



**ADALAH'S NGO REPORT TO THE UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS  
REGARDING ISRAEL'S IMPLEMENTATION OF THE INTERNATIONAL COVENANT  
ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)**

**THE RIGHTS OF PALESTINIAN ARAB CITIZENS OF ISRAEL**

**SUBMITTED OCTOBER 2010**

Adalah – The Legal Center for Arab Minority Rights in Israel is pleased to submit this report to the UN Committee on Economic, Social and Cultural Rights to assist it in its consideration of Israel's Third Periodic Report of July 2010 and in drawing up its "List of Issues" for Israel at the upcoming pre-sessional working group in November 2010.

This document presents suggested questions and background information for the Committee on the following issues:

- Lack of incorporation of the Convention into domestic legislation

*Article 1 – General principles, non-discrimination*

1. The lack of a constitutionally-guaranteed right to equality and discrimination and the enactment of discriminatory laws
2. The use of military and/or national service as a mechanism for discrimination against Arab citizens of Israel in the enjoyment of socio-economic rights

*Articles 6 to 9 – Labor rights*

3. Unemployment and employment opportunities
4. Arab citizens employed in the civil service
5. The right to social security
6. Income, poverty and wage gaps
7. The ongoing ban on family unification
8. The demolition and evacuation of the unrecognized Arab Bedouin villages in the Naqab
9. Lack of access for Arab citizens of Israel to land and housing
10. The new land reform law and internally-displaced Palestinians
11. Discrimination in planning
12. Infant mortality and the health situation in the unrecognized villages in the Naqab
13. Lack of access to clean drinking water

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### *Articles 13 to 15 – Cultural rights*

14. Systemic under-investment in Arab education
15. Persistent gaps in educational attainment
16. Status of the Arabic language and Arab culture
17. Denial of cultural contact with the Arab world

Three appendices are attached:

- Appendix 1 - 10 New Discriminatory Laws, June 2010
- Appendix 2 – Letter sent by Adalah to the Prime Minister and other ministers concerning the discriminatory use of the military service criterion in affording higher education and employment benefits, August 2010
- Appendix 3 – Letter sent by Adalah on behalf of 10 Israel-based human rights organizations to the Prime Minister, the Justice Minister and the Attorney General arguing that the state's policy of home demolitions in the Naqab is illegal, October 2010

An **index of issues and suggested questions** is also provided with this submission.

- **Lack of incorporation of the Convention into domestic legislation**

#### ***Suggested questions***

- *Is Israel taking any steps to incorporate the provisions of the ICESCR into its domestic legislation, as the Committee previously urged?<sup>1</sup> If so, please provide details of the legislative processes underway. If not, why not?*
- *Does the State party envisage signing the Optional Protocol to the Convention?*

The CESCR Covenant has not been incorporated into domestic legislation and thus it is not binding law, and nor can it be enforced in Israeli courts. Israel ratified the ICESCR in 1991, but has yet to incorporate its provisions into its domestic legislation. For international human rights conventions to have the status of binding legal authority before the Israeli courts, the Israeli parliament, the Knesset, must enact its provisions into law. Without such domestic legislation, the ICESCR is non-binding and cannot be enforced before Israeli courts. The ICESCR thus has the legal status of “persuasive authority” before the Israeli courts. Israel’s Supreme Court recognizes some economic, social and cultural rights as part of the right to dignity or based on specific statutes. However since these rights are not enshrined in the Basic Laws, their scope and content are subject to judicial interpretation. According to the ADVA Center, since the 1960s, over 20 basic bills for economic, social and cultural rights, based on the principles of the ICESCR, were introduced in the Knesset, but all were defeated.<sup>2</sup>

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<sup>1</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights (CESCR): Israel, 23 May 2003, E/C.12/1/Add.90, para. 29.

<sup>2</sup> See ADVA Center, “Social Rights in Israel,” January 2007, p. 5, available at: <http://www.adva.org/uploaded/rights-short.pdf>

## Article 1 – General principles, non-discrimination

### **1. The lack of a constitutionally-guaranteed right to equality and discrimination and the enactment of discriminatory laws**

#### **Suggested questions**

- Please indicate whether the State party envisages including the right to equality and the prohibition of discrimination explicitly in the Basic Law: Human Dignity and Liberty. Given that a constitutional right to equality for all citizens is not explicitly guaranteed under Israeli law, please explain how the State party ensures compliance with its obligations under the Covenant? Please provide information on any measures envisaged to protect further the right to equality and ensure that no discriminatory laws are enacted.<sup>3</sup>
- Many Israeli laws include the terms “Jewish and democratic State”, “the values of the State as a Jewish State”, and/or refer to “Israel’s heritage” as a source of law. Why does this not constitute discrimination against non-Jews, in particular, the Arab minority?<sup>4</sup>

#### **Background information**

The right to equality and freedom from discrimination is not explicitly guaranteed in Israeli law as a constitutional right, nor is it protected by statute. Israel lacks a written constitution or a Basic Law that constitutionally guarantees the right to equality and prohibits discrimination, either direct or indirect. While several ordinary statutes provide protection for the right of equality for women and people with disabilities,<sup>5</sup> no statute relates to the right to equality for the Palestinian Arab minority in Israel in particular. *The Basic Law: Human Dignity and Liberty*, which is considered a mini-bill of rights by Israeli legal scholars, does not enumerate a right to equality; on the contrary, this Basic Law emphasizes the character of the state as a Jewish state.<sup>6</sup>

In addition, the definition of the State of Israel as a Jewish state, as enshrined in law, allows inequalities to persist and enables state-sanctioned discrimination against Palestinian citizens of Israel. Increasingly, since the election of the right-wing Netanyahu-led government in 2009, coalition members have also introduced a raft of discriminatory legislation. Much of this legislation focuses on “loyalty oaths” to Israel as a Jewish, Zionist and democratic state; the

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<sup>3</sup> As previously recommended by the Committee. See Concluding Observations of the CESCR: Israel, 23 May 2003, E/C.12/1/Add.90, paras. 16, 32. See also Concluding Observations of the Human Rights Committee: Israel, 29 July 2010, CCPR/C/ISR/CO/3/CRP.1, para. 6; and Concluding Observations of the Committee on the Elimination of Racial Discrimination (CERD): Israel, 14 June 2007, CERD/C/ISR/CO/13, paras. 16, 17.

<sup>4</sup> As previously recommended by the Committee. See Concluding Observations of the CESCR: Israel, 23 May 2003, E/C.12/1/Add.90, para. 16.

<sup>5</sup> There are four key equality statutes: *The Women’s Equal Rights Law – 1951*, *The Prevention of Sexual Harassment Law – 1998*, *The Equal Rights for People with Disabilities Law – 1998*, and *The Anti-Discrimination Act in Products, Services and in the Entrance to Places of Entertainment and Public Places – 2000*.

<sup>6</sup> Section 1(a) of *The Basic Law: Human Dignity and Liberty* states that, “The purpose of this Basic Law is to protect human dignity and liberty, in order to establish in a Basic Law the values of the State of Israel as a *Jewish and democratic state*” (emphasis added). Even the Basic Law: Freedom of Occupation, which provides “every Israeli national or resident” constitutional protection “to engage in any occupation, profession or trade,” includes the term “Jewish and democratic” in its statement of purpose.

criminalization of speech that challenges the Jewish and/or Zionist nature of the state; the imposition of more restrictions on political participation and even citizenship rights for “breach of loyalty” to the state.<sup>7</sup> Over the last three years, several new laws have been enacted that discriminate against Palestinian Arab citizens of Israel, including legislation in the field of economic, social and cultural rights:<sup>8</sup>

- *The Israel Land Administration Law (2009)*: This law institutes broad land privatization (much of the land owned by the Palestinian refugees and internally displaced persons would be subject to privatization under the law.
- *Amendment (2010) to The Land (Acquisition for Public Purposes) Ordinance (1943)*: This Mandate-era law authorizes the Finance Minister to confiscate land for “public purposes”. The amendment confirms state ownership of a massive amount of Palestinian land confiscated under this law, even where it has not been used to serve the original purpose of its confiscation.<sup>9</sup>
- *Absorption of Discharged Soldiers Law (1994) Amendment No. 7: Benefits for Discharged Soldiers (2008)*: Allows the use of military/national service as a criterion for the allocation of benefits in higher education. The vast majority of Palestinian citizens of Israel are exempted from military service and do not serve in the Israeli army for political and historical reasons.
- *The Economic Efficiency Law (Legislative Amendments for Implementing the Economic Plan for 2009-2010) (2009)*.
  - a. A section of this law concerns “National Priority Areas” (NPAs). It grants the government sweeping discretion to classify towns, villages and areas as NPAs and to allocate enormous state resources without criteria, in contradiction to the Israeli Supreme Court’s 2006 decision in H CJ 2773/98 and H CJ 11163/03, *The High Follow-Up Committee for Arab Citizens in Israel v. Prime Minister of Israel*.
  - b. A further section of this law concerns the distribution of “child allowances.” Under the new law, children who do not receive the vaccinations mandated by the Health Ministry will no longer be provided with financial support. This provision mainly affects Arab Bedouin children living in the Naqab (Negev).

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<sup>7</sup> See the Association for Civil Rights in Israel, Position Paper: “Harming Democracy in the Heart of Democracy,” 5 October 2010, available at: <http://www.acri.org.il/eng/story.aspx?id=769>; and Adalah and the Arab Association for Human Rights, Letter to the EU Presidency and the Ambassador of the Delegation of the European Commission to the State of Israel regarding the EU-Israel Association Council and new legal developments concerning the Arab minority in Israel, 4 June 2009, available at:

[http://www.adalah.org/features/var/Adalah\\_HRA\\_EU\\_upgrade\\_letter\\_FINAL\\_4.6.09\[1\].pdf](http://www.adalah.org/features/var/Adalah_HRA_EU_upgrade_letter_FINAL_4.6.09[1].pdf)

<sup>8</sup> See Adalah, *Special Report: 10 New Discriminatory Laws*, June 2010, available at: <http://www.adalah.org/eng/10.php>. A copy of the paper follows. **See Appendix 1.**

<sup>9</sup> See Adalah, “Knesset Enacts New Amendment to the Land Ordinance of 1943 to Block Palestinian Claims for Land Previously Confiscated by the State,” 25 February 2010, available at: [http://www.adalah.org/eng/pressreleases/pr.php?file=24\\_02\\_10](http://www.adalah.org/eng/pressreleases/pr.php?file=24_02_10)

## **2. The use of military and/or national service as a mechanism for discrimination against Arab citizens of Israel in the enjoyment of socio-economic rights**

### ***Suggested question***

- *Military service provides highly advantageous benefits in the fields of housing and land, education, and other public services. According to information before the Committee, these benefits are increasing all the time. How is this policy compatible with the Covenant given that most Arab citizens of Israel do not perform military service and that Arab citizens lag behind their Jewish counterparts in most major socio-economic indices?*<sup>10</sup>

### ***Background information***

One of the main tools employed by the state with which to channel state resources to Jewish citizens of Israel is by conditioning eligibility for economic benefits, higher education, public services, housing loans, etc. on the performance of “military service.” The vast majority of Palestinian citizens of Israel are exempted from military service and do not serve in the Israeli army for political and historical reasons. Thus the use of this criterion as a condition for awarding economic benefits discriminates against them on the basis of their national belonging and violates their right to equal enjoyment of various public services. By employing this criterion, the state is violating its duty to serve as a trustee for the entire public on an equal basis. Significantly, individuals who have served in the Israeli military already receive substantial compensation under *The Absorption of Discharged Soldiers Law—1994*, which enumerates the broad range of benefits to which discharged soldiers are entitled, including housing and educational grants.

On 21 July 2010, the Knesset approved Amendment No. 12 of the Absorption of Discharged Soldiers Law.<sup>11</sup> According to this amendment, from the coming academic year (2010-2011) onwards anyone who has completed military and/or national service will benefit from a range of benefits in higher education, including the financing of tuition fees for undergraduate studies at institutions of higher education in peripheral area (defined as “National Priority Areas”, i.e. the Naqab, the Galilee and the West Bank settlements). These benefits come on top of other higher educational benefits to which discharged soldiers are already entitled under the law, which include one free academic year at preparatory courses for students throughout the country, and state contributions to tuition fees for all years of study at higher education and vocational institutions. Amendment No. 7 to the law, adopted in 2008, further stipulates that every institution of higher education or vocational training or pre-academic preparatory course may grant preference to discharged soldiers with respect in the allocation of student accommodation and other economic benefits.

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<sup>10</sup> See Concluding Observations of CERD: Israel, 14 June 2007, CERD/C/ISR/CO/13, para. 21.

