the Naqab amount to about 80,000 dunams of land in total, according to the Society for the Protection of Nature in Israel (SPNI). Many of these “individual settlements” now have illegally constructed housing and entertainment facilities on land solely zoned for agricultural use. The re-designation of the land would provide an economic windfall for existing and future individual settlement holders.

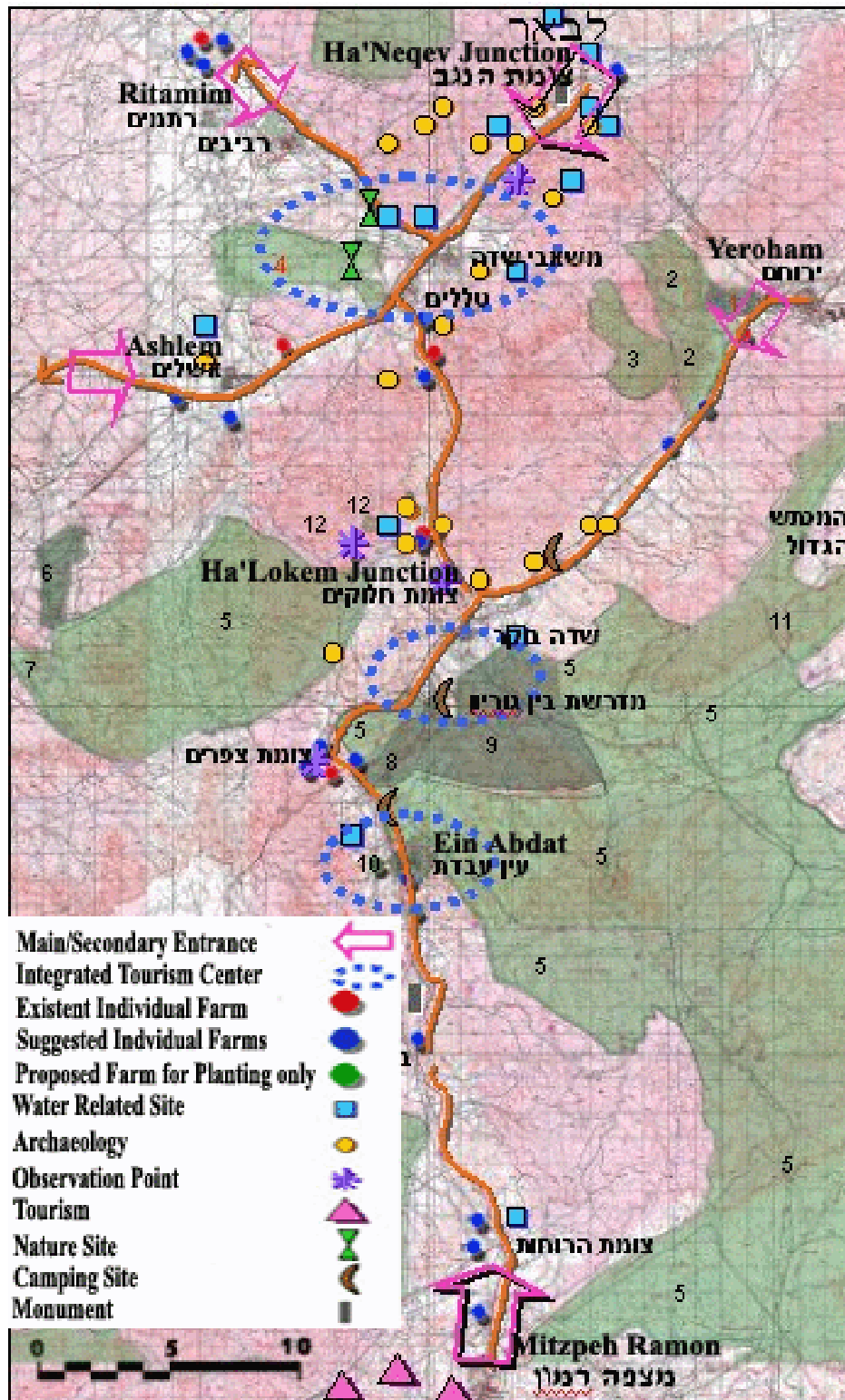
Adalah learned of the “Wine Path Plan” from reports in *Ha’aretz* on 29 February 2004. The Prime Minister’s Office had originally initiated the “individual settlements” policy two years before. A governmental decision, taken on 6 November 2002, which approved the policy, states that: “it is a tool to fulfill the government’s policy for developing the Negev and the Galilee and for safeguarding state land in the Negev and the Galilee.”

At the NCPB hearing, Adalah set forth several arguments for the cancellation of the plan, as raised in a 1 March 2004 letter sent to Mr. Gideon Bar-Lev, chairperson of the NCPB. First, Adalah argued that the plan’s unequal distribution of vast and lucrative portions of land, with no clear, objective criteria, prevents equal access to the land for the entire population of the region and is thus, discriminatory. Second, Adalah argued that the plan is not based on any relevant factual data regarding the current situation or the needs of the local Arab Bedouin population, including those who live in the unrecognized villages, with regards to housing, land shortage, and overcrowding problems. As such, the plan, lacking clear criteria and a relevant factual basis, fails to adhere to principles of constitutional and administrative law. Third, Adalah argued that the retroactive legalization of the seizure of “state lands” violates the Planning and Building Law – 1965. Adalah urged the NCPB to propose an alternative plan based on an equal and just distribution of land taking into consideration the current situation and future needs of the Arab Bedouin in the Naqab and aiming to eliminate the gaps between the Arab and Jewish populations in the region.

