

UN COMMISSION ON HUMAN RIGHTS
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Item 6 of the provisional agenda

**RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND
ALL FORMS OF DISCRIMINATION**

Statement submitted by Habitat International Coalition and Adalah – The Legal Center for Arab Minority Rights in Israel (both in special consultative status with ECOSOC)

HIC and Adalah raise their concern regarding a policy of the Israel Land Administration (ILA), a state agency, prohibiting Palestinian citizens of Israel from leasing Jewish National Fund (JNF) lands, all of which fall under the management and administration of the ILA. As a result, Palestinian citizens, who constitute 20% of the population, are denied access to 13% of "Israel Lands."¹ This discriminatory policy contributes to the institutionalization of racially-segregated towns and villages throughout the state.

Background

Established in 1960, the ILA is a governmental agency that manages 93% of the land in Israel (19.5 million dunams or 78 million acres).² Since 1948, Israeli laws have led to the systematic confiscation and transfer of Palestinian-owned land to the state and Zionist institutions, including the World Zionist Organization and the JNF, for the exclusive use by Jews whether they are citizens of Israel or not. Under Israeli law, this land cannot be sold to any individuals; rather, the ILA administers leases of JNF lands exclusively to Jews. Israel's Basic Law: Israel Lands (1960) categorizes lands controlled by the state, the Development Authority and the JNF as "Israel Lands."³

By 2003, the JNF had acquired ownership over 13% of all "Israel Lands," or a total of 2,555,000 dunams, compared to 600,000 dunams in 1948.⁴ The JNF claims to have used donations from Jews around the world to purchase 1.25 million dunams of land from the state immediately after its establishment.⁵ However, the JNF acquired nearly 2,000,000 dunams, or approximately 78% of its current holdings, from the state in 1949 and 1953.⁶

Moreover, the majority of this land belonged to Palestinian refugees (individuals who either became refugees during the Israeli-Arab war of 1948–49, and subsequently found themselves outside Israeli-held territory, or those who were internally displaced and became citizens of the new state, known as "present absentees.")

¹ The problem of land access is much wider. Due to land laws and state policies, Palestinian citizens are blocked from purchasing or leasing land in approximately 80% of the area of the state.

² See the website of the ILA at www.mmi.gov.il.

³ ILA Annual Report 2003 (Hebrew), available at www.mmi.gov.il/static/p236.html.

⁴ Ibid. See, United Nations Palestine Commission, "Considerations Affecting Certain of the Provisions of the General Assembly Resolution on the 'Future Government of Palestine': Control of Land Regulations," 10 January 1948.

⁵ See, JNF's response, December 2004, to H.C. 9205/04, *Adalah, et. al. v. The Israel Land Administration, et. al.* (case pending).

⁶ See Arnon Golan, "The Acquisition of Arab Land by Jewish Settlements in the War of Independence," in *Catedra*, Vol. 63 (1992), pp. 122–54 (Hebrew); Yifa'at Holtzman-Gazit, "The Use of Law as a Status Symbol: The Jewish National Fund Law – 1953 and the Struggle of the JNF to Establish its Position in the State" in *Iyoni Mishpat*, Vol. 26, pp. 601–44, July 2002 (Hebrew).

The JNF's Special Status

Under Israeli law, the JNF enjoys a special status and is granted the privileges of a public authority. The 1961 Memorandum and Articles of Association of the JNF state that the ILA will administer all JNF-owned lands and that the objectives of the JNF are to acquire property in Israel "for the purpose of settling Jews on such lands and properties." The JNF interprets the Memorandum as prohibiting the allocation of its lands to "non-Jews." Furthermore, the ILA Law (1960) allocates 50% of seats in the ILA Council to the JNF, thereby granting it a substantial role in formulating Israel's land policies over 93% of state. While "Israel Lands" cannot be sold, the Israel Lands Law (1960) allows their transfer between the state and JNF. Additionally, Israeli law grants the JNF the same status as a public authority for the purpose of confiscating land. The JNF's Memorandum and policies are discriminatory in their nature and effect, and contribute to the ongoing conflict.

As the UN Committee on Economic, Social and Cultural Rights (UNCESCR) has recognized that, despite its discriminatory charter, the JNF executes governmental functions.⁷ Meanwhile, the JNF operates as a tax-exempt charity within the jurisdiction of many of the Committee's member states.

Legal Challenges to Discriminatory Land Policies of the ILA and JNF

On 13 October 2004, Adalah petitioned the Israeli Supreme Court, demanding the cancellation of the aforementioned policy and a regulation promulgated by the Ministry of Finance, which permit the ILA's allocation of JNF lands through bids open only to Jews.⁸

In a letter to Adalah dated 15 August 2004, the ILA acknowledged that JNF land tenders are only open to Jews. The ILA supported this policy, stating that it is bound to respect the objectives of the JNF as detailed in the Covenant signed by the State of Israel and the JNF. The JNF's written response to the petition of December 2004, Israel stated that:

The JNF is not the trustee of the general public in Israel. Its loyalty is given to the Jewish people in the Diaspora and in the state of Israel... The JNF, in relation to being an owner of land, is not a public body that works for the benefit of all citizens of the state. The loyalty of the JNF is given to the Jewish people and only to them is the JNF obligated. The JNF, as the owner of the JNF land, does not have a duty to practice equality towards all citizens of the state (pp. 34, 38).

In January 2005, Israeli daily newspaper *Haaretz* reported that, in response to the petition, the Attorney General had decided that the ILA cannot discriminate against Palestinian citizens in the marketing and allocation of lands that it manages, even those belonging to the JNF.⁹ In June 2005, Israel approved the government-appointed Gadish Committee's recommendations, which advised the state to exchange state-held land in the north and south of Israel for land of equal value held by the JNF in the center. Adalah argued that such transfers would not remedy the JNF's discriminatory practices and only preserve the denial of Palestinian citizens' equal access to land.

The ILA is not permitted to adopt discriminatory positions that violate the right to equality and dignity, or to be subcontracted to discriminate against Palestinian citizens on the basis of "nationality." Israel has ratified several international human rights treaties that enumerate the right to equality and freedom from racial discrimination, including Articles 1, 2, 3 and 5 of

⁷ Concluding Observations of the UNCESCR: Israel, E/C.12/1/Add.27, 4 December 1998, para. 11.

⁸ See H.C. 9205/04, *Adalah, et. al. v. The Israel Land Administration, et. al.* (case pending). The Association for Civil Rights in Israel and the Arab Center for Alternative Planning also filed a petition to the Supreme Court in October 2004 challenging the ILA's discriminatory policy. See H.C. 9010/04, *The Arab Center for Alternative Planning, et. al. v. The Israel Land Administration, et. al.* (case pending).

⁹ Yuval Yoaz and Amiram Barkat, "AG Mazuz Rules JNF Land Can Now be Sold to Arabs," *Ha'aretz* [English edition] (27 January 2005).

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Universal Declaration of Human Rights (UDHR), Articles 2, 3 and 26 of the International Covenant on Civil and Political Rights (ICCPR), and Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). As the UNCESCR concluded in its observations on Israel, the policies and practices of the ILA and the JNF:

constitute an institutionalized form of discrimination because these agencies by definition would deny the use of these properties to non-Jews. Thus, these practices constitute a breach of Israel's obligations under the Covenant [E/C.12/1/Add.27, 4 December 1998, para. 11].

Adalah and HIC emphasize that Israel cannot transfer public goods and services to any entity that does not respect the fundamental human rights of citizens and international law.

The JNF and the United Nations

In July 2004, the JNF acquired NGO status with the UN Department of Public Information.¹⁰ As an organization that publicly acknowledges that it “does not have a duty to practice equality towards all citizens of the state,” the JNF operates contrary to the principles of the UN Charter, which emphasizes respect for human rights and equality, a prerequisite for regional peace and security.

Due to the explicitly discriminatory nature of the ILA and JNF’s policies, Adalah and HIC call upon the Commission to initiate an investigation into Israel’s discriminatory land allocation policies and to:

- Urge the state of Israel to cease discriminatory land allocation practices using institutions such as the JNF, and to apply covenanted principles of equality, just distribution and fairness;
- Inform the UN Economic and Social Council (ECOSOC) of the discriminatory nature of the JNF, particularly in view of its putative nongovernmental status.
- Apply the principles of non-discrimination on grounds of national belonging in accordance with its obligations under international human rights law to all state land allocation policies.

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¹⁰ See JNF Press Release, “JNF Approved as United Nations Non Governmental Organizational,” 16 July 2004, available at http://www.jnf.org/site/PageServer?pagename=PR_UN_NGO_Status.