<sup>11</sup> On 17 August 2010 Adalah sent a letter to the Prime Minister and other ministers to demand that the government withdraw its support for the legislation. A translation of the letter is provided in **Appendix 2**. See also, Adalah, “Widening Use of Military Service as a Condition for University and Employment Benefits Discriminates against Arab Citizens of Israel,” 19 September 2010, available at: [http://www.adalah.org/eng/pressreleases/pr.php?file=20\\_09\\_10\\_1](http://www.adalah.org/eng/pressreleases/pr.php?file=20_09_10_1)

Since the purpose of educational benefits paid from public funds is primarily to redistribute wealth and allow individuals from less affluent backgrounds to pursue an education, the extensive use of the military service criterion constitutes discrimination against Arab citizens of Israel, particularly since unemployment and poverty rates are far higher among Arab citizens of Israel than their Jewish counterparts (*see sections 3 and 6, below*).

In addition, a draft law was recently tabled by MK Hamed Amar, according to which preference will be given to discharged soldiers in the allocation of civil service positions (*see section 4, below*). The government approved the draft law on 11 July 2010.<sup>12</sup> If the law is approved by the Knesset, it risks creating a slippery slope of the military service criterion being increasingly used in the field of private business, thereby threatening to raise the barriers to employment faced by Arab citizens of Israel (*see section 3, below*).

*Articles 6 to 9 – Labor rights*

### **3. Unemployment and employment opportunities**

#### ***Suggested question***

- *Please provide updated data on unemployment and labor force participation rates disaggregated according to sex and national belonging. Please comment on claims that the following issues hinder the participation of Arab citizens of Israel, in particular Arab women, in the labor force: the use of the military service criterion as a condition for employment, the lack of industrial zones located in Arab localities, the reported shortage of state-run daycare centers for Arab children in Israel, and the lack of frequent public transportation to and from Arab towns and villages. Please detail any specific steps taken or envisaged by the State Party to overcome these obstacles.*<sup>13</sup>

#### ***Background information***

*The Equal Opportunities in Employment Law – 1988* prohibits discrimination between job-seekers on the basis of their nationality. Despite this law, however, Palestinian citizens of Israel often face discrimination in work opportunities, pay and conditions, both because of the inadequate implementation of the law and structural barriers.

According to state statistics, while the overall unemployment rate in Israel stood at 7.3% in 2008,<sup>14</sup> the figure among Arab citizens was higher, at 10.9%.<sup>15</sup> Further, of the 40 towns in Israel

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<sup>12</sup> *Ha'aretz*, 11 July 2010 (Hebrew).

<sup>13</sup> See in this regard the Committee's previous recommendation. Concluding Observations of the CESCR: Israel, 23 May 2003, E/C.12/1/Add.90, para. 20. See also Concluding Observations of CERD: Israel, 14 June 2007, CERD/C/ISR/CO/13, para. 24.

<sup>14</sup> Israeli Central Bureau of Statistics (CBS), *Statistical Abstract of Israel 2008*, No. 59, Table 12.23.

<sup>15</sup> *Ibid.* Table 12.10.

with the highest unemployment rates, 36 are Arab towns.<sup>16</sup> Accordingly, there are also wide gaps in labor force participation. For example, in 2008 only 29.3% of Arab citizens in the “prime working-age group” of 25-54 were engaged in the civilian labor force, compared to 81.7% of Jewish citizens of the same age.<sup>17</sup>

Although Israel’s Report does not offer disaggregated figures on unemployment and labor force participation rates among Arab women, providing information only on “Arabs and others” (para. 160), the rate of labor force participation is extremely low among Arab women. According to the Central Bureau of Statistics, in 2008 the percentage of Arab women aged 15+ engaged in the civilian workforce was 21.1%, compared to a parallel figure of 57% among Jewish women.<sup>18</sup> These are among the lowest figures in the world, and far below the average in the Organisation for Economic Co-operation and Development (OECD) countries, where 62% of women are in paid work.<sup>19</sup> Furthermore, the average search for new jobs takes Arab women 64 weeks, over double the figure of Jewish women, at 31 weeks.<sup>20</sup>

Further, as the following table demonstrates, Arab citizens who are employed are over-represented in unskilled work and construction (males) compared to their Jewish counterparts, and underrepresented in professional sectors such as banking, insurance and finance. These general trends are also borne out by Israel’s Report (para. 226), in which it is stated that 23.7% of Arab workers were clerical and sales personnel, 42% worked in agriculture, manufacturing, construction and other industries, and 13% were unskilled workers.

*Percentages of employees engaged in select industries, 2008<sup>21</sup>*

	Arab employees (%)	Jewish employees (%)
Construction (males) <sup>22</sup>	28.4	5.4
Unskilled workers	14.6	6.4
Business activities	5.6	14.3
Managerial positions	2.3	7.3
Banking, insurance & finance	0.8	4.3

<sup>16</sup> Professor (Emeritus) Shimon Shamir (2005-09-19) *The Arabs in Israel – Two Years after The Or Commission Report*, 19 September 2005, available at:

<http://72.14.221.104/search?q=cache:DPCzMyN0nWkJ:www.dayan.org/kapjac/files/shamirEng.pdf>

<sup>17</sup> CBS, *Statistical Abstract of Israel 2009*, No. 60, Table 12.1.

<sup>18</sup> Ibid.

<sup>19</sup> OECD, *Overview of Gender Differences in OECD Countries*, March 2010, available at:

[http://www.oecd.org/document/51/0,3343,en\\_2649\\_37457\\_44720243\\_1\\_1\\_1\\_37457,00.html](http://www.oecd.org/document/51/0,3343,en_2649_37457_44720243_1_1_1_37457,00.html)

<sup>20</sup> The Ministry of Industry, Trade and Labor, *The Status of Employment of Arab Women Between the Ages of 18-65 in 2006*, 29 January 2008 (Hebrew).

<sup>21</sup> CBS, *Statistical Abstract of Israel 2008*, No. 59, Table 12.18.

<sup>22</sup> CBS, *Statistical Abstract of Israel 2008*, No. 59, Table 12.12.

## Obstacles to employment for the Arab minority in Israel

As stated recently by the OECD, “There is no doubt that the Arab-Israeli population faces many unique challenges in successfully integrating into Israeli society and realizing its full potential.”<sup>23</sup> One way in which Palestinian citizens of Israel are discriminated against and excluded from the labor force is by the use of the military service criterion as a condition for acceptance for employment, often when there is no connection between the nature of the work and military experience. While the inclusion of military service in a job specification may seem neutral on its face, it has a discriminatory effect on Palestinian citizens of the state as they are exempted as a group<sup>24</sup> from performing military service on the basis of their national belonging for political and historical reasons.

Further, Arab towns and villages typically offer limited employment opportunities. The state is systematically failing to locate employment-generating industrial zones in Arab communities. Thus, for example, the state budget for 2008 allocated a total sum of NIS 215 million for developing industrial zones, of which just NIS 10 million was earmarked for Arab towns and villages.<sup>25</sup> Only 2.4% of all industrial zones in Israel are located in Arab towns and villages, and the Tziporit Industrial Zone alone, which covers approximately 6,000 dunams, is larger than all the developed industrial zones in all the Arab towns and villages in Israel combined.<sup>26</sup> Similarly, governmental incentives for new businesses and entrepreneurs are sorely lacking in Arab towns and villages. In addition, Arab citizens of Israel often have to travel long distances to reach employment offices, few of which are located in Arab towns and villages.<sup>27</sup>

Reducing the employment opportunities of Arab women in particular is the current shortage of state-run daycare centers for Arab children in Israel: only 30 daycare centers cater to Arab children in the country, and as a result just 3.7% of Arab children under the age of four are enrolled in state-run daycare centers, compared to 16.3% of Jewish children in the same age group.<sup>28</sup> Despite the relative shortage of daycare centers for Arab children, the state continues to channel state funds to Jewish localities: the government recently announced the establishment of 150 new designated daycare centers, only 17 of which (or 11%) in Arab localities, while Arab

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<sup>23</sup> OECD, *Labour Market and Socio-Economic Outcomes of the Arab-Israeli Population*, 18 March 2010, p. 9, available at:

<http://www.oecd.org/officialdocuments/displaydocumentpdf?cote=delsa/elsa/wd/sem%282010%292&doclanguage=en>

<sup>24</sup> With the exception of men from the Palestinian Druze community, according to an agreement signed between Druze religious leaders and the state in 1956.

<sup>25</sup> Mossawa, *The Arab Population in the 2008 State Budget*, May 2008.

<sup>26</sup> Dr. Yosef Jabareen, *The Employment of Arabs in Israel*, The 18th Caesarea Forum, June 2010, available at: <http://www.idi.org.il/sites/english/events/TheAnnualEconomicForum/Pages/EconomicConference2010.aspx>

<sup>27</sup> E.g. in 2005, the Ministry of Industry, Trade and Labor rescinded its decision to close down an employment office in the Arab town of Kufr Kana in northern Israel only after Adalah and the Laborer’s Voice (Sawt el-Amel) petitioned the Supreme Court to demand that the office, which serves around 71,000 Palestinian citizens of Israel in the area, including over 4,000 job-seekers, be kept open. HCJ 8249/04, *Ziad Matar et al. vs. Ministry of Industry, Trade and Labor*.

<sup>28</sup> Orly Almagor-Lotan, *Day Care and Family Home Care Centers in the Arab Sector*, The Center for Research and Information, The Knesset, 7 July 2008 (Hebrew).



children account for 25% of all children in Israel (para. 221 of Israel's Report). More poor Arab families are required to pay for private daycare and early education for young children, despite the fact that Arab families have a lower average income than Jewish families, and many are forced to forgo such services. The lack of suitable daycare facilities acts as a brake on the participation of Arab women in particular in the labor force: a rough indicator of this effect is that according to state statistics, the participation rate of married Arab women in the civil labor force stands at 14%, while the participation rate of single Arab women is 46.8%.<sup>29</sup>

Aggravating the problem is the almost total absence of public transportation from Arab towns and villages to central cities, which makes it more difficult, particularly for women and young people who do not own cars, to work elsewhere. Most bus lines do not enter Arab villages at all, and road-side buses to major cities often run only once per day. The lack of adequate public transportation is in part the responsibility of the state, as the major public transportation system (*Egged*) is majority-owned by the government. State-funded vocational training programs are also often inaccessible to the Arab population as a result. The structural barriers to employment are not discussed in Israel's Report, which focuses instead on the alleged "traditional stands and cultural stigmas among the Arab population," which, it argues, "define the acceptable limits to traveling alone to school and work" (para. 214).

#### **4. Arab citizens employed in the civil service**

##### ***Suggested questions***

- *Based on information obtained, the Committee wishes to reiterate its concern over the severe under-representation of Arab citizens of Israel in the civil service.<sup>30</sup> Why, in spite of the 1993 and 2000 amendments to the Civil Service Law (Appointments) – 1959 law and various government decisions does the percentage of Arab citizens in general (6.5%) and Arab women in particular (2%) in the civil service remain far lower than their percentage of the population (around 20%) and far lower than even the rate allegedly targeted by the State (10%)? Please provide data on the numbers and percentages of civil service employees in the various public sector bodies, including ministries, disaggregated according to national belonging, sex and professional rank.*
- *Please provide updated information to the Committee on progress towards meeting the targets set out in Government Resolution 2579 in relation to Arab citizens of Israel [State report para. 70]. Does the resolution contain any specific quotas relating to Arab women working in the civil service? Please provide updated information on the implementation of five-year work plans to increase the representation of Arab citizens, inter alia, in all*

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<sup>29</sup> The State of Israel's Fifth Periodic Report to the Committee on the Elimination of Discrimination Against Women, CEDAW/C/ISR/5, 24 March 2010, p. 208, para. 462.

<sup>30</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel. 23 May 2003, E/C.12/1/Add.90, para. 21.

government ministries [State report para. 70] and state the target percentages of Arab employees adopted by each of these plans.

### **Background information**

The state, the largest employer in Israel, does not enforce *The Equal Opportunities in Employment Law – 1988* on its own practices, and Palestinian citizens of Israel in general remain sorely under-represented in civil service positions. This under-representation is despite an amendment made in 2000 to the *Civil Service Law (Appointments) – 1959*, which stipulates fair representation throughout the civil service, and all ministries and affiliated institutions “to both sexes... and... the Arab population including Druze and Circassian.” According to Israel’s Report (para. 71), as of November 2008, Arab citizens of Israel made up just 6.5% of all civil service employees. While Israel’s report does not disaggregate the data by sex, in 2006 just 2% of civil service workers were Arab women.<sup>31</sup> Furthermore, over time there has been marginal improvement in the representation of Arab citizens in the civil service, in particular with regard to women, who also accounted for 2% of all civil service employees in 2001.<sup>32</sup> The situation is direr still in the Naqab district, where in 2010 Arab citizens made up less than 1% of civil service employees.<sup>33</sup> These figures seriously call into question the efficacy of the amendment to the Civil Service Law (Appointments) and/or the state’s efforts to further its implementation.

In addition, a number of government decisions have been issued over the past decade that order the implementation of the law and stipulate interim quotas for the representation of Arab men and women.<sup>34</sup> However, these interim targets have consistently been missed, and the representation of Arab citizens, men and women alike, remains low.

Arabs employed in government ministries is correspondingly low and inadequate, including in ministries that have a decisive impact on their lives such as the Ministries of Transport (2.3%), Housing (1.3%) and Finance (1.2%). The following table details Arab representation in government ministries.

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<sup>31</sup> The Civil Service Commission, *Suitable Representation for the Arab Minority, including the Druze and Circassians in the Civil Service*, 2006 (Hebrew).

<sup>32</sup> Ali Hedar, “The Arab Citizens in the Civil Service,” *Sikkuy Report, Equality and the Integration of the Arab Citizens of Israel 2000-2001*, citing an April 2001 report of the Governmental Companies Authority.

<sup>33</sup> The Negev Coexistence Forum for Civil Equality, *The International Day Against Racism, 21 March 2010, the Situation of the Arab Villages in the Negev*, March 2010 (Hebrew), available at: [http://www.dukium.org/user\\_uploads/pdfs/doh.pdf](http://www.dukium.org/user_uploads/pdfs/doh.pdf)

<sup>34</sup> These include Government Decision 1832 of 29 April 2004; Government Decision 414 of 15 August 2006; Government Decision 2579 of 11 November 2007; and Government Decision 4437 of 25 January 2009.

*Arab representation in Israeli government ministries, 2006*<sup>35</sup>

<b>Ministry</b>	<b>No. of Arab employees</b>	<b>Total no. of employees</b>	<b>% of Arab employees</b>
Health	1,935	26,753	7.2
Education	126	2,031	6.2
Justice	99	2,497	3.9
Industry Trade & Labor	45	1,326	3.4
Transport	21	881	2.3
Housing	10	730	1.3
Finance	12	954	1.2

The two ministries with the most Arab employees are the Ministries of Education and Health. The vast majority of these employees work in Arab towns and villages or mixed cities providing services directly to Arab communities, as teachers and doctors and nurses. Arab professionals are rarely to be found in decision-making positions in the upper echelons of these ministries.

## **5. The right to social security**

### ***Suggested question***

- *Please detail any special measures to ensure that Arab citizens of Israel are able to enjoy the right to social security on an equal footing with Jewish citizens, and comment on the reported denial of income support allowances to individuals who use or own specific kinds of cars, particularly with regard to those who live in areas with effectively no access to public transportation.*

### ***Background information***

Israel's Report provides no information on Arab citizens of Israel in its discussion of Article 9 of the Convention. This represents a grave omission given that Arab citizens are among the groups most in need of social security given their relatively high rates of poverty, unemployment and disability. Further Arab citizens of Israel often face particular obstacles and have specific needs in the field of social security. The following case is an illustration of the ways in which Israel's policies in the field of social security can affect Arab citizens in specific and negative ways.

### **The denial of income support payments to car owners and users**

In Israel, income support allowances are arbitrarily conditioned on whether a recipient of this benefit owns or has access to the use of a car. In practice, this condition severely impacts Arab citizens of Israel, both because they make up around 25% of all income support recipients, and because there is almost no access to public transportation to and from Arab towns and villages.

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<sup>35</sup> The Civil Service Commission, "Suitable Representation for the Arab Minority, including the Druze and Circassians in the Civil Service," 2006.

Income security payments are granted to every citizen who is unemployed and cannot find or engage in work following the end of the period in which the person is entitled to receive unemployment benefits. Income supplementation is granted to every worker in part-time employment whose salary is below the minimum wage (approximately NIS 4,000 per month). In both cases, these benefits aim to ensure that individuals can meet their basic needs and live at a minimum living standard in dignity.

In 2004, Adalah and Sawt el-Amel submitted a petition to the Israeli Supreme Court demanding the cancellation of Article 9A(b) of the Income Support Law – 1980 and Article 10(c) of the Income Support Regulations – 1982, which prevented unemployed car owners and users from receiving secured income support allowances. Following the petition, the Knesset amended the law in January 2007 to allow recipients of supplemental income payments to own a car, provided that the car is more than seven years old and if its engine power is 1,300 Hp or if the car is more than 12 years old and if its engine power is 1,600 Hp.

However, while the amendment does allow recipients of income support benefits to own a car, it imposes three conditions on their ownership that must all be met, and that in practice preclude this possibility entirely. One of the three conditions stipulates that a person receiving income support payments should begin receiving the benefits within one month of being dismissed from their previous workplace. In reality this condition cannot be met, since individuals who have been dismissed receive unemployment benefits for a period of three months, and only after receiving these benefits for three months do they become eligible for income support payments. The amendment therefore discriminates between income support recipients and recipients of supplemental income payments, who are allowed to own and use a car in the aforementioned circumstances. The discrimination created by the law between recipients of income support payments and supplemental income payments is arbitrary and unjustified, since the main objective of the Income Support Law is to protect every citizen who is unable to guarantee a minimal level of income, especially those who are entitled to income support payments.

Owning a car can be crucial for recipients of income support, as they may need it in order to carry out their necessary daily activities, such as attending employment offices, looking for workplaces, having access to medical and health care and to different forms of professional training to assist income support recipients in finding work. The importance of a car is all the greater in the Arab towns and villages due to the lack of public transport and the scarcity of local employment opportunities. Adalah and Sawt el-Amel filed a further petition challenging the new amendment in March 2008.<sup>36</sup> In November 2009 the state responded that the condition is not discriminatory.

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<sup>36</sup> HCJ 10662/04, *Salah Hassan, et al. v. The National Insurance Institute, et al.* (case pending).

Commenting on the issue, the OECD, which published a review of labor-market and social policy in Israel in January 2010, stated that, “it is counterproductive to have restrictive rules on car ownership and use for income support clients who live in areas with limited public transport.”<sup>37</sup>

*Articles 10 to 12 – Social rights*

**6. Income, poverty and wage gaps**

***Suggested question***

- *What measures is Israel taking, if any, to reduce the wide gaps in employment rates and sectors of employment, and inequality in wages between Jewish and Arab citizens of the state, in accordance with the principle of “equal pay for work of equal value”?*<sup>38</sup>

***Background information***

In its discussion of the current standard of living of Israel’s population, Israel’s Report (paras. 420-421) does not provide data about household incomes disaggregated into Arab and Jewish households. As reported by the OECD, the net monthly income of Arab households is just 63% of the net monthly income of Jewish households, despite the larger average size of Arab families.<sup>39</sup> Therefore, “it is clear that in terms of economic wellbeing, the Arab-Israeli population is at a net disadvantage compared to the Jewish population.”<sup>40</sup>

According to state statistics, which look at income of workers rather than household income, the average gross monthly income among Arab citizens of Israel was NIS 5,419 in 2008, just 68% of the average income earned by Jewish citizens, at NIS 7,949.<sup>41</sup> The average gross monthly income among Arab male workers was around **42% lower** than for Jewish male workers in 2008, while for Arab female workers, it was around 28% lower than for Jewish female workers in the same year.<sup>42</sup>

*Gross monthly income per employee by population group and sex in 2008 (in New Israeli Shekels)*<sup>43</sup>

	Total	Males	Females
Arabs	5,419	5,764	4,350
Jews	7,949	9,966	6,046

<sup>37</sup> OECD, *Israel: A divided society, results of a review of labour-market and social policy*, 20 January 2010, p. 6, available at: <http://www.oecd.org/dataoecd/0/40/44394444.pdf>

<sup>38</sup> See the Concluding Observations of the CESCR: Israel, 23 May 2003, E/C.12/1/Add.90, paras. 21, 36, 37.

<sup>39</sup> OECD, *Labour Market and Socio-Economic Outcomes of the Arab-Israeli Population*, March 2010, p. 33, available at: <http://www.oecd.org/officialdocuments/displaydocumentpdf?cote=DELSA/ELSA/WD/SEM%282010%292&doclang=eng>

<sup>40</sup> Ibid. p. 34.

<sup>41</sup> CBS, *Income of Individuals (Income Survey)* Table 25, 2008.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

As noted in Israel's Report (para. 423), poverty gaps between the Jewish majority and the Arab minority in Israel persist, although the report does not detail these gaps. According to state statistics, 49.4% of all Arab families in Israel are classified as poor, compared to an average rate of 19.9% among all families in Israel.<sup>44</sup> This figure is far higher among Arab Bedouin families, at 67.2%.<sup>45</sup> While Arab citizens constitute around 20% of the total population of Israel they are over-represented in the poor population, accounting for 45.2% of persons (members of families) in 2007.<sup>46</sup> Thus, according to Israel's National Insurance Institute, "there is a large, almost threefold gap between the Arab families' share of the entire population and their share of the poor population."<sup>47</sup>

Israel ranks local councils and municipalities according to a ten-point socio-economic scale. Cluster 10 represents the wealthiest localities, and cluster 1 the poorest towns. The 75 Arab localities in the state are greatly over-represented in the lowest clusters: they make up around 87% of all localities within clusters 1-3, around 72% of all localities within clusters 1-4, and 0% of the most prosperous localities in the country classified in clusters 7-10.<sup>48</sup> As a consequence, the services provided by local authorities are generally both scarcer and of poorer quality in Arab localities.

*Comparison of neighboring pairs of selected Arab & Jewish towns by socio-economic indicators, 2009<sup>49</sup>*

Town (Jewish towns shown in grey)	Average income per capita (NIS)	Socio-economic cluster ranking	% of sub-minimum wage-earners	% aged 17-18 entitled to a matriculation certificate
Afula	2,626	5	47.13	51.45
Umm el Fahem	1,321	2	58.64	33.29
Dimona	2,530	4	48.53	46.35
Rahat	1,059	1	57.07	23.92
Zikron Ya'akov	3,823	7	37.59	54.77
Jisr el-Zarqa	1,300	2	57.67	15.96

<sup>44</sup> National Insurance Institute, *Poverty and Social Gaps, Annual Report 2008*, p. 16, 22 (English), available at: [http://www.btl.gov.il/English%20Homepage/Publications/Poverty\\_Report/Documents/poverty%20report%202008.pdf](http://www.btl.gov.il/English%20Homepage/Publications/Poverty_Report/Documents/poverty%20report%202008.pdf)

<sup>45</sup> OECD, *Labour Market and Socio-Economic Outcomes of the Arab-Israeli Population*, March 2010, p. 31.

<sup>46</sup> The National Insurance Institute, *Annual Survey 2008*, p. 80 (English), available at: <http://www.btl.gov.il/English%20Homepage/Publications/Annual%20Surveys/Documents/skira-2008-E.pdf>

<sup>47</sup> Ibid.

<sup>48</sup> CBS, *Local Councils and Municipalities by Socio-Economic Index, Ranking and Cluster Membership*, 2006, available at: [http://www.cbs.gov.il/hodaot2009n/24\\_09\\_244t3.pdf](http://www.cbs.gov.il/hodaot2009n/24_09_244t3.pdf). These figures do not include Arab citizens living in mixed cities. It should be noted that many Jewish localities that are ranked within the low socio-economic clusters are settlements located in the occupied West Bank, including East Jerusalem, rather than in Israel proper. These include Modi'in Illit and Betar Illit (cluster 1), Betar Illit (cluster 2), El'Ad and Immanu'el (cluster 2), and Qiryat Arba (cluster 3).

<sup>49</sup> CBS, *Local Councils and Municipalities – Rank, cluster membership, population, variable values, standardized values and ranking for the variables used in the computation of the index*, 2009, available at: [http://www.cbs.gov.il/hodaot2009n/24\\_09\\_244t1.pdf](http://www.cbs.gov.il/hodaot2009n/24_09_244t1.pdf)

Migdal Haemeq	2,313	5	47.70	49.34
Shafa'amr	1,747	3	48.88	34.94
Karmi'el	2,980	6	42.30	58.57
Arrabeh	1,417	2	54.55	24.47

The preceding table illustrates the socio-economic disparities that exist between a sample of Arab and Jewish towns located in close geographic proximity. It indicates how consistent gaps persist across a range of socio-economic indicators. The average income in the listed Arab towns is significantly and consistently lower than average income in the Jewish towns, and the average gap is approximately NIS 1,370. Consequently, all the sampled Arab towns are ranked in socio-economic clusters 1-3, while all the Jewish towns fall in clusters 4-7. Furthermore, in all of the sampled Arab towns, wage-earners earning less than the minimum wage account for more than their proportion in all the Jewish towns in the sample, and in all but one case account for over half of wage-earners.

### **The inequitable redistribution of public resources**

The State of Israel is well aware of these disparities. In an official government study conducted in 2007, for example, the National Insurance Institute concluded that, "... the poverty incidence index divides the population clearly into two national groups, with the poverty level of the Arab families far higher than that of the Jewish families."<sup>50</sup> However, the state has consistently failed to take adequate and effective action to address the phenomenon of absolute and relative poverty among the Arab minority in Israel, through affirmative action programs, targeted economic stimulus programs, etc. When it has initiated such plans they are often implemented partially, gradually or not at all, and therefore fail to deliver the required support. For instance, the NIS 4 billion "Multi-Year Plan for the Development of the Arab-Sector Communities," was launched in 2000 to great fanfare, with the stated aim of closing the economic gaps between Palestinian and Jewish citizens in Israel. However, the plan has never been fully implemented. Despite its non-implementation, the state has used the fact that the plan was granted approval to justify the exclusion of Arab towns and villages from other development programs.<sup>51</sup>

An example of the inequitable allocation of public resources is Amendment 146 to the Income Tax Act, a discriminatory clause determining the provision of income tax benefits. The amendment originally afforded tax exemptions to Israeli Jewish communities located on the border with the Gaza Strip, but the list quickly expanded to include communities added for political reasons only. Due to the lack of clear criteria to govern the provision of significant tax rebates to communities, not one of the communities selected to enjoy the benefits was Arab.

<sup>50</sup> National Insurance Institute, *Poverty and Social Gaps, Annual Report, 2007*.

<sup>51</sup> For example, on 2 June 2004, the Supreme Court ruled on a petition submitted by Adalah and Tel Aviv University Law Clinic against a government decision to exclude Arab towns from the "Ofeq" program that the state could not use the Multi-Year Plan as a reason for excluding Arab towns from other government socio-economic plans and programs. HCJ 6488/02, *The National Committee of Arab Mayors, et al. v. The Director's Committee for Fighting Unemployment in Settlements with High Unemployment Rates, et al.*

The amendment passed despite the fact that Arab communities suffer from systematic discrimination in state budget allocation and are among the poorest and most neglected communities in Israel. In response to petitions submitted by the Association for Civil Rights in Israel (ACRI) and Adalah against the amendment in 2005,<sup>52</sup> the Israeli Supreme Court decided in September 2010 that the granting of tax benefits to several communities without equal, clear and written criteria was unconstitutional and discriminatory.<sup>53</sup>

Overall, direct state policy measures to reduce poverty (transfer payments/benefits and taxes) target Jewish citizens far more than Arab citizens: the incidence of poverty declined by just 13.5% among Arabs in 2008 as a result of such measures, compared to 46.2% among Jewish citizens.<sup>54</sup> Thus the redistribution of income by the state serves to preserve and widen rather than narrow inequalities between Arab and Jewish citizens. In Israel, government expenditure has a particularly critical role to play in combating poverty and redressing inequality, given the very high percentage it constitutes of the country's total GDP. In 2003, Israel invested as much as 52.4% of GDP on government expenditure, compared with 48.1% in France, 37.2% in Sweden, 36.8% in Finland, 32.8% in Germany, 21.0% in the United States and 18.4% in Canada.<sup>55</sup> However, by not focusing on the poorest and most disadvantaged groups among society, taxes and benefits have the effect of reducing poverty overall in Israel by just 25%, compared with an average of around 60% (compared with household incomes before taxes and benefits are taken into account) among OECD countries.<sup>56</sup>

## **7. The ongoing ban on family unification**

### ***Suggested question***

- *In light of the Committee's concern, voiced in its Concluding Observations on Israel from 2003 regarding Israel's restrictive family unification policies towards Palestinians,<sup>57</sup> as well as calls from other UN human rights treaty bodies to revoke the Citizenship Law,<sup>58</sup> please comment on the recent re-extension of the law through January 2011 and whether Israel intends to turn the law into a permanent law. How does Israel reconcile the blanket ban on*

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<sup>52</sup> HCJ 6880/05, *Association for Civil Rights in Israel v. Minister of Finance, et al.*; HCJ 6901/05, *Mayor of Rahat Municipality, et al. v. The Minister of Finance, et al.*

<sup>53</sup> See Adalah's press release and the Supreme Court's decision in Hebrew at:

<http://www.adalah.org/newsletter/ara/sep10/sc%20decicionsn%20in%20tax.pdf>

<sup>54</sup> National Insurance Institute, *Poverty and Social Gaps, Annual Report 2008*, p. 15 (English).

<sup>55</sup> Adva Center, *Total Government Expenditure as Percentage of GDP, 2003*.

<sup>56</sup> OECD, *Israel: A divided society – Results of a review of labour-market and social policy*, 20 January 2010, available at: <http://www.oecd.org/dataoecd/0/40/44394444.pdf>

<sup>57</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel, 23 May 2003, E/C.12/1/Add.90, paras. 18 and 34.

<sup>58</sup> See Concluding Observations of the Human Rights Committee: Israel, 29 July 2010, CCPR/C/ISR/CO/3/CRP.1, para. 15; Concluding Observations of CERD: Israel, 14 June 2007, CERD/C/ISR/CO/13, para. 20, and CERD's special decisions of 2003 (Decision 2/63) and 2004 (Decision 2/65); Concluding Comments of the Committee on the Elimination of Discrimination against Women (CEDAW): Israel, 22 July 2005, CEDAW/C/ISR/CO/3, para. 33.



*family unification between Israeli citizens and residents of the West Bank,<sup>59</sup> Gaza Strip, Syria, Lebanon, Iraq or Iran with its obligations under the Covenant?*

### **Background information**

The State of Israel's restrictive family unification procedures for Palestinian citizens of Israel and their non-citizen Palestinian and/or Arab spouses remain firmly in place, despite the Committee's previous concerns in this regard,<sup>60</sup> as well as calls by several other UN human rights treaty committees on Israel to revoke the law. The Citizenship and Entry into Israel Law (Temporary Order), first enacted in July 2003, codified this policy into law. The law denies Palestinian citizens of Israel the right to acquire residency or citizenship status in Israel for their Palestinian spouses from the OPT, solely on the basis of their nationality. In May 2006, a 6-5 majority of the Israeli Supreme Court decided to uphold the law,<sup>61</sup> and in July 2010, the Knesset extended the validity of the law for the tenth time to 31 January 2011. As a result of the ban on family unification, thousands of families are forced to live apart or in a state of constant insecurity under the threat of separation.

Temporary visitor permits to Palestinian residents of the OPT married to Israeli citizens have been granted in very restricted circumstances, pursuant to amendments made to the law in July 2005,<sup>62</sup> However, even where the stringent conditions for family unification are met, the maximum that can be obtained by a non-Israeli Palestinian spouse is a short-term residency permit, such as a three-month tourist visa, that does not allow the non-citizen spouse to work or drive and denies them the protection of health insurance or social security. Families therefore remain under enormous pressure.

In March 2007, the Knesset expanded the ban on family unification to citizens of "enemy states", namely Syria, Lebanon, Iraq and Iran, and to "anyone living in an area in which operations that constitute a threat to the State of Israel are being carried out," according to security reports presented to the government.<sup>63</sup> In June 2008, the Gaza Strip was also added to this list. The law flagrantly discriminates against Palestinian citizens of Israel, who are most likely to have non-citizen Palestinian/Arab/Muslim spouses. At the same time, however, the "graduated process" of naturalization for residency and citizenship status in Israel for all other "foreign spouses" remains unchanged.

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<sup>59</sup> Palestinian residents of the OPT married to citizens of Israel may apply for temporary residence permits in restricted cases, according to amendments made to the law in July 2005. However, even where the stringent conditions for family unification are met, the maximum that can be obtained by a non-Israeli spouse is a short-term residency permit that does not allow the non-citizen spouse to work or drive and denies them the protection of health insurance or social security. Families therefore remain under enormous pressure.

<sup>60</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel, 05/23/2003, E/C.12/1/Add.90, para. 18.

<sup>61</sup> HCJ 7053/03, *Adalah, et al. v. Ministry of Interior, et al.* (petition rejected 14 May 2006).

<sup>62</sup> Amendments to the law from 2005 allow Palestinian men over 35 years and Palestinian women over 25 to apply for temporary residency permits at most.

<sup>63</sup> Petitions filed to the Supreme Court of Israel challenging the constitutionality of the expanded law, including a petition submitted by Adalah, remain pending. HCJ 830/07, *Adalah v. The Minister of the Interior, et al.*

The ban on family unification severely violates the right to family life. Amid ongoing international condemnation at the repeated extensions of the law's validity, other UN human rights treaty bodies have also criticized and called on Israel to revoke the Citizenship and Entry into Israel Law.<sup>64</sup>

### **The security pretexts used by the state to justify the law**

The law is sweeping in its application and totally disproportionate to the alleged security grounds cited by Israel to justify its enactment, and to draw attention away from the state's demographic motives in limiting the number of Palestinians relocating to Israel to live with their Israeli citizen spouses. In its Third Periodic Report to the Committee, the State of Israel claimed that since late 2000, "there has been a growing involvement in assistance to terrorist organizations on the part of Palestinians originally from the West Bank and the Gaza Strip" who have Israeli identity cards obtained through means of family unification with Israeli citizens or residents (para. 393). It thereby makes a direct link between security threats and family unification between Palestinians from both sides of the Green Line.

Despite these claims, the state has consistently failed to provide clear, detailed data to the Supreme Court or to other bodies to demonstrate the security risk posed by family unification procedures. This failure extends to Israel's Report, which contains only one specific example and otherwise makes general statements including, "between September 2000 and the end of 2006, 38 of the 172 terrorist attacks carried out in Israel, were committed by such individuals [individuals who carry Israeli identity cards pursuant to procedures of family unification]" (para. 395). This information omits details of the nature of the involvement of such individuals or and convictions obtained against them for their alleged crimes.

However, at a hearing held in March 2010 on petitions challenging the amended law, the Supreme Court ordered the state to provide updated data, within thirty days, on the number of requests for family unification, the number of requests that were denied, and the number of people who entered Israel on the basis of family unification and were found by the state to have been "involved in operations against the security of the state."<sup>65</sup>

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<sup>64</sup> CERD in its special decisions of 2003 (Decision 2/63) and 2004 (Decision 2/65) and Concluding Observations of 2007, para. 20 (CERD/C/ISR/CO/13); CEDAW in its Concluding Observations of 2005, paras. 33-34 (CEDAW/C/ISR/CO/3); and most recently the Human Rights Committee, which in its Concluding Observations of July 2010, "reiterate[d] its concern that the Citizenship and Entry into Israel Law... remains in force and has been declared constitutional by the Supreme Court." The Committee recommended that Israel revoke the law and "review its policy with a view to facilitating family reunifications of all citizens and permanent residents without discrimination" (CCPR/C/ISR/CO/3, para. 15).

<sup>65</sup> For more information, see Adalah, *Eleven Justice Panel of Israeli Supreme Court Holds Hearing on Citizenship Law Case; Court Orders State to Provide New Data on Why the Law is Needed for Security Reasons*, 14 March 2010, available at: [http://www.adalah.org/eng/pressreleases/pr.php?file=14\\_3\\_10](http://www.adalah.org/eng/pressreleases/pr.php?file=14_3_10)

According to the state's response of 13 April 2010, between 2001 and April 2010, 54 persons who had received status in Israel through family unification procedures were either "directly involved in terrorist attacks" or prevented from carrying out such attacks at the last minute.<sup>66</sup> However, again the state failed to provide any details about the nature of the involvement of these 54 persons in the reported attacks or attempted attacks. Nor did it provide any information on how many of them had been arrested, detained, released, indicted, convicted or sentenced for these activities or detail the gravity of their alleged actions. In addition, the state failed to provide the court with any data about applications or involvement of persons from the aforementioned "enemy states," strongly suggesting that there is no factual basis for the sweeping ban on family unification with non-Jewish nationals from these states.

Furthermore, previous information supplied by the state casts serious doubts on these general claims. Following a request for detailed information submitted by Adalah in December 2008, the state responded that just **seven** persons who had received status in Israel through family unification procedures had been indicted for security-related offenses, that only **two** of these had then been convicted, and that these two persons had already completed their sentences, which suggests that the offenses were relatively minor. Given the numbers involved, the law is sweeping in its application and completely disproportionate to the alleged security reasons cited by Israel to justify its enactment.

Amendments made to the law in 2005 deny status to Palestinians from the OPT who are related to individuals whom *security officials suggest might constitute a security threat to Israel*. Such presumptuous conclusions cannot be challenged and would hold even where an applicant maintained no personal contact with such a relative.

In addition, according to the state, between August 2005 and April 2010, 4,118 Palestinians entered Israel through family unification, equating to around just 800 persons per year.<sup>67</sup> The humanitarian committee that was set up to review family unification applications approved of just 33 cases from 600 applications between November 2008 and April 2010, a relatively insignificant number. The law, which established this committee, does not define the term "humanitarian" but does specifically state that the need for children to live with their parents does not constitute a humanitarian consideration that would justify granting the right to family unification. The humanitarian committee is a deeply flawed body, which lacks transparency, does not grant applicants the right to appear before the Committee, and denies applicants the right to appeal its decisions, and does not constitute an adequate solution to the severe violations of rights inflicted by the law.<sup>68</sup>

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<sup>66</sup> The state's response is on file with Adalah.

<sup>67</sup> UN Human Rights Committee, Replies of the Government of Israel to the List of Issues to be taken up in connection with the consideration of the third periodic report of Israel, CCPR/C/ISR/Q/3/Add.1, 12 July 2010, p. 54.

<sup>68</sup> See Physicians for Human Rights-Israel, "The Humanitarian Committee - a false hope to the many who have been affected by the Citizenship Law," July 2010, available at:

<http://phr.org.il/default.asp?PageID=100&ItemID=788>

## **8. The demolition and evacuation of the unrecognized Arab Bedouin villages in the Naqab (Negev)**

### ***Suggested questions***

- *What steps is Israel taking to respect and protect the rights of Arab Bedouin living in the unrecognized villages in the Naqab (Negev) to an adequate standard of living and to provide them with basic infrastructure and services. Please provide information on the reasons why Israel does not officially recognize these villages, which either pre-date the establishment of the state in 1948 or to which inhabitants were forced to relocate by the State after being expelled from their original villages? Please provide information on the State's plan to implement the recommendations issued by the Goldberg Committee.*
- *Please comment on the State's plans to demolish and evacuate entire Arab Bedouin unrecognized villages. In what circumstances does Israel decide to demolish a house or evacuate a village, and by whom is the decision made? How many homes have been demolished in the unrecognized villages since 2003 and for what reason? Are the owners and/or residents of the demolished houses/evacuated villages compensated in any way?*
- *What steps is Israel taking to criminally investigate police and other authorities involved in the violent home demolition operation in al-Araqib, an unrecognized Arab Bedouin village in the Naqab (Negev) in the summer of 2010, and the presence of Tax Authority officials and their illegal debt collection during the demolition of the entire village?*

### ***Background information***

Despite the Committee's previous concerns,<sup>69</sup> as well as those voiced by other UN human rights treaty-bodies,<sup>70</sup> between 2000 and 2007, at least 3,084 Palestinian homes were destroyed in Israel, the majority belonging to Arab Bedouin living in the unrecognized villages in the Naqab/Negev.<sup>71</sup> The demolition of homes is one of the tools used by Israel to evacuate the unrecognized villages and concentrate the Arab Bedouin in the Naqab into the over-crowded and impoverished townships that have been recognized by the state.<sup>72</sup> Most of the houses are demolished on the pretext of Arab Bedouin violations of land and planning laws.<sup>73</sup>

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<sup>69</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel, 12 April 1998, E/C.12/1/Add.27, para. 26 and 28, and 5/23/2003, E/C.12/1/Add.90, para. 27 and 43. See also CESCR General Comments 4 (the right to adequate housing) and 7 (forced evictions).

<sup>70</sup> Concluding Observations of the Human Rights Committee: Israel, 29 July 2010, CCPR/C/ISR/CO/3/CRP.1, para. 24; Concluding Observations of CERD: Israel, 14 June 2007, CERD/C/ISR/CO/13, para 25;

<sup>71</sup> The Israeli Committee Against House Demolitions, telephone interview held on 21 July 2009.

<sup>72</sup> A letter sent by Adalah on behalf of several Israel-based organizations to the Prime Minister, the Justice Minister and the Attorney General arguing that the state's policy of home demolitions in the Naqab is illegal follows. **See Appendix 3.**

<sup>73</sup> Human Rights Watch, "Off the Map – Land and Housing Rights Violations in Israel's Unrecognized Bedouin Villages," 30 March 2008. This 130-page report documents how discriminatory Israeli laws and practices force tens of thousands of Bedouin in the south of Israel to live in "unrecognized shanty towns where they are under

Palestinian Arab Bedouin in the Naqab number close to 140,000 people, or 14% of the total population of the Naqab.<sup>74</sup> Around 60,000 Arab Bedouin in the Naqab live in around 40 unrecognized Arab villages throughout the Naqab, referred to in Israel's Report as "illegal clusters" (para. 473). With no official recognition or status, these villages are excluded from state planning and government maps, have neither local councils or belong to other local governing bodies, and receive little-to-no basic services, including electricity, water, telephone lines, or education or health facilities. The Israeli government views the inhabitants of these villages as "trespassers on state land,"<sup>75</sup> although many have been living on these lands – the ancestral lands of the Arab Bedouin – prior to the establishment of the state in 1948, and although state attempts to assert ownership claims on the land are vehemently disputed. Others, expelled from their ancestral lands by the state, were forced to move to their current locations by the military government imposed on Palestinians in Israel between 1948 and 1966.

Of the 14,185,000 dunams of land in the Southern District, the total number of dunams currently under the jurisdiction of the seven government-planned Arab Bedouin townships in the Naqab<sup>76</sup> is around 60,000 dunams, and a seven further newly-recognized towns have jurisdiction over a further 34,000 dunams. Combined, this land area accounts for a mere **0.8%** of land in the district.

Israel is now seeking to evacuate the unrecognized villages and concentrate the Arab Bedouin in the Naqab into the over-crowded and impoverished townships, and to allocate the remaining land to Jewish citizens in order to ensure a Jewish demographic majority in the Naqab. Home demolitions and forced evictions are the most extreme means employed by Israel to force Arab Bedouin who refuse the minimal compensation package offered by the state to leave their villages, and constitute a violation of the Covenant. Villages that have been fully or partially demolished in recent years include Umm el-Heiran,<sup>77</sup> al-Surra, Tweiyyah and al-Araqib. Furthermore, the demolition of the unrecognized villages is contrary to the recommendations of the Goldberg Commission, formally known as "The Advisory Committee on the Policy regarding Bedouin towns," as presented to the government in December 2008 (see the State's Report, paras. 477-482). The Goldberg Commission recommended, inter alia, the official recognition of the unrecognized villages, according to limitations, and their incorporation within the existing array of towns and villages.<sup>78</sup>

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constant threat of seeing their homes demolished and their communities torn apart. Available at:

<http://www.hrw.org/en/reports/2008/03/30/map-0>.

<sup>74</sup> Mustafa, M. and M. Subhi, *Unlicensed: The Policy of Demolishing Arab Homes in Israel*, Center for Contemporary Studies, 2005, p. 48 (Arabic).

<sup>75</sup> Attorney General's response to Adalah's petition H.C. 2887/04, *Salem Abu Medeghem, et al. v. The Israel Lands Administration, et al.* in a case challenging the ILA's spraying of poisonous material on crops belonging to Arab Bedouin farmers from the unrecognized villages (petition accepted 15 April 2007).

<sup>76</sup> Rahat, Lagiyya, Kessife, Tel el-Sebe (Tel Sheva), Hura, 'Arora, and Shegheb al-Salam (Segev Shalom).

<sup>77</sup> See, e.g. "Adalah Demands that Court Prevent the Expulsion of 1,000 Arab Bedouin from their Homes and the Destruction of their Village in the Naqab in Israel," 13 November 2008, available at:

[http://www.adalah.org/eng/pressreleases/pr.php?file=08\\_11\\_13](http://www.adalah.org/eng/pressreleases/pr.php?file=08_11_13)

<sup>78</sup> The Report of the Goldberg Commission, December 2008, para. 108. A copy of the report translated to English is on file with Adalah.

## **The demolition and evacuation of al-Araqib**

An example of the recent upsurge in the state's efforts to evacuate the unrecognized villages is the repeated demolition of the village of al-Araqib. On 27 July 2010, residents of the Arab Bedouin unrecognized village al-Araqib in the Naqab were awoken at dawn to find themselves surrounded by police officers, some on horseback. The police, carrying guns, tear gas, truncheons and other arms, declared the village a "closed area" and ordered its 250 residents—men, women, elderly people and children—to leave their homes within two minutes, warning that they would be forcibly evicted if they resisted. No less than 1,300 police officers began to demolish the homes while the residents tried to salvage their belongings from their houses. A helicopter flew above the village throughout the demolition.

All 45 houses in the village were razed to the ground and its residents left without a roof over their head, with all their belongings confiscated, including refrigerators, ovens, cupboards, bedroom and dining room furniture and carpets. The police also uprooted around 4,500 olive trees. Representatives of the Tax Authority accompanied the police and seized property of residents in debt to the tax authorities, including property from the area surrounding the houses such as electricity generators, plows and large flour bags. The confiscation was undertaken without prior warning or demands to the residents to pay their debts, and was therefore illegal. Residents were required to pay NIS 22,500 (almost US \$6,000) to retrieve their property. Illegally, most of the police officers covered their faces and did not wear identity tags. One of the most shocking aspects of the raid was that a busload of radical right-wing Jewish youth accompanied the police to the village. The youth began to taunt the people who just lost their homes, and applauded when the police officers demolished the homes.

The village was destroyed for the second time a week later, with police again using violent means and excessive force. Representatives of Adalah visited al-Araqib following the destruction and spoke with residents. Adalah immediately demanded a criminal investigation into the police involved in the demolition operation, and into the presence of Tax Authority officials and the illegal debt collection operation. Adalah sent a further letter to the Police Investigation Unit (*Mahash*) following the second destruction the village. Adalah drew on full accounts provided by individuals present at the second day of evacuation and demolition, including residents, civil society and political leaders and activists, of police brutality. Residents of al-Araqib have attempted to rebuild their village several times. After each attempt the state has demolished the new structures, at least five times to date.

## **The "individual" Jewish settlements in the Naqab**

In stark contrast to the state's discriminatory policy of concentrating the Arab Bedouin in the Naqab onto the smallest possible area of land are so-called "individual settlements," another tool used by the state to "Judaize" the land in the Naqab. Individual settlements are inhabited, in general, by single Jewish families, which are provided with hundreds and sometimes thousands of dunams of land for their exclusive use. There are around 60 individual settlements in the Naqab,

stretching over 81,000 dunams of land.<sup>79</sup> The government's "Wine Path Plan" sought to establish 30 individual settlements by retroactively legalizing these existing settlements and allowing for the construction of a number of new ones, thereby distributing vast and lucrative portions of land in the Naqab exclusively to Jewish citizens.<sup>80</sup> This policy prevents equal access to the land for the entire population of the Naqab.

In 2006, Adalah petitioned the Israeli Supreme Court demanding the cancellation of the "Wine Path Plan"; in June 2010, the court rejected the petition and ruled to uphold the planning authorities' decision to establish the individual settlements as part of the Wine Path Plan.<sup>81</sup> The court decided that the planning authorities' decision to approve the plan fell within planning policies and that it had no authority to intervene. In its decision, the court did not address the petitioners' arguments concerning the disparate impact of the plan, and specifically the unequal distribution of land and the discrimination against the Arab Bedouin unrecognized villages entailed by the plan. Meanwhile, on 12 July 2010, the Knesset approved a new law to legalize individual settlements in the Naqab retroactively, including those that lie outside the Wine Path Plan, by a vote of 27 MKs in favor and 6 against.<sup>82</sup> Following its recent review of Israel, the UN Human Rights Committee recommended that Israel should "respect the Bedouin population's right to their ancestral land and their traditional livelihood based on agriculture."<sup>83</sup>

## **9. Lack of access for Arab citizens of Israel to land and housing**

### ***Suggested questions***

- *Please comment on concerns that despite the Israeli Supreme Court's decision in Qa'adan, the operation of private Zionist institutions, including the World Zionist Organization, the Jewish Agency, and Jewish National Fund, which are chartered to work solely for the benefit of Jews,, in close cooperation with the state, results in inferior, inadequate and inequitable access to land and housing for Arab citizens of Israel.*<sup>84</sup>
- *What measures does Israel envisage taking to ensure that "admissions committees" do not exclude Arab citizens from approximately 700 agricultural and community towns, in keeping with the Qa'adan decision issued by the Israeli Supreme Court,<sup>85</sup> which ruled that the state is*

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<sup>79</sup> Hana Hamdan, "The Policy of Settlement and "Spatial Judaization in the Naqab," *Adalah's Newsletter*, vol. 11, March 2005, available at: <http://www.adalah.org/newsletter/eng/mar05/ar2.pdf>

<sup>80</sup> Formally known as Regional Master Plan TAMAM 4/14/42: Partial District Master Plan for the Southern District – Amendment No. 42.

<sup>81</sup> *HCI 2817/06, Adalah, et al. v. The National Council for Planning and Building, et al.* (case pending).

<sup>82</sup> The bill proposes to amend the Negev Development Authority Law. Legislative bill no. 716/18, introduced on 24 June 2009.

<sup>83</sup> Concluding Observations of the Human Rights Committee – Israel, CCPR/C/ISR/CO/3, 29 July 2010, para. 24.

<sup>84</sup> See Concluding Observations of the CESCR: Israel, 12 April 1998, E/C.12/1/Add.27, para. 11; Concluding Observations of the CESCR: Israel, 23 May 2003, E/C.12/1/Add.90, para. 12; Concluding Observations of CERD: Israel, 14 June 2007, CERD/C/ISR/CO/13, para. 19.

<sup>85</sup> *HCI 6698/95. Qa'adan v. The Israel Land Administration, et. al*, PD 54(1) 258 (2000).

*obliged to treat Jewish and Arab citizens equally in all matters pertaining to the allocation of land.*<sup>86</sup>

- *Please report on any progress made in the establishment of a new city for Arab citizens of Israel, and on any other measures taken to reduce the wide gaps in population and housing density between Arab and Jewish citizens of Israel.*

### **Background information**

Israel's Report (para. 458) refers to the possibility of building a new Arab city in Israel. As the report states, the city remains at the stage of background work. In fact, since 1948, the State of Israel has established approximately 600 Jewish municipalities, whereas no new Arab village, town or city has been built.<sup>87</sup> The possible construction of a new Arab city has been discussed in vague terms for years, without concrete developments. However, Arab representatives have not been consulted regarding the project and their needs have not yet been taken into account (for example, whether the Arab minority needs one city or a number of smaller towns and villages located around the country, etc.). By contrast, two large Jewish cities have in recent years reached advanced stages of the planning process – Harish, a city for ultra-orthodox religious Jews located in Wadi 'Ara, where the majority population is Arab citizens of the state, and Ir Habahadim, a city designated for Israeli security officials and their families in the Naqab.

The lack of new towns built to accommodate the needs of Palestinian citizens of Israel should be placed in the context of the fact that while Arab citizens constitute just under 20% of the population of the state, only 3-3.5%<sup>88</sup> of the land in Israel is currently owned by them, as compared to 48% in 1948. As much as **93%** of the land in Israel is now under the direct control of the state and the JNF, a quasi-state entity. This land is officially referred to as "Israel lands." The remainder is owned by private Jewish individuals. Palestinian citizens are in practice blocked from purchasing or leasing land on around 80% of the land in Israel on the basis of their national belonging.<sup>89</sup> As a result, the vast majority of state land consists of segregated, Jewish-only areas.

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<sup>86</sup> See Concluding Observations of the CESCR: Israel, 23 May 2003, E/C.12/1/Add.90, paras. 14, 30; Concluding Observations of CERD: Israel, 14 June 2007, CERD/C/ISR/CO/13, para. 23.

<sup>87</sup> The state built seven townships in the Naqab in order to concentrate the Bedouin on as little land as possible after removing them from their original land. These townships—Lagiyya, Hura, Kseiffe, 'Arara, Tel el-Sabe, Shegheb al-Salam, and Rahat—are the poorest communities in Israel, with the worst infrastructure and services. The state has also recognized nine previously-unrecognized Bedouin villages—Kassar Alsar, Moladah, Makhol, Darijat, Abu Qrenat, Um Batin, Bir Hadaj, Tarabin and al-Said—which are also intended to be sites of further relocations from the unrecognized villages. They fall under the authority of the Abu Basma Regional Council, established in 2004.

<sup>88</sup> Oren Yiftachel, *Lands, Planning and Inequality: The Division of Space Between Jews and Arabs in Israel*, Position Paper, The Adva Center (2000) (Hebrew).

<sup>89</sup> 52 regional councils in Israel (this number excludes regional councils located in the occupied Golan Heights and West Bank) govern around 850 rural towns and villages in Israel covering 81% of state land in Israel, although they contain only around 8% of the state's population. There are only three Arab regional councils, Al-Batouf, Bustan Al-Marj and Abu Basma. The majority of the towns and villages located within the jurisdiction of the regional councils are agricultural and community towns, from which Arab citizens are excluded. According to state figures, 99.6% of the population living in rural localities is Jewish. Israel's Fifth Period Report to the UN Committee on the Elimination of Discrimination against Women, CEDAW/C/ISR/5, 21 October 2009, p. 253, para. 565. For more



## Exclusion from JNF-controlled land

Land controlled by the JNF, which today constitutes around 13% of land in the state, is reserved for the exclusive use by Jews. The discriminatory policies pursued by the JNF in collaboration with state authorities serve to exclude Arab citizens from land use and ownership. Of the 2.5 million dunams of land currently owned by the JNF, close to two million dunams were transferred to it by the state in 1949 and 1953, giving the JNF special status under Israeli law.<sup>90</sup> The majority of JNF-controlled land previously belonged to Palestinian refugees and internally-displaced persons (IDPs; around 25% of all Palestinian citizens of Israel are IDPs). According to ILA policy, JNF-controlled land is marketed and allocated through bids open only to Jews, completely excluding Palestinian citizens. The JNF's principles prohibit the allocation of rights to lands under its ownership to someone who is not a Jew. In response to a Supreme Court petition filed by Adalah to challenge the ILA's policy, the JNF argued that, "As the owner of JNF land, the JNF does not have to act with equality towards all citizens of the state." In 2005, the Attorney General decided that the ILA cannot discriminate against Arab citizens in marketing and allocating JNF-owned land. However, he also decided when a non-Jewish citizen wins a tender for a plot of JNF land, the ILA will compensate the JNF with an equal amount of land, an arrangement that clearly fails to end discrimination against Arab citizens.<sup>91</sup>

## Admissions committees

A further mechanism used to exclude Palestinian citizens from land ownership and use is "admissions committees." Admissions committees are mechanisms that monitor applicants for housing units and plots of land in "agricultural and community towns" in Israel. They are used partly to filter out Arab applicants from future residency in these locations, as well as other marginalized groups in Israel, such as Mizrahi Jews (Eastern Jews), single parents and gay people.<sup>92</sup> These committees operate in almost 700 agricultural and community towns, which

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information, see Adalah's letter of 21 July 2009 to the Knesset concerning the transfer of property rights in rural and agricultural villages (English) at: [http://www.adalah.org/features/land/admission\\_committees-Eng\\_FINAL%5B1%5D.pdf](http://www.adalah.org/features/land/admission_committees-Eng_FINAL%5B1%5D.pdf)

<sup>90</sup> 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 (2002), pp. 601-44 (Hebrew). The JNF claims that it bought 1.25 million dunams of land from the state immediately after the establishment of Israel, using donations from Jews from around the world. See the JNF's response of December 2004 to HCJ 9205/04, *Adalah, et al. v. The Israel Lands Administration, et al.* (case pending).

<sup>91</sup> HCJ 9205/04, *Adalah v. The Israel Land Administration, et al.* (case pending). This arrangement was formalized in "The Principles of the Agreement between the State and the JNF," signed on 26 May 2009. The agreement also states that the JNF will transfer land assets it has allocated to third parties for housing and employment to state ownership; in exchange, the state will transfer land of the same amount in the Naqab and the Galilee to the JNF. The agreement stipulates that the JNF agrees to the administration of its land by the newly-established Land Authority Council, to replace the ILA, "in a way that will preserve the principles of the JNF in regard to its lands." The location of this land intensifies the anticipated harm to the Arab population because this population lives primarily in the Naqab and Galilee, and is in dire need of additional land resources.

<sup>92</sup> Israel Land Administration Decision No. 1015 provides for the operation of Admissions Committees and was made in cooperation with the Jewish Agency for Israel. The decision directs Admissions Committees of small community

account for 68.5% of the total towns in Israel, and around 85% of all villages.<sup>93</sup> The committees include “a senior official from the settlement agency (The Jewish Agency or The World Zionist Organization).”<sup>94</sup> Among the criteria these committees employ in assessing applicants is whether the candidate is “suited to social life in a small community or agricultural settlement,” a criterion that lacks any transparency and is open to wide interpretation and arbitrary considerations. The Israel Land Authority (ILA) instituted admissions committees to bypass the landmark Supreme Court decision in *Qa’adan* in 2000<sup>95</sup> in which the court ruled against discrimination between Jewish and Arab citizens of the state in the use and allocation of state-controlled land.<sup>96</sup>

### Population density and overcrowding in Arab towns and villages

Arab towns and villages in Israel suffer from severe overcrowding. While the Arab minority in Israel comprises around 20% of the population, Arab municipalities have jurisdiction over only 2.5% of the total area of the state. For example, the state-regulated jurisdiction of Nazareth (the largest Arab town in Israel), which has a population of around 70,000, is 16,000 dunams.<sup>97</sup> A comparison with the neighboring Jewish town of Natseret Illit brings the existing inequality into sharp relief: Natseret Illit, with a population of 50,000, has jurisdiction over 40,000 dunams of land.<sup>98</sup> Since 1948, the State of Israel has established approximately 600 Jewish municipalities, whereas no new Arab village, town or city has ever been built.<sup>99</sup>

At the level of the individual household, Arab citizens live in far more cramped conditions than Jewish citizens of the state: in 2008, the average housing density among Arabs was **1.43** persons

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and agricultural towns to apply a number of criteria in deciding whether or not to recommend that the ILA accept a candidate’s request to live in one of these towns.

<sup>93</sup> These towns fall within the jurisdiction of 53 regional councils, which are distributed throughout the country and exercise control over around 81% of the total land-space in the state.

<sup>94</sup> As stipulated in ILA Decision No. 1015.

<sup>95</sup> HCJ 6698/95, *Adel Qa’adan v. The Israel Land Administration*.

<sup>96</sup> On 2 November 2009 a bill was tabled that proposes to establish the operation of admissions committees in law, in accordance with the internal by-laws of individual community towns (Legislative bill no. 18/1740, which proposes to amend *The Communal Associations Ordinance – 1933* from the Mandate period). Among the conditions that the committees should take into account under law are a candidate’s “suitability to the lifestyle and social fabric of the community town, a community characterized by social and cultural homogeneity, as well as the general suitability of the person the basic vision of the community town, as set forth in its internal by-laws” (Article 6B(b)4 of the bill). If enacted, the bill threatens to anchor the arbitrary criterion of social suitability into law, and to perpetuate discrimination against Arab citizens in accessing land in these towns. The bill passed a first reading in the Knesset on 9 December 2009, and was then transferred to the Knesset’s Constitution, Law and Justice Committee for discussion, where it remains.

<sup>97</sup> Information obtained from the Nazareth Municipality.

<sup>98</sup> *Ibid.* In the 1960s, the state appropriated land from Nazareth in order to build Natserat Illit.

<sup>99</sup> The state built seven townships in the Naqab in order to concentrate the Bedouin on as little land as possible after removing them from their original land. These townships—Lagiyya, Hura, Kseiffe, ‘Arara, Tel el-Sabe, Shegheb al-Salam, and Rahat—are the poorest communities in Israel, with the worst infrastructure and services. The state has also recognized nine previously-unrecognized Bedouin villages—Kassar Alsar, Moladah, Makhol, Darijat, Abu Qrenat, Um Batin, Bir Hadaj, Tarabin and al-Said—which are also intended to be sites of further relocations from the unrecognized villages. They fall under the authority of the Abu Basma Regional Council, established in 2004.

per room, compared to **0.84** persons per room among Jews.<sup>100</sup> While over half (58.7%) of Jewish citizens live in the most non-crowded conditions – in dwellings with less than one person per room – less than a fifth (18.1%) of Arabs live in similar conditions.<sup>101</sup> It is important to note that the statistics provided in the State’s Report on housing density from 2007 (para. 436) also omit the Arab Bedouin who live in the unrecognized villages in the Naqab, where levels of overcrowding are typically very high, in addition to kibbutzim, which are characterized by low population density. Therefore the true disparities between housing density among Jewish and Arab citizens of Israel is significantly greater than these statistics would indicate.

## **10. The new land reform law and internally-displaced Palestinians**

### ***Suggested questions***

- *Please comment on information that the newly-enacted legislation, the Israel Land Administration Law – 2009, enables the State to sell land belonging to Palestinian refugees and Palestinian citizens of Israel who are internally-displaced persons on the private market, and is thus prejudicial to their land and housing rights.*
- *Please explain the State Party’s continued refusal to allow Internally-Displaced Palestinians, also known as IDPs, who are citizens of Israel living within the borders of the State of Israel, to return to their original land, where they so demand.<sup>102</sup>*

### ***Background information***

#### **The New Land Reform Law**

As much as **93%** of the land in Israel is now under the direct control of the state and the JNF, a quasi-state entity. This land is officially referred to as “Israel lands.” The remainder is owned by private Jewish and Arab individuals. Prior to 1948, just 6-7% of the land was owned by the Jewish community. This massive transfer of land was executed by law.

- Israel expropriated 1.2-1.3 million dunams of land (a dunam is a unit of land area equating to 1,000m<sup>2</sup>) from the Arab population under *The Land Acquisition (Validation of Acts and Compensations) Law – 1953* for alleged “essential settlement and development needs.”
- All the property owned, possessed or used by the Palestinians who became refugees was transferred to the State of Israel under *The Absentees’ Property Law—1950*.<sup>103</sup> This law was

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<sup>100</sup> CBS, Statistical Abstract of Israel 2009, No. 60, Table 5.23.

<sup>101</sup> Ibid.

<sup>102</sup> See Concluding Observations of the CESCR: Israel, 12 April 1998, E/C.12/1/Add.27, para. 25; Concluding Observations of the CESCR: Israel, 23 May 2003, E/C.12/1/Add.90, para. 12.

<sup>103</sup> Article 1(b) of *The Absentees’ Property Law* defines persons who were expelled or fled the country, or left their homes to seek temporary refuge elsewhere in Palestine from 29 November 1947 as “absentees.” Israel then placed their property under the control of the “Custodian for Absentees’ Property.” The full definition of an

used almost exclusively against Palestinians, both the refugees and internally-displaced persons (IDPs). The State of Israel, UN agencies, and private Palestinian individuals have given various estimations of the total amount of land confiscated pursuant to *The Absentees' Property Law*, ranging from around 2 million dunams to 16 million dunams.<sup>104</sup>

- In addition, *The Defence (Emergency) Regulation 125* authorizes the military commander to declare land to be a “closed military area.” Once he so declares, no person is allowed to enter or to leave the area. Under this regulation, the populations of dozens of Arab villages were uprooted.

The acquisition by the state of Palestinian land continues down to this day. A new land reform law, *the Israel Land Administration (ILA) Law – 2009*, passed on 3 August 2009, allows for the privatization of state-held land including land in destroyed and evacuated Palestinian villages belonging to internally-displaced persons (IDPs) as well as Palestinian refugees living abroad.<sup>105</sup> The new law is extremely prejudicial to the constitutional rights of Palestinian Arab citizens of Israel, and it violates the property rights of the Palestinian refugees as it contravenes international humanitarian law (IHL) applicable to them and their property. The law is wide ranging in scope and has four main elements:

- a. **It institutes broad land privatization.** Ownership rights of all residential, commercial and industrial areas will be transferred, along with all land approved for development, estimated at around 800,000 dunams (200,000 acres). This land includes properties belonging to Palestinian refugees (“absentees” properties) and internally-displaced persons (IDPs), some of the lands of destroyed and evacuated Arab villages, and land otherwise confiscated from Palestinian citizens, which will be sold off. None of these lands will be open to restitution claims in the future.
- b. **It permits land exchanges between the State and the Jewish National Fund (JNF), the land of which is exclusively reserved for the Jewish people.** 50,000-60,000 dunams of land will be transferred from the JNF to the state, mainly in the cities, and in return, the JNF will receive state land in the Naqab and the Galilee. In the Naqab, the land swap will lead to the development of Jewish towns while the state is working towards evacuating the unrecognized Arab Bedouin villages, and in the Galilee more JNF lands in the area will put

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“absentee” under the law and the full text of the law in English is available from the UN Information System on the Question of Palestine (UNISPAL) at: <http://unispal.un.org/UNISPAL.NSF/0/E0B719E95E3B494885256F9A005AB90A>

<sup>104</sup> For more information, see Adalah’s Interactive Map and Database on the History of the State of Israel’s

Expropriation of Land from the Palestinian People, available at: <http://www.adalah.org/features/land/flash/>

<sup>105</sup> *Israel Land Administration (ILA) Law – 2009*. The new law is extremely prejudicial to the rights of Palestinian citizens of Israel, as well as Palestinian refugees, by formalizing the legal status of the major causes of discrimination in land rights against Palestinians, including admissions committees, land swaps between the state and JNF, and granting decisive weight to the JNF on the new Land Authority Council, set to replace the ILA. For more information see, *Adalah position paper on behalf of the High Follow-up Committee for Arab Citizens of Israel: Critique of the Israeli government’s land reform bill*, 21 July 2009, available at:

<http://www.adalah.org/newsletter/eng/jul09/jul09.html>

further restrictions on the potential future development of the Arab towns and villages and serve the purpose of “Judaizing” the Galilee.

c. **It grants decisive weight to JNF representatives in a new Land Authority Council, which would replace the ILA:** 43% of the members of the new Council are to be JNF representatives (6 out of 13). This privilege contradicts principles by which public administration should be administered since the JNF sees itself as a trustee of the Jewish people with its properties distributed exclusively to Jewish people, to the detriment of the land and property rights of Palestinian citizens of Israel and Palestinian refugees.

### **The internally-displaced Palestinian citizens of Israel, or “present-absentees”**

Around 25% of all Palestinian citizens of Israel are internally-displaced persons (IDPs), who are Palestinians who remained in the country following the establishment of the State of Israel but who were compelled to leave their land and were not permitted to return to it, and hence are referred to as “present absentees.” Approximately 230,000 Palestinians with full Israeli citizenship continue to live in the absurd situation of being denied access to their land, decades after their original displacement. The determination of the state to prevent the IDPs from returning to the land is perhaps most clearly illustrated by the uprooted Palestinian village of Iqrit. In this case, despite a ruling by the Supreme Court of Israel in 1951 to order the Minister of Defense to allow the villagers to return to Iqrit two weeks after their evacuation, today they remain able only to pray in the village church and bury their dead in the village cemetery.

Iqrit is located in the Upper Galilee. In 1948, the population of the village stood at 490 people living in 70 houses. The area covered by the village was 24,591 dunams, of which 16,012 were in private ownership. On 31 October 1948, Battalion 92 of the Israeli army entered the village, and approximately one week later a commander told the village representatives to ask the residents to leave their homes for a period of two weeks, on the alleged ground that the army planned to carryout military training in the area that could threaten their lives. The commander pledged to the villagers that the after the two-week period had elapsed the villagers would be permitted to return to their homes. However, when the village representatives contacted the Military Governor for his permission to return the request was rejected, as it was on several subsequent occasions. Nine months after the evacuation of Iqrit the village’s land was declared a “closed military area” under Defence (Emergency) Regulation 125.

In July 1951, the Supreme Court of Israel accepted a petition filed by the villagers seeking permission to return to Iqrit. The court ruled that, “there is no legal obstacle to petitioners returning to their village” and ordered the Minister of Defense to allow the villagers to return; however, the ruling has yet to be implemented.<sup>106</sup> In defiance of the court’s decision, and in order to thwart any possibility of the villagers returning to Iqrit, the army blew up all the houses in the village on Christmas Eve, 24 December 1951, leaving only the church and cemetery standing. In

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<sup>106</sup> H CJ 64/51, *Daoud, et al. v. The Minister of Defense, et al.*

1953, the state seized the village's land under the Land Acquisition Law, under which the land was transferred to state ownership.

Despite the ruling of the Supreme Court in favor of the villagers' demand to return to their land the people of Iqrit remain IDPs. The lack of progress in their case comes despite support from leading politicians including Menachem Begin – who announced in 1977 that his future government would let the villagers of Iqrit and Bir'im (a similarly displaced village) return to their land. It is also in spite of the findings of the Libai Committee,<sup>107</sup> which found, inter alia, that there was no reason to prevent the displaced villagers of Iqrit and Bir'im from returning. Moreover, in 1996 and 1999, two Justice Ministers both declared on behalf of their respective governments that the findings of the Libai Committee were acceptable and that they wished to reach a settlement based thereon. However, no progress was made on the ground. In 2002, Prime Minister Ariel Sharon rejected the findings of the Libai Committee, and the Supreme Court subsequently rejected a second petition filed by the villagers, in June 2003, while recommending that the government reconsider the matter favorably.<sup>108</sup>

Another example is that of the destroyed Palestinian village of Lajoun in the Triangle area in central Israel. Land in the village was confiscated at the order of the then-Minister of Finance from landowners on 15 November 1953 under Article 2 of the Land Acquisition Law for "essential settlement and development needs." However, following the confiscation the land was used in part for planting a manmade forest and for the establishment of a small facility for the "Mekorot water" company. In a Supreme Court appeal brought on behalf of 486 Arab IDP families from Lajoun in 2007, Adalah argued that the land in question – which to nearly 200 dunams and was confiscated along with other plots of land – should be returned to its owners since the state has not used it for "settlement" needs, as claimed in the 1953 confiscation order.<sup>109</sup> In its decision, issued in January 2010, the Supreme Court ruled that, "planting a manmade forest can be considered a kind of settlement, if we take into account that the presence of green spaces is essential for the welfare of everyone and is part of the general development of the region." The decision contradicts Supreme Court precedent, which holds that if confiscated land is not used for many years after its confiscation, it should be returned to its original owners. In this case, it is clear that planting a manmade forest is not a use in public service. The decision also affords greater importance to manmade forests than to the property rights of Arab citizens of Israel.<sup>110</sup>

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<sup>107</sup> In 1993, the late Prime Minister Yitzhak Rabin appointed Justice Minister David Libai to head a ministerial committee to look into the matter of the displaced villages of Iqrit and Bir'im. The Committee presented its findings 18 months later.

<sup>108</sup> HCJ 840/97, *Awni Sbeit, et al. v. The State of Israel, et al.* For more information, contact the Iqrit Community Association at [www.iqrit.org](http://www.iqrit.org).

<sup>109</sup> Civil Appeal 4067/07, *Jabareen, et al. v. The State of Israel, et al.* Decision delivered 4 January 2010.

<sup>110</sup> For more information, see Adalah, "Israeli Supreme Court Rules that Lands Confiscated in Lajoun from 486 Arab Families in 1953 for "Settlement Needs" will not be Returned to Them," 12 January 2010, available at: [http://www.adalah.org/eng/pressreleases/pr.php?file=10\\_01\\_12](http://www.adalah.org/eng/pressreleases/pr.php?file=10_01_12)

## 11. Discrimination in planning

### **Suggested question**

- *Please provide information on any mechanisms Israel envisages introducing to ensure that representatives of Arab communities are given genuine decision-making powers in the process of planning of Arab towns, villages and neighborhoods in Israel.*<sup>111</sup>

### **Background information**

As indicated in Israel's Report (para. 446), of the 32 members of the National Council for Planning and Building, four are Arab members (12.5%). All of the members are appointed, including the four Arab members, and thus do not represent Arab communities. The High Follow-Up Committee for Arab Citizens in Israel, the highest representative Arab body in Israel, is not consulted over the appointments.

The inadequate and under-representation of Arab citizens of Israel spans the entire planning system in Israel. For example, just 1 of 15 members of the National Committee for National Infrastructure is Arab.<sup>112</sup> The problem is also acute in the district planning committees. For example, 2 of 18 members of the Northern District Planning Committee are Arab (11.1%), whereas Arab citizens make up around 53% of the district's population; there are also 2 Arab members in the 18-member Haifa District Planning Committee (11.1%), while Arab citizens account for around 24% of the district's population; in the southern district, where Arab citizens make up approximately 16% of the population, only one Arab sits of the Southern District Planning Committee (5.5%).<sup>113</sup> These Arab members do not represent Arab communities, as there is no community representation as such in these planning authorities.

Israel's Report is misleading regarding community participation in the planning process (see paras. 454-457), particularly regarding the planning of Arab towns, villages and neighborhoods. The planning process often contains no genuine community participation and master plans designed for Arab localities are frequently rejected by the local community. For example, a public committee was recently established by Arab citizens in the Wadi 'Ara area to contest the master plans drawn up for the area.

Even where steering committees are set up as part of the planning process – committees that typically consist of representatives of government ministries, the planning authorities, consultants and perhaps one or two members of the Arab community, who are appointed without consultation – they have no decision-making authority, but can only make non-binding suggestions and recommendations to the planning authorities. The views and priorities of the Arab representatives are frequently at odds with those of the other members of the steering

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<sup>111</sup> See Concluding Observations of the Committee on the Elimination of Racial Discrimination: Israel, 14 June 2007, CERD/C/ISR/CO/13, para. 25.

<sup>112</sup> Dr. Rasem Khameiseh, *Obstacles to Arab Participation in the Planning Authorities and in Designing the Public Space in Israel*, July 2010, Floersheimer Institute of Urban and Regional Studies, Hebrew University, p. 46 (Hebrew).

<sup>113</sup> *Ibid.*

committees, and there is no mechanism to ensure that their input is fed into the decision-making process and their opinions taken seriously into account.

Local authorities and local planning committees (which are not necessarily representative of the local community) do not play a formal role in decision-making within the planning process; generally, drafts of the master plans are given to them at a certain point towards the end of the drafting process for their comments, rather than at the outset. Final decisions remain with the planning authorities.

## **12. Infant mortality and the health situation in the unrecognized Arab Bedouin villages in the Naqab**

### ***Suggested questions***

- *Please explain the reasons why infant mortality rates among Arab Bedouin citizens of Israel remain extremely high and, according to data received by the Committee, rose between 2003 and 2008. What, if any, special measures are being taken by the State to decrease the rate of infant mortality that results from consanguineous (inter-relative) marriage?*
- *Please provide additional information on measures taken to address the discrepancies between the infant mortality rates and life expectancy rates of Israel's Jewish, Arab and Arab Bedouin populations, particularly in light of comments that the state has closed frontline services such as "mother and child clinics" that operate in the unrecognized Arab Bedouin villages and the reported lack of specialist physicians including pediatricians or gynecologists allocated to these villages.*

### ***Background information***

According to data provided by Israel, in 2008, infant mortality rates within the Jewish majority in Israel stood at 2.9 per 1,000 live births; for the Arab minority, it was double that at 6.5 per 1,000 live births;<sup>114</sup> and in the Naqab, among the Arab Bedouin, the rate is even higher, at 15.0 per 1,000 live births in 2005.<sup>115</sup> The data also indicates an **upward trend** in infant mortality rates among the Arab Bedouin in the Naqab, which stood at 13.3 deaths per 1,000 live births in 2003.<sup>116</sup>

The health situation is most critical in the unrecognized villages in the Naqab, where the provision of health services is either limited or non-existent. There are only twelve clinics in the unrecognized villages. These clinics lack medical specialists and pharmacies. Furthermore the staff

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<sup>114</sup> CBS, *Israel in Figures 2009*, p. 11 (English).

<sup>115</sup> Israel's Third Periodic Report to the UN Human Rights Committee, CCPR/C/ISR/3, 21 November 2008, para. 571.

<sup>116</sup> I. Shoham Vardi, *The Death of Bedouin Babies in the Negev, 1990-2002*, Beer Sheva: Ben-Gurion University; unpublished conference paper (Hebrew). See also, Physicians for Human Rights-Israel, *No Man's Land: Health in the Unrecognized Villages of the Negev*, July 2003, available at: [http://www.phr.org.il/phr/files/articlefile\\_1163421247181.pdf](http://www.phr.org.il/phr/files/articlefile_1163421247181.pdf)



often does not speak Arabic.<sup>117</sup> Together, these services provide health care to just 20% of the residents of the unrecognized villages.<sup>118</sup> Eleven of these health clinics are affiliated to Kupat Holim Clalit (one of the four major health funds in Israel) on which thousands of people rely for health care. However, not one of these clinics employs pediatricians or gynecologists, and thus there is a lack of specialized health care for Arab Bedouin women and children living in these areas. In response to inquiries made by Adalah and Physicians for Human Rights-Israel, the Ministry of Health stated in May 2009 that the family doctors that currently work on the clinics are sufficient and that the villagers can travel to clinics in neighboring Jewish towns to receive pediatric or gynecological care.<sup>119</sup>

While Israel's Report (para. 532) provides that six new Mother and Child Health Clinics have recently been constructed in the unrecognized villages in the Naqab, in fact, in October 2009, the Health Ministry closed down three of these clinics that operated in Qasr el-Ser, Abu Tlul and Wadi el-Niam. The clinics specialize in post-natal care and are part of a group of six clinics established in the unrecognized villages following Supreme Court litigation brought by Adalah in 1997.<sup>120</sup> The ministry claimed it had closed the clinics due to a lack of nurses and doctors willing to work in them and suggested the women and children receive post-natal services in Beer el-Sabe (Beer Sheva) and elsewhere in the Naqab. However, the lack of public transportation linking the unrecognized villages, the lack of private car transport and other factors prevents many women from accessing clinics outside their villages. The closure of the clinics therefore poses a danger to the lives of thousands of pregnant women, mothers and children living in these villages. In December 2009, Adalah petitioned the Supreme Court against the Health Ministry's closure of the clinics,<sup>121</sup> and as a result, in August 2010, the Health Ministry announced that two of the clinics—in Qasr el-Ser and Abu Tlul—will be reopened. The Wadi al-Nam clinic remains closed.

The inadequate provision of health services in the unrecognized villages is a deliberate policy of neglect on the part of the state, which ultimately seeks to evacuate the unrecognized villages and relocate their residents, in part by creating intolerable conditions. Hence it is precisely in the unrecognized villages, where the need for health services is at its greatest, that provision is at its most inadequate.

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<sup>117</sup> Ibid.

<sup>118</sup> Ibid.

<sup>119</sup> Letter on file with Adalah.

<sup>120</sup> HCJ 7115/97, *Adalah, et al. v. Ministry of Health, et al.* The Ministry of Health evaded its commitment to establish the clinics and the court's decision for several years, eventually setting them up in 2000 and 2001 following further pressure from Adalah and others.

<sup>121</sup> HCJ 10054/09, *Wadad El-Hawashly, et al. v. The Ministry of Health*. See Adalah, "Adalah Petitions Supreme Court against Health Ministry Demanding Re-Opening of Mother and Child Clinics in Three Arab Bedouin Unrecognized Villages in the Naqab," 16 December 2009, available at: [http://www.adalah.org/eng/pressreleases/pr.php?file=09\\_12\\_16](http://www.adalah.org/eng/pressreleases/pr.php?file=09_12_16)

### 13. Lack of access to clean drinking water

#### **Suggested questions**

- *Please provide data on the number of residents and locations of any communities located in Israel whose homes are not connected to the state's water-grid. Please also comment on claims that the state is using the denial of clean, running drinking water as a means of forcing the residents of the unrecognized Arab Bedouin villages to abandon their lands and relocate to the government-planned towns.*
- *What steps will the state take to ensure that no Arab citizens of Israel are arbitrarily deprived of the right to clean drinking water due to the non-payment by local councils of their debts to water corporations?*

#### **Background information**

##### **Lack of clean drinking water in the unrecognized villages in the Naqab/Negev**

In the Naqab, Israel is deliberately not providing thousands of Palestinian Bedouin families with access to clean drinking water due to the unrecognized status of their villages. Most people in the unrecognized villages obtain water via improvised, plastic hose hook-ups or unhygienic metal containers, which transport the water from a single water point located on main roads located far from their homes, causing health risks and daily hardships.<sup>122</sup> The poor quality of their drinking water puts residents of the unrecognized villages at risk of dehydration, intestinal infections and other diseases associated with poor hygiene, such as dysentery.<sup>123</sup> Access to drinking water is a basic right derived from the right to life, and the ramifications for health caused by the State's refusal to provide running water to the residents of the unrecognized villages are potentially severe, and have a role to play in the high the infant mortality rates among the Arab Bedouin population in the Naqab. Adalah's appeal on behalf of hundreds of Arab Bedouin families to the Israeli Supreme Court against a decision delivered by the Haifa District Court (sitting as a Water Tribunal) upholding rulings of the Water Commissioner and the Israel Land Administration (ILA) not to provide residents of the unrecognized with drinking water has been pending for four years without any decision. According to the Water Tribunal's decision, the right to water is conditional on a "clear" public interest "not to encourage cases of additional illegal settlement" by Arab Bedouin.<sup>124</sup>

In violation of its obligations under the Covenant, the State of Israel is using the denial of clean, running drinking water as a means of forcing the residents of the unrecognized Arab Bedouin

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<sup>122</sup> To view images of the unhygienic conditions in which many residents of the unrecognized villages have to obtain drinking water, see: <http://www.adalah.org/images/landday07/slideshow.php?directory=&currentPic=2>.

<sup>123</sup> Expert Opinion of Prof. Michael Alkan, Director of the Institute for Infectious Diseases, the Soroka Medical Center and the Faculty of Health Sciences, Ben-Gurion University, Commissioned by Adalah (Hebrew).

<sup>124</sup> See C.A. (Civil Appeal) 9535/06, *Abdullah Abu Musa'ed, et al. v. The Water Commissioner and the Israel Lands Administration* (case pending).

villages to abandon their lands and relocate to the government-planned Bedouin townships. For example, in a letter dated 19 October 2004 regarding the unrecognized village of Umm al-Hieran, the Bedouin Development Authority (the state body responsible that recommends to the water commissioner whether requests for connection should be approved) acknowledged that the current arrangements for obtaining drinking water were inadequate, but stated that the dwellings were illegal and that access to drinking water and other utilities would only be made available if the villagers relocated to the recognized town of Hura.<sup>125</sup> In July 2010, the UN Human Rights Committee called on Israel to “guarantee the Bedouin population’s access to health structures, education, water and electricity, irrespective of their whereabouts on the territory of the State part.”<sup>126</sup>

### **Interrupted water supplies to Rameh and other Arab villages in the North**

In recent years, the residents of a number of Arab towns and villages in the north of Israel, including Rameh, Horfesh, Mughar and Sakhnin, have been subjected to periodic cuts in their water supply. For example, on 18 December 2009, the Mekorot Water Company, a governmental corporation, informed the Rameh Local Council that it intended to completely cut off the water from the village, even without a few hours of respite, because of the debts the local council owed to the company. Following an agreement reached between the local council and Mekorot to pay the debt (residents pay their water bills to the local council and the local council in turn pays Mekorot), the water supply to the village was resumed for two weeks. Mekorot then returned to cutting off the water from the village, sometimes for days on end. Cutting off the water supply interferes with all residents’ use of water for everyday purposes such as drinking, cooking, bathing, cleaning the house and other daily needs, thus making people’s lives unbearable. Further Mekorot cuts the water from schools and health care clinics.

In cutting off the water, Mekorot relies on clause 114A of the Water Act, which stipulates that Mekorot is not authorized to cut off the water from local authorities that have paid 80% of the payments owed to Mekorot. However, Mekorot interprets this clause of the law as if it is in fact authorized to cut off water supplies. Mekorot cuts the water in a sweeping manner, without distinction between residential homes and public institutions, or between people who pay or do not pay their water bills. This act constitutes collective punishment against the village’s residents.

In March 2010, Adalah petitioned the Supreme Court on behalf of 13 Arab citizens of Israel from Rameh and health and environmental organizations.<sup>127</sup> The petitioners demanded that the Court order Mekorot to resume the regular and continuous supply of water to residents who pay their water bills and to the schools and health and social welfare institutions in the

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<sup>125</sup> Letter on file with Adalah. For more information, see also The Negev Coexistence Forum for Civil Equality, *The Arab-Bedouins of the Naqab-Negev Desert in Israel, Shadow Report to the UN Committee on the Elimination of Racial Discrimination*, May 2006, available at: [http://www.phr.org.il/phr/files/articlefile\\_1172399200466.pdf](http://www.phr.org.il/phr/files/articlefile_1172399200466.pdf).

<sup>126</sup> Concluding Observations of the Human Rights Committee – Israel, CCPR/C/ISR/CO/3, 29 July 2010, para. 24.

<sup>127</sup> HCJ 2094/10, *Nisreen Bishara Assad, et al v. Mekorot Water Company* (case withdrawn at the advice of the court following a settlement reached between the Municipality of Rameh and the Mekorot Water Company).

village. The petitioners argued that the decision to cut off the water from Rameh and the other Arab towns is unreasonable and that Mekorot can use other less harmful methods to collect the debts.

#### *Articles 13 to 15 – Cultural rights*

### **14. Systemic under-investment in Arab education**

#### ***Suggested questions***

- *Please provide updated information about the financial resources (budget) allocated by the Ministry of Education to each Arab student as compared to each Jewish student in Israel. Please provide statistics on how many drop-out counselors are funded by the state to work in Jewish schools in comparison to Arab schools, and in schools serving Arab Bedouin citizens in the Naqab in particular?*
- *In 2006, the Supreme Court of Israel issued a landmark ruling on a petition submitted by Adalah that voided a government decision to grant preferential status to certain regions of the country (“National Priority Areas”) affording them substantial state funding, and in particular for education.<sup>128</sup> The court struck down this decision, ruling that it discriminated against Arab citizens of Israel. According to information obtained by the Committee, the state has failed to implement the court’s decision and is continuing to distribute NPA benefits for education on the basis of criteria that discriminate against Arab citizens of Israel. Please comment.*

#### ***Background information***

The MOE severely underfunds Arab schools in Israel. Israel does not regularly release official data detailing how much it spends in total on each Arab and Jewish student, and there are no separate lines in the state budget for Arab education.<sup>129</sup> However, state statistics published in 2004 reveal that for the academic year 2000-2001, public investment in Arab schools equaled an average of NIS 534 per Arab student as compared to NIS 1,779 per Jewish student.<sup>130</sup> **Thus the state spent three times more for Jewish students than it did for Arab students.** This under-funding is manifested in many areas, including the poor infrastructure and facilities characteristic of Arab

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<sup>128</sup> H.C. 2773/98 and H.C. 11163/03, *The High Follow-up Committee for the Arab Citizens in Israel, et. al. v. The Prime Minister of Israel* (petition accepted 27 February 2006). See also Adalah, “Supreme Court Gives State until May 2009 to Cancel ‘National Priority Areas,’” 24 November 2008, available at: [http://www.adalah.org/eng/pressreleases/pr.php?file=08\\_11\\_24](http://www.adalah.org/eng/pressreleases/pr.php?file=08_11_24)

<sup>129</sup> The state budget for education is structured in such a way as to prevent analysis of exactly how much funding Arab education receives. