

Major Findings of Adalah's Report to the UN Committee on the Elimination of Racial Discrimination

Presented in Geneva, March 1998

Discriminatory Laws: This Report found 20 discriminatory laws - 17 of which are discriminatory on their face, in that they either relate only to the rights of Jews in Israel or abridge the rights of Arab citizens of the State. The other 3 laws discussed in this Report use neutral language and general terminology, but have a discriminatory effect on Arab citizens. The 17 facially discriminatory laws were found in the Basic Laws, the sources of Israel law, citizenship, the right of political participation, land and housing rights, culture rights, education rights, and religious rights. The other 3 laws, which use neutral language but have a discriminatory effect, have been used to control and limit land and housing rights of the Arab minority in Israel.

The Lack of Equal Protection Rights for the Arab Minority: Although laws exist which protect the equal rights of disadvantaged groups such as women and the disabled, no general statute relates to the right to equality for all citizens. Moreover, there is no statute which specifically protects equal rights for the Arab minority in Israel.

The Basic Law: Human Dignity & Freedom, which is considered a mini-bill of rights by Israeli legal scholars, does not enumerate the right for equality. On the contrary, this Basic Law emphasizes the ethnicity of the State as a Jewish State. Therefore, the Arab minority is afforded no constitutional protection against discrimination.

Equality Cases Before the Supreme Court of Israel: The Supreme Court has delivered several forward-thinking decisions in anti-discrimination cases involving the rights of women, homosexuals, the disabled and other groups, however, the Supreme Court, since 1948, has dismissed all cases which deal with equal rights for Arab citizens of the State.

This Report shows that the Supreme Court, in cases involving equal rights for Arab citizens, uniformly considers the differences between Jews and Arabs to be relevant factors in justifying privileges granted only to Israeli Jews. As a result, the Court consistently rules that discriminatory State policies are not invalid and discriminatory because they further legitimate distinctions. The Supreme Court, therefore, has failed to protect the equal rights of the Arab minority in Israel.

Although Israel's Report mentioned several equality cases, it fails to bring before the CERD Committee, even one case in which the Supreme Court has accepted a claim of discrimination brought by an Arab citizen of the State. Israel's Report dedicates over five pages to quoting from the Re'em case, to illustrate the liberal approach of the Supreme Court in cases involving Arab equal rights. Yet, Re'em is not an equal rights case, but one about freedom of expression. Moreover, in Re'em, the Court declares its refusal to deal with the Arabic language as an official language of the State.

Criminal Cases: An examination of Israeli Court criminal cases shows great disparities in sentencing, as well as in the Attorney General's indictment policy for Arabs and Jews. This Report brings before the CERD Committee several current surveys which conclude that the national identity of a defendant is an important factor in prosecutorial indictment policy and judicial sentencing in criminal cases. For example, the studies show that for a defendant, with no criminal record, an Arab is twice as likely to be convicted (20%) than a Jew (10%).

Citizenship: The Israeli government argues that the Law of Return, which allows every Jew to immigrate to Israel and to automatically become a citizen, is not discriminatory between the citizens of Israel but is merely an immigration law. By using detailed examples, this report shows that the effect of this law discriminates between the citizens and the residents of Israel based on national origin. Family unification is one direct example of this discrimination between citizens of the State. In this situation, there is no chance for a non-Jew to acquire citizenship: The Minister of Interior has almost absolute discretion, as confirmed by the Supreme Court, and the policy of the Ministry clearly states "not to issue citizenship" to non-Jews.

The Right of Political Participation: Israeli law does not allow an Arab political party to run in the Knesset election if its platform denies that Israel is the state of the Jewish people. If the platform of an Arab political party states, for example, that the Law of Return should be amended or abolished because it discriminates against the Arab minority, it will be disqualified, according to Ben Shalom,

the leading case on this issue. Thus, in order to qualify to run for the Knesset, an Arab political party cannot demand in its platform full and equal rights for Arab citizens of Israel.

Land & Housing Rights: The Absentee Property Law declares that anyone who left the country in 1948, is an absentee, and that his/her property comes under the control of the State. This Law was used only against Arabs, and even in reference to people who remained in the country but who were compelled to leave their land. These individuals are called "present absentees." The Defence (Emergency) Regulation 125 authorizes the military commander to declare land to be a "closed area." Once he so declares, no person is allowed to enter or to leave the area. By this regulation, the population of tens of Arab villages became uprooted. There is no uprooted Jewish population in the State.

The National Planning & Building Law prohibits the provision of basic services such as water and electricity to tens of unrecognized Arab villages in the State. Although these villages existed before the State's establishment, the main purpose of the law is to force the people to leave their villages and move to government-planned areas. There are no unrecognized Jewish villages in Israel.

Governmental planning policies ignore the needs of Arab citizens and Arab communities. In addition, the government restricts and limits the jurisdictional boundaries of Arab localities through its land allocation policy. For example, the government's 1998 plan for land allocation for housing completely excludes the Arab minority. According to the plan, land will be designated for the building of 23,000 apartments, none of which will be constructed in Arab towns.

Culture & Language Rights: The official institutions, state holidays, symbols, and heroes are exclusively Zionist-Jewish. Moreover, the Hebrew language is dominant, although Arabic is also an official language of the State by law. Several laws establish Jewish cultural institutions but none create similar centers for Arab citizens of the State. In addition, since the establishment of Israel, the State has not devoted any resources to creating or enriching Arab educational or cultural institutions, such as an Arab university.

Education Rights: The State Education Law codifies the objectives of the educational system, which serve only to advance Jewish culture and Zionist ideology. No autonomous educational system, run by Arab educators, was created for the Arab community to meet their needs as a distinct group. Arab students are assigned to read Zionist literature and poetry and not Arab Palestinian classics, which are studied throughout the Arab world. Moreover, Arab students devote more hours of classroom study to Torah, than to Arab religious studies, and are examined on Judaism but not their own religions. Thus, the educational system recognizes only one national group in the State, and as a result, the Jewish community is afforded the opportunity to preserve and enrich its culture, art and history whereas the Arab community is deprived of that chance. Furthermore, due to the discriminatory practices of the government, Arab students and schools suffer from a lack of basic services provided to Jewish students and schools. For example, 80% of the students who dropped out of school are Arabs. Arab schools lack educational enrichment programs, adequate infrastructure, and other necessary services.

Religious Rights: The budget of the Ministry of Religious Affairs shows the stark contrast between Jews and non-Jews, and the wide-scale discrimination against non-Jews. The Knesset Budget Law of 1998 allocates only 1.86% of the total (US \$430 million) for the Muslim, Christian and Druze religious communities combined, although they comprise close to the fifth of the population. Thus, more than 98% of the total budget is allocated to support Jewish religious services and institutions.

Social & Economic Rights: Governmental offices use discriminatory standards and criteria, which work to exclude Arab individuals and marginalize Arab localities, such as the requirement of military service or the qualification for "national priority area" status. Furthermore, although the Equal Opportunity Law prohibits discrimination based, inter alia, on national origin, the law is not effective in providing equal employment opportunity for Arab citizens of the State.

Racism and Hate Speech: Racism occurs at almost every level in Israeli society. A main reason for the prevalence of racism in Israel is that State institutions consistently emphasize the national-religious character of the State. In addition, the militaristic nature of the State strengthens the myth of "us" versus "them" in the national consciousness of the Jewish majority in Israel. The Attorney General's Office rarely uses the available legal tools where hate speech is directed against the Arab minority. It chooses to pursue individuals who pose a threat to the 'culture of the majority'. These charges, aimed at protecting the public order or the national security, in effect, seek to pacify the majority who were

shocked by the assassination of Prime Minister Rabin by a religious-nationalist Jewish student. The clear message sent by the prosecutor's office, as well as the judiciary, is that hate speech is not important where the interests of the Arab community are involved.

The authorities may limit hate speech or incitement to racism by prior restraint, however, they rarely use this power. In the few cases involving incitement to racism, the Supreme Court discussed these issues as the confrontation between hate speech and the freedom of expression, preferring the latter in most of the cases. In doing so, the Supreme Court has not considered the interest of protecting the minority and even, did not condemn the speech, as it does in cases involving Arab political activists. Of course, freedom of speech is important in building a liberal democratic society, however, the Arab minority does not have access to the majority media or to majority culture to forcefully counter the hate speech against them based on the liberal principle of "words versus words."