The NCPB also heard arguments against the plan raised by the SPNI, the largest environmental NGO in the state. The SPNI argued that the individual settlements break up open spaces and present numerous dangers to the surrounding environment.

At the conclusion of the hearing, the NCPB voted against submitting the plan for approval. It decided to appoint a three-person subcommittee to review the plan and submit recommendations and conclusions. On 30 March 2004, the NCPB decided to approve the Wine Path Plan, with certain conditions, for submission.

See Map of the Wine Path Plan on the following page.



Map of the Wine Path Plan as published on the website of the Ramat Ha'Negev Regional Council: <http://www.ramat-negev.org.il/info/wine/wine-road.htm?21023>. The Wine Path runs from Ha'Negev Junction down to Mitzpeh Ramon in the Ramat Ha'Negev area.



## **II. DISCRIMINATION AND INJUSTICE IN LAND PLANNING**

Adalah is working with other NGOs, Arab mayors, and affected community residents throughout the country to challenge the state's discriminatory land plans that will severely and negatively impact the future development and growth of Arab towns, villages and neighborhoods. For the most part, these **plans view the Arab minority as a "demographic problem,"** as such. These plans seek to restrict or prevent the expansion of industrial, commercial, and development areas in Arab towns and villages; limit the growth of Arab towns by surrounding them by protected lands, which cannot be developed; increase the housing and population density in Arab towns and villages; require the demolition of Arab-owned homes; and assert the claimed state's right to land.

Highlighted here are four cases on which Adalah is currently working that involve discrimination and injustice in land planning: (1) objecting to and seeking the cancellation of the TAMAM 2-9 plan for the Northern District of Israel; (2) objecting to and seeking the cancellation of Local Plan G-7337, which proposes the establishment of a nature reserve and a national park in the north of Israel; (3) working with residents of the "unrecognized neighborhood" of Al-Mal to include the neighborhood in the new master plan for the Arab village of Wadi Salami; and (4) challenging the legality of a recent governmental decision which would forcibly remove tens of thousands of Arab Bedouin citizens of Israel from their lands and homes in the unrecognized villages in the Naqab and concentrate them on a minimal amount of land in government-planned towns.

### **1) Objection to TAMAM 2-9 Plan for the Northern District of Israel**

Adalah, together with the Arab Center for Alternative Planning (ACAP), filed an objection to TAMAM 2-9 - The Plan for the Northern District of Israel before the National Council for Planning and Building (NCPB) on 30 December 2001. The objection was submitted on behalf of 26 Arab municipalities and local councils in the north. The objectors demanded the cancellation of the plan and the development of a new plan, in accordance with modern planning norms, based on principles of equality, public participation, transparency, and fair representation of Arab citizens of the state in the planning process.

The TAMAM 2-9 Plan was initiated by the NCPB in 1986 with the stated goal of "preserving the lands of the nation and Judaizing the Galilee."<sup>4</sup> Planners also raised concerns that "The taking control of the [Northern District] by Arab elements is a fact that the State of Israel is not dealing with as it should and this will cause distress for future generations."<sup>5</sup>

The Northern District Committee for Planning and Building submitted TAMAM 2-9 in August 2001, presenting it as a development plan for the northern district of Israel, an area where over 50% of the population are Palestinian citizens of Israel. In reality, the plan revealed itself more as a political and demographic tool than an actual plan for socio-economic development. The plan proposes to find solutions to three main problems, among eleven others: (1) "predominant Jewish minority in many parts of the Galilee"; (2) "Arab towns and villages are geographically contiguous"; and (3) "the taking control of land and illegal building."<sup>6</sup>

In the plan, all industrial and commercial areas are placed in or close to Jewish towns, and the development of tourism is promoted only in these towns. Restrictions set forth in the plan prevent the expansion of industrial, commercial, and development areas in the Arab towns and villages. Further, many of the Arab towns and villages are surrounded by protected lands, which cannot be developed. The plan neglects the poor living conditions in Arab towns and villages, failing to address the severe housing problems, overcrowding, lack of land available for building, and the shortage of public services that exist in these areas.

The objection included four parts: (1) a challenge to the process of planning including the exclusion of Arab representation on the plan's editorial committee, responsible for finalizing the plan, and the lack of proportional representation on the steering committee (two Arab citizens out of 30 members); (2) an analysis of planned maps and the provision of updated maps; (3) an analysis of the applicability of the plan; and (4) a challenge to the entire philosophy behind that plan that views the existence of Arab citizens of Israel as a problem. The objection noted that the government's maps of Arab villages and towns were completely inaccurate, with entire neighborhoods excluded from them. Clearly such exclusion of information and of input from the affected community impacts negatively on the applicability of the plan.

The NCPB held a hearing on the objection on 20 March 2003. The NCPB has not yet issued its decision.

## **2) Objection to Local Plan G-7337 on Behalf of Over 100 Arab Farmers**

In January 2002, the Nature Reserve and National Park Authority (NRNPA) submitted Local Plan G-7337 to the Northern District Planning and Building Committee (NDPBC). The plan proposes the establishment of a nature reserve and a national park on over 3,200 acres (13,184 dunams) of land in the area of el-Malak Valley, surrounding five Arab towns (Basmet Tabon, el-Kabiah, el-Helif, el-Hamereh, and el-Khawaled) and bordering several more in the north of Israel. The plan's principal stated objective is to preserve the land's natural resources and appearance. To do so, the proposed plan permits the confiscation of land from its current owners, places restrictions on farmers' land cultivation, and limits the future growth of these Arab towns.

On 13 March 2002, Adalah filed an objection to this plan, on behalf of over 100 Arab farmers from the Galilee, to the NDPBC, demanding its cancellation. Adalah argued that the plan violates the farmers' right to property and their freedom of employment. It ignores the longstanding relationship between the Arab farmers and their land, and the integral role they play in preserving it. The proposed restrictions that impede the farmers' employment would also deprive them of their primary source of income. Adalah also argued that the plan is discriminatory as it fails to establish clear objective criteria for establishing a nature reserve in the area; rather, the geographical specifications of the plan appear to be designed specifically to limit the growth of Arab towns. Inexplicably, the proposed nature reserve excludes all the area's forests, which are located close to Jewish towns (Alonim, Aloni Abba, Alon Hagalil, Bet Lehem, and Hagalilit), and instead is concentrated near and entirely surrounds Arab towns and includes most of the Arab-owned land in the area that has been cultivated for over 100 years. The area designated as a nature reserve and national park illogically contains virtually no natural forests. Adalah also argued that there is no connection between the land owned and cultivated by the farmers and the public need for the establishment of the nature reserve and the national park.

The plan also contains factual inaccuracies, which present a misleading picture of the current state of the land in question, Adalah further argued. For example, the area designated as a nature reserve under the plan, encompasses two Arab villages - el-Hamereh and Ras Ali - that do not appear on the maps that accompany the plan. The village of el-Hamereh appears far from its actual location, while the village of Ras Ali does not appear at all. Without prior knowledge, an individual reviewing the plan would not be aware of the plan's effect on these villages. Adalah argued that the NRNPA, as a government agency, failed to uphold its obligation to the public by presenting false and misleading information. Bimkom - Planners for Planning Rights is preparing an expert opinion. No date has been set for a hearing on the objection.

## **3) Challenging the Denial to Include the "Unrecognized Neighborhood" of Al-Mal in the New Master Plan for the Arab Village of Wadi Salami**

The Arab town of Wadi Salami (population about 3,000), located in the Galilee, was first recognized by the state the early 1970s. At that time, the neighborhood of al-Mal, which is

geographically a part of Wadi Salami, was left out of the master plan of the village, and thus, became an “unrecognized neighborhood.” Currently, about 100 people reside in 15 homes in al-Mal. As an “unrecognized neighborhood,” there is no basic infrastructure, and the residents are not provided with any municipal services nor can they obtain permits to build on their land.

In 22 July 2002, Adalah, on behalf of the residents of al-Mal, approached the Northern District Planning and Building Committee (NDPBC) to include the unrecognized neighborhood in a new master plan that was being developed for Wadi Salami. In the course of extensive correspondence with the Misgav Local Planning and Building Committee and the NDPBC, Adalah learned that the NDPBC had discussed the option of including al-Mal in the plan for Wadi Salami and had rejected it. Adalah then asked for the protocols of the NDPBC meetings, as well as the decision. For this information, the NDPBC referred Adalah to MLPBC, and the MLPBC referred Adalah back to the NDPBC.

Adalah filed an administrative petition to the Nazareth District Court on 13 April 2004 on behalf of the residents of al-Mal against the MLPBC and the NDPBC to obtain the protocols. This information must be provided, Adalah argued, as the al-Mal residents are affected parties to the decision. Further, the protocols should also be made available pursuant to the Freedom of Information Act - 1998.

#### **4) Challenging the Legality of the Governmental Decision Regarding the Bedouin Sector in the Naqab (“The Sharon Plan”).**

On 4 May 2003, Adalah sent a letter to Prime Minister Ariel Sharon and Attorney General Elyakim Rubenstein challenging the legality of a 9 April 2003 government decision regarding the Bedouin sector. This decision sets forth a NIS 1.175 billion (about US \$265 million) five-year plan (2003-2007). According to the decision, the objective of the plan is “to alter and improve the situation of the Bedouin population in the Negev, relieve its distress, arrange for the orderly recording of land in the Negev, and strengthen law enforcement.”

The main aspects of the plan include the setting forth of policy guidelines and government spending for: (i) contesting and settling ownership claims and land arrangements; (ii) “enforcing the state's rights to land and enforcing the planning and building laws;” (iii) completing the development and infrastructure of the existing seven Arab Bedouin towns (Rahat, Lagiyya, Kessife, Tel el-Sebe, Hura, 'Arora, and Segev Shalom); and (iv) the planning of seven new such towns. To note that close to 40% of the budget is allocated to home demolitions, land dispossession, and community transfer; no budget is allocated for the planning and development of the new towns.

In remarks about the plan, the Minister of Industry and Trade Ehud Olmert, who is also responsible for implementing the plan, was quoted as saying that: “We are talking about evacuating [the Bedouin] to the new seven towns that we are building for them. We will conduct contacts with them [the Bedouin], however, I assume that they will absolutely oppose [the plan] ... If it [this issue] was up to an agreement, it will never be given ...”<sup>7</sup>

The government’s plan does not fit the needs, suit the priorities or uphold the rights of the Palestinian Bedouin citizens of Israel living in the Naqab (Negev), approximately 120,000 people. The government’s decision is not a development plan, but rather, a plan to concentrate the Palestinian Bedouin living in the Naqab on a minimum amount of land. In the letter, Adalah set forth five main arguments against the plan:

(1) *Conflict of interest between the functions assigned to ILA.* According to the plan, the ILA is tasked with the development of the existing and planned towns for the Arab Bedouin. At the same time, it is also charged with “submitting motions to court contesting any land ownership claims

made by the Bedouins.” One authority cannot be responsible for two conflicting duties, both development and contesting the land claims of the “subjects” of this development.

(2) *No community consultation.* None of the Arab Bedouin living in the unrecognized villages in the Naqab, those who stand to be most affected by the plan, were consulted prior to its approval. The failure of the government to consult with the community makes the plan illegal. By not consulting with the community or with experts, the government is continuing to use an old model of planning which it employed in the establishment of the existing seven government-planned towns for the Arab Bedouin in the Naqab. This model is widely regarded as a failure by experts, who describe the government-planned towns as “socially, economically and politically dysfunctional, ranking as the most disadvantaged settlements in Israel by a significant margin.”<sup>8</sup>

(3) *Discriminatory Approach.* According to the decision, the ILA “will act to fully implement the rule of law by enforcing the state’s rights in land, including taking actions against trespassers.” This approach is discriminatory for three reasons: (i) The plan targets only so-called “illegal buildings” in the unrecognized Arab Bedouin villages, while ignoring this phenomenon in Jewish communities; (ii) the problem of “illegal buildings” in the unrecognized villages is a result of discriminatory state policies – these villages have been systematically excluded from local and national development plans, making it impossible for residents to obtain building permits; and (iii) while the government frequently engages in community consultation on property rights issues with Jewish communities, no such approach was taken with the affected Arab communities in the context of this plan.

(4) *Need for legislation.* The plan affects a large number of people, their basic rights and their livelihoods, and concerns matters of intense social conflict between Arab citizens and the state. As such, in order to have initial legal validity, the plan must be a part of a legislative process and not a decision of the government. Further, even if such a plan was set forth in legislation, it would need to pass judicial challenge and review.

(5) *Failure to recognize native land rights.* The plan ignores the historical and contemporary injustices suffered by the Bedouin, ranging from their expulsion and forced flight during the 1948 War, to the confiscation of their land, and their displacement and re-location during the military regime imposed on all Palestinians in Israel between 1948 and 1966. The government should adopt a different approach, which recognizes the historic injustice done to the native Arab Bedouin in the Naqab as well as their land rights.<sup>9</sup>

In June 2003, the Attorney General responded to Adalah’s letter stating that the appropriate way to critique the plan is to voice and/or file objections to it through the land planning procedure. The Minister of Industry and Trade replied in July 2003, claiming that the plan constitutes an affirmative action program for the Arab Bedouin in the Naqab.

### **III. DISPOSSESSION AND DISPLACEMENT**

This section details seven recent legal representations undertaken by Adalah concerning governmental decisions and policies aimed at displacing and dispossessing Arab citizens of Israel from their homes and lands. These cases challenge principle issues related to administrative demolition orders; home demolition policies; attempts to evacuate Arab individuals from their privately-owned lands; attempts to nullify land ownership claims of Arab citizens, without due process; and even the use of toxic chemicals to destroy agricultural fields, constituting a danger to the life and health of residents, animals and their environment.

## **1) Challenging Administrative Demolition Orders Issued by the Misgav Local Planning and Building Committee against a Mosque and Two Homes in the Arab Village of Husseniya**

Adalah is currently litigating two cases involving administrative demolition orders against a mosque and two homes in the Arab village of Husseniya (population 800-900), located in the north of the country. Although Husseniya has existed for decades, it was only granted government recognition in 1995. Upon its recognition, a local committee was appointed for the village; in 2001, the inhabitants of Husseniya, for the first time, elected their own local committee members.

Husseniya falls within the jurisdiction of the Misgav Regional Council. The Misgav Regional Council, which was set up in 1982, is comprised of 30 Jewish towns and six Arab villages. The Jewish-dominated regional council gives Jewish representatives control over land planning decisions for the Arab towns under its jurisdiction.

The head of the Misgav Local Planning and Building Committee (MLPBC) issued the administrative demolition orders in Husseniya, after consulting with the head of the Misgav Regional Council. In both of these demolition cases, Adalah argued that the MLPBC had violated the Planning and Building Law - 1965 by not consulting with the head of the local committee of Husseniya. The local committee, established by law, is elected to run the daily matters of the village. This consultation process, at the local level, is necessary to ensure community participation in planning. It is a mechanism that connects the more centralized national and regional administrative planning bodies to the citizens as well as the interests of their local communities. Community consultation in planning is a fundamental part of the democratic process; it is not a mere technicality, but rather a tool for a constant “conversation” between the peoples’ representatives and governmental authorities.

### **A. Demolition Order against the Husseniya Mosque**

In April 2001, the head of the MLPBC issued an administrative demolition order against the mosque in Husseniya claiming it was built illegally. Adalah, on behalf of a committee that deals with issues related to mosques and cemeteries in Husseniya, submitted a motion to the Acre Magistrate Court to cancel the order in August 2001. In the motion, Adalah argued that the order was invalid, as the MLPBC had failed to consult with the head of the local committee of Husseniya prior to the issuance of the demolition order, as required by the Planning and Building Law – 1965. Article 238A (B) of the Law provides that consultation with the head of a local authority in which the structure or building designated for demolition is located must precede the issuance of any administrative demolition order. As a local committee, constituted in accordance with the law existed in Husseniya, prior consultation by the MLPBC should have been undertaken with the head of this body. The head of the Husseniya local committee is the appropriate individual in such a case as he has direct contact with the inhabitants of the village, making him the most knowledgeable about the specific circumstances and considerations in order to decide upon the reasonableness of the issuance of an administrative demolition order. The head of the Misgav Regional Council, who had been consulted prior to the issuance of this order, is not similarly-situated.

In 20 November 2001, the Acre Magistrate Court accepted the motion and cancelled the administrative demolition order against the mosque. The MLPBC filed an appeal against this decision to the Haifa District Court in January 2002. On 2 February 2004, the Haifa District Court upheld the decision of the Acre Magistrate Court, emphasizing once again, the duty to consult with the head of the local committee of Husseniya, prior to the issuance of an administrative demolition order. To date, no appeal has been filed to the Supreme Court.

***Criminal Appeal 2005/02, Misgav Local Planning and Building Committee v. Yousef Sawaed, et. al. (Haifa District Court, decision delivered 2 February 2004)***

## **B. Demolition Orders against the Sawaed Brothers' Homes**

On 29 July 2001, Yousef and Housni Sawaed, Arab citizens of Israel living in the village of Husseniya, were informed that administrative home demolition orders had been issued by the MLPBC for each of their houses. Upon receiving the orders, the brothers filed an appeal to the Acre Magistrate Court. In October 2001, their request to cancel the orders was rejected. They immediately filed an appeal against this decision to the Haifa District Court, which cancelled the demolition in January 2002. The following month, the MLPBC filed an appeal to the Supreme Court. At this stage, the Sawaed brothers approached Adalah to assist them in their case.

On 26 January 2004, Adalah submitted legal arguments on behalf of the Sawaed brothers to the Supreme Court. In the submission, Adalah argued that the Supreme Court should uphold the decision of the Haifa District Court, which ruled that the failure of the MLPBC to consult with the head of the local committee of Husseniya prior to the issuance of the demolition order, as required by the Planning and Building Law – 1965, rendered the order invalid. Like in the case of the mosque, the MLPBC had only consulted with the head of the Misgav Regional Council prior to issuing the orders against the Sawaed brothers' homes.

Adalah also argued that the Local Council Order - 1958 provides that in cases of home demolition orders, the authority of the MLPBC to decide upon these issues is transferred to the local committees that fall within the jurisdiction of the Misgav Regional Council - in this case, the local committee of Husseniya. Thus, the MLPBC should have consulted with the head of the Husseniya local committee and not with the head of the Misgav Regional Council. Therefore, the orders are invalid and the Haifa District Court's decision to cancel the demolition should be upheld.

On 18 February 2004, the Supreme Court held a hearing on the case. At the hearing, the MLPBC argued that the heads of local committees could not be trusted regarding the issuance of home demolition orders, as they are influenced by community forces that prevent them from providing impartial consultation. Supreme Court Justice Matza criticized the MLPBC for advancing such an argument. Essentially, the MLPBC's argument, if accepted, would moot all powers of elected local committees. Adalah submitted supplemental arguments to the Supreme Court on 22 February 2004. The Court is expected to rule on the case following a review of this submission.

**Permission for Criminal Appeal 1782/03, *Misgav Local Planning and Building Committee v. Yousef and Housni Sawaed* (case pending).**

### **2) Demolition Order against the Home of Hussein Sawaed**

In many cases, when the state wishes to demolish the home of an Arab citizen of Israel, the state argues before the court that the house stands on land designated as agricultural. The state uses this argument even in cases in which the building in question existed before the enactment of the Planning and Building Law - 1965. An example of such a case is that of Hussein Sawaed.

Mr. Sawaed's house is located near Shafa'amr in the north of Israel. The house was built in 1959, prior to the enactment of the Planning and Building Law - 1965, and the Sawaed family has resided in it since 1972. In 1991, the Northern District Planning and Building Committee (NDPBC) filed a criminal indictment against Mr. Sawaed before the Acre Magistrate Court charging him with illegal building and using agricultural land for residential use in violation of the Planning and Building Law – 1965. During the course of the trial, the indictment was amended and the charge of illegal building was cancelled, as the statute of limitations had expired. After trial, on 9 February 1999, the Magistrate Court decided that Mr. Sawaed was guilty of the charge of using agricultural land for residential purposes. The Court also ruled that Mr. Sawaed could remain in his home for three years and attempt to obtain a permit for residential use. However, the Court also informed the NDPBC that it could file a motion requesting the demolition of Mr.

Sawaed's home (although he was not convicted of the offense of illegal building) under Article 212 of the Planning and Building Law – the “Request for Demolition Order Without Conviction” procedure. On 11 October 1999, the NDPBC filed this Article 212 motion. Adalah began representing Mr. Sawaed at this time.

In early 2000, Adalah submitted preliminary arguments to cancel the NDPBC's Article 212 motion, contending that the charge violates Mr. Sawaed's right to property and unreasonably prevents him from getting a permit for residential use of the house. On 19 December 2002, Adalah filed supplemental arguments in the case. By filing the Article 212 motion a few months after the Court's decision in 1999, Adalah argued that the NDPBC did not act in good faith, and that the motion should be cancelled as it was filed too late - 40 years after the home was built.

On 30 January 2003, the Magistrate Court decided that: (1) Three years has passed since the 1999 Court ruling on the case and thus, Mr. Sawaed is not permitted to use the house for residential purposes as he did not obtain a permit. Thus, the arguments relating to the violation of property rights and bad faith were rejected; and (2) the late filing of the Article 212 motion – 40 years after the house was built – is an issue for trial. Trial is set for May 2004.

**Different Motions 5530/99, *The State of Israel and the Northern District Planning and Building Committee v. Hussein Sawaed* (case pending).**

**3) ‘Adel Sawaed’s Right to a Home in Kamoun**

In the early 1980s, Kamoun, located in the Galilee, was established as a Jewish town and became part of the Misgav Regional Council. Kamoun was built around a plot of land owned by the Sawaed family, Arab citizens of Israel. Several members of the Sawaed family live in two homes in Kamoun that were built prior to the establishment of the state; evacuation orders have been issued against them by the Acre Magistrate Court, after their land was registered as “state land.”

Mr. ‘Adel Sawaed, another family member, built a temporary home, after marrying, on a plot of land owned by the Sawaed family in Kamoun. He approached the Misgav Local Planning and Building Committee (MLPBC) in 1997 for a building permit in order to build a new home. The MLPBC has not yet issued any decision on his request.

In 2000, the MLPBC obtained a court order, valid after 18-months, to demolish ‘Adel Sawaed's temporary residence. Adalah, on behalf of Mr. Sawaed, filed a motion to the Acre Magistrate Court on 29 July 2003 seeking an injunction to delay the demolition. In response to the motion, the lawyer representing the MLPBC requested that both parties reach an agreement negotiated by the court. The parties reached an agreement on 22 October 2003 that the house demolition would not take place, pending the decision on the building permit by the MLPBC, as Adalah had requested. The agreement also contained provisions to ensure that if the MLPBC decides to reject his request for a building permit and order the demolition of his home, it must provide 30-days advance notice so that he may file an appeal.

Adalah is currently assisting Mr. Sawaed by working with the MLPBC to facilitate his building permit request. By pursuing Mr. Sawaed's case, in which there is no dispute over land ownership, Adalah is also challenging the existence of exclusively Jewish settlements.

**4) Joint Regional Committee for Re-Division of Agricultural Land Cancelled Plan in the Naqab – the *De Facto* Large-Scale Confiscation of Arab-Owned Land Averted**

In 10 June 2003, Adalah, in cooperation with the Committee for the Defence of Land Rights of Internally Displaced Persons in the Naqab (CDLRIDP), filed an objection on behalf of eleven

Arab Bedouin citizens of Israel to the Joint Regional Committee for Re-division of Agricultural Land (JRC), against Local Plan “Kibbutz Shuval and surrounding area, 10/MSD” demanding the plan’s cancellation. The plan would have brought large amounts of land to registration as state-owned land, resulting in the *de facto* confiscation of Arab-owned lands.

The stated goal of the plan, which affects 21,213 dunams of mostly agricultural land, was to register the lands with the Israel Land Registry, to redefine divisions and re-classify sections of the land. Adalah raised four main arguments challenging the legality of the plan: (i) It violates the objectors’ due process rights as it bypasses the process of land registration begun in 1971, and would nullify without review, the previously filed land ownership claims. If approved, the plan would *de facto* bring out a large-scale confiscation of land by the state; (ii) it is misleading, inaccurate, and uses imprecise language. Importantly, the plan notes that it was submitted with the consent of the “landowners,” namely, the State of Israel, the Jewish National Fund, and the Development Authority; (iii) It fails to meet the criteria for a “plan for the re-division of land,” as set out by the Planning and Building Law - 1965; and (iv) The ILA exceeded its authority by initiating and submitting the plan. The CDLRIDP prepared maps demarcating the land ownership claims asserted by the objectors, which were also submitted as part of the objection.

On 6 January 2004, the JRC decided to cancel the plan. By reaching this decision, the *de facto* large-scale confiscation and transfer of thousands of dunams of scarce Arab-owned land to state-control was averted.

### **5) Challenging the Legality of the Government’s Plan to Demolish Arab Homes in the Naqab, the Galilee, and the Triangle**

Adalah submitted a letter on 2 October 2003 to then-Attorney General Elyakim Rubenstein, Prime Minister Ariel Sharon, Minister of Internal Security Tzachi Hanegbi, and Minister of Industry and Trade Ehud Olmert, challenging the legality of a recent government plan, as reported in the Hebrew press, to increase the demolition of homes throughout the country belonging to Palestinian citizens of Israel. Adalah demanded that the government (1) cancel the plan; (2) cease the discriminatory implementation of home demolition orders; and (3) initiate a comprehensive planning process, based on the principles of equality and fairness, with the full participation of the Arab minority in Israel, including experts, affected residents, and housing rights activists.

On 29 September 2003, *Ma’ariv* reported that:

In a meeting of the Ministerial Committee for the Non-Jewish Sector which convened two weeks ago, the Prime Minister said that: ‘we are losing the land that we are not settling.’ Sharon even hit his hand on the desk and demanded that the ministers increase the momentum [to halt] the illegal building in the Arab sector. Pursuant to that, Ministers Olmert and Hanegbi met and decided to establish a bureau, the purpose of which will be to implement home demolition orders of illegal buildings in the Arab sector. The bureau is supposed to focus on three centers where the phenomenon of illegal building and breach of building permits is most pronounced: the villages of the Bedouin in the Negev and the villages of the Arabs in the Galilee and in the Triangle ...major sources in the government also mentioned that ‘every new building which will be built in the Arab sector will immediately be demolished, and then hundreds of buildings will also be demolished which were built on state land illegally.’

In the letter, Adalah argued that if the press report is correct, the government’s plan is illegal for three main reasons: (1) The lack of state-approved plans for Arab towns and villages, as well as for the unrecognized villages, makes it *de facto* impossible to obtain building permits. The



government characterizes Arab-owned homes built without a permit as “illegal.” If implemented, the government’s decision to demolish these “illegal homes” would constitute a clear violation of the right to housing, as enumerated in several international human rights treaties ratified by Israel; (2) The government’s decision is discriminatory in that it targets only so-called “illegal homes” in Arab towns and villages, and completely ignores this phenomenon in Jewish communities, such as the building of commercial enterprises on land designated as agricultural in kibbutzes and moshavs. Further, the so-called “illegal building” problem in Arab towns and villages, as well as in the unrecognized villages, is a result of ongoing discriminatory state policies; and (3) The government’s decision follows persistent patterns of unjust policies and laws that have dispossessed Palestinian citizens of Israel from their lands and displaced them from their homes since the establishment of the state. Examples of such laws by which the state has confiscated Arab-owned land include the Absentee Property Law (1950), the Law of State Property (1951), the Law of Land Purchases (Confirming Actions and Compensation) (1953), and the Land Ordinance (Purchasing for Public Interest) (1943). Arab Bedouin citizens of Israel have been particularly disadvantaged as a result of historic and contemporary state policies.

On 11 January 2004, the Head of the Supreme Court Division of the Attorney General’s Office replied to Adalah’s letter. She stated that the Prime Minister did not make the statements attributed to him by *Ma’ariv*, and that in fact, the meeting was called to discuss the overall actions taken to date pursuant to the governmental decision regarding the “Bedouin Sector” in the Naqab (discussed above). As to the “bureau” referred to by *Ma’ariv*, she contended that it “was not established to deal with the Arab sector or any other sector,” but was established by a 25 March 2003 government decision for the purposes of strengthening the enforcement and implementation of the planning and building laws.” The April 2003 ministers’ committee set the “priority to strengthen the implementation [of the planning and building laws] in the southern district.” She also emphasized that, “the policy of implementation would be set by the Attorney General and the Attorney General’s Office.” Substantively, none of the issues raised in Adalah’s letter were addressed in this response.

#### **6) Seeking to Stop the ILA from Spraying Agricultural Fields Cultivated by Arab Bedouin in the Naqab**

On 22 March 2004, Adalah filed a petition to the Supreme Court on behalf of individuals and human rights organizations against the Israel Lands Administration (ILA), the Ministry of Industry and Trade, and the Ministry of Agriculture. The petitioners sought an order from the Court to stop the ILA from spraying the agricultural crops cultivated by the Arab Bedouin in the Naqab, as these acts constitute a danger to the life and health of human beings and animals as well as to their environment.

The petitioners are four Arab Bedouin citizens of Israel, one of whom was injured from the spraying and three of whom had crops destroyed by the ILA; Physicians for Human Rights-Israel (PHR-I); the Association of Forty; the Forum for Co-Existence in the Negev; the Negev Company for Land & Man, Ltd.; Bustan for Peace; the Association for Support and Defense of Bedouin Rights in Israel; the Arab Association for Human Rights (HRA); The Galilee Society; and Adalah.

The petition describes the facts surrounding the ILA’s spraying of crops, on multiple occasions during the last two years, in three unrecognized Palestinian Arab villages in the Naqab - Al-Arakib, Abda, Wadi el-Bekor. The ILA has destroyed thousands of dunams of crops, with the most recent spraying taking place in mid-March 2004. In Abda, for example, the ILA admitted to the aerial spraying of crops with a chemical called ROUNDUP, but claimed that the agent did not and could not possibly cause any damage. These allegations are contradicted in a letter sent to Adalah by a health clinic in Mitzpeh Ramon, which reported treating at least 17 individuals, including children, following their exposure to chemicals sprayed by the ILA in Abda in March 2003. One of the petitioners in the case, Mr. Saleem Abu Medeghem, 38-years-old from Al-

Arakib, also described in his affidavit feeling nauseous and fainting, immediately after being exposed to the chemicals in February 2004; he was subsequently hospitalized. Mr. Abu Medeghem, as well as other petitioners, emphasized that the ILA issued no warnings, either before or after the spraying.

The ILA claims that its actions are legal. According to the ILA, the crops are planted illegally by the Arab Bedouin on state-owned land, and that it is enforcing the state's right to the land. These lands are the ancestral lands of the Palestinian Bedouin in the Naqab, who have suffered from both historical and contemporary injustices. Before the establishment of the state in 1948, the Arab Bedouin in Palestine numbered approximately 60,000. During the 1948 war, Israeli forces expelled many Arab Bedouin from the Naqab, and forced others to flee; only about 9,000 remained by the end of the war. During the subsequent military regime imposed on all Palestinians in Israel (1948-1966), many of the remaining Arab Bedouin had their land confiscated, were displaced from their homes, and were re-located to other areas by the state. State attempts to assert claims of ownership of the land are vehemently disputed.

In the petition, the petitioners emphasized that ROUNDUP is a very dangerous substance. The label affixed to the bottle of ROUNDUP contains many warnings to users, notably that that all physical contact with the chemical must be avoided. It also states - "Do Not Apply This Product Using Aerial Spray Equipment" - and that even if the chemical is sprayed from ground level, no one should be allowed to enter the area for seven days. The ROUNDUP label also notes that the "level of toxicity is 4 - dangerous."

Two expert opinions regarding the health risks of using ROUNDUP in aerial spraying were submitted with the petition. Dr. Elihu Richter, Head of the Unit of Occupational and Environmental Medicine and Center for Injury Prevention, Hebrew University stated in his expert opinion that:

The evidence from research shows reproductive risks from paternal and maternal exposure in animals and paternal exposure in humans. There is a suggestion of carcinogenic risk. There are reports of ecosystem impacts affecting crop quality... The application of any pesticide or herbicide by aerial spraying near human settlements is dangerous, and should be banned. Advance warning, which may or may not have been carried out here, does not provide a pretext for violating this rule, since there is the potential for exposure to residues after spraying... In the absence of definitive evidence of absence of risk, the spraying by air of herbicides is clearly an unethical exercise in human experimentation in which the subjects - the residents - including children - exposed to the drift - are unwilling participants.

Dr. Ahmad Yazbek, who holds a Ph.D. in Chemistry from the Technion and who is a senior researcher with the Regional Research and Development Center - The Galilee Society, stated in his expert opinion that in tests conducted on animals, different active ingredients contained in ROUNDUP have "shown acute toxic effects such as eye and skin irritation as well as affects on the circulatory system." He also references an extensive scientific review conducted by the US-based National Coalition for Alternatives to Pesticides, which found a variety of human health and environmental problems associated with the product, as well as research done in California, which has found that "ROUNDUP exposure is the third most frequent cause of toxic reactions in farm workers."

The petitioners argued that the ILA's spraying of the crops violates the right to life, the right to health, and the right to dignity under both domestic and international law. The petitioners also argued that the ILA has no authority to destroy the crops, regardless of the legal status of the land in question. The Law for the Protection of Plants - 1956 governs the issue of crop spraying. The

purpose of the law is to protect health and the environment; it grants sole authority to the Minister of Agriculture to further this purpose. If the Minister grants a permit to another entity regarding these matters, it may only be given for this purpose; the ILA's purpose - to enforce the state's claimed right to land - and its actions in spraying and destroying the crops do not further this purpose. Moreover, the ILA is also violating regulations made pursuant to this law. These regulations prohibit the spraying of chemicals from the air if nearby plants could be damaged. They also mandate that if poisonous chemicals are sprayed, it must be done in accordance with the instructions and the warnings on the material. The petitioners also contended that the ILA's spraying of the crops constitutes criminal offenses. These actions violate the Penal Law - 1977, specifically, Article 336 (Use of a dangerous toxin) and Article 452 (Malicious damage).

On 23 March 2004, the Supreme Court issued a temporary injunction, as requested by the petitioners, preventing the ILA and the ministries or any other entity appointed by them, from spraying the agricultural crops of the Arab Bedouin inhabitants of the unrecognized villages in the Naqab.

**H.C. 2887/04, *Saleem Abu Medeghem, et. al. v. Israel Lands Administration, et. al.* (case pending).**



Spraying agricultural fields in the Naqab. *Ha'aretz*, 11 February 2004.

#### Notes

<sup>1</sup> See Oren Yiftachel, "Land, Planning and Inequality: Space Distribution Among Jews and Arabs in Israel," (Tel Aviv: Adva, 2000).

<sup>2</sup> See Oren Yiftachel, "Land, Planning and Inequality: Space Division Between Jews and Arabs in Israel," ADVA Center, November 2000 (Hebrew); and Oren Yiftachel, "Nation-Building and the Division of Space in the Israeli 'Ethnocracy': Settlement, Land and Ethnic Disparities," 21 (3) Tel Aviv University Law Review 637-663 (June 1998) (Hebrew).

<sup>3</sup> The public bodies named in the law are: the Jewish Agency, the Jewish National Fund, the Society for the Protection of Nature in Israel, the Administration for National Parks, the Administration for Nature Reserves, the Council for National Parks and Nature Reserves, the Council for the Beautiful Land of Israel, the Society for Scenic Architecture, the Public Council to Prohibit Noise and Air Pollution in Israel, the Society for Engineers and Architects in Israel. On 26 January 2004, the Interior Minister announced that it had conferred standing to object on the Arab Center for Alternative Planning (ACAP). See ACAP Press Release, "ACAP Obtains Official Recognition from the Ministry of Interior," [www.ac-ap.org](http://www.ac-ap.org).

<sup>4</sup> Protocol of the National Council for Planning and Building Meeting #223, 4 March 1986 at 8 (Hebrew). Mr. Yudi Sagi, a member of the Council, also stated that: "Those who use the infrastructure of roads to the towns, plantations and lands being prepared for development are those from whom we want to preserve the land [e.g., the Arabs in the Northern District]."

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<sup>5</sup> Protocol of the National Council for Planning and Building Meeting #224, 1 April 1986 at 7 (Hebrew). Comment attributed to Mr. Alef Mintz, a member of the Council.

<sup>6</sup> Development and Master Plan, Northern District: Provision 9 to Tamam 2, Part 1: Goals, Policy and Development Alternatives (July 1992) at 4 (Hebrew).

<sup>7</sup> Koren Orah, "The Minister that Deals with the Sabbath, the Bedouins, and Recruiting Investment from Pension Funds from New York," *Ha'aretz*, 11 April 2003 (Hebrew).

<sup>8</sup> See Harvey Lithwick, "An Urban Development Strategy for the Negev's Bedouin Community," The Center for Bedouin Studies and Development, Ben Gurion University (2000) available at [www.bgu.ac.il/bedouin/](http://www.bgu.ac.il/bedouin/).

<sup>9</sup> See e.g., *Mabo and Others v. State of Queensland*, 107 A.L.R. 1, 86 (1992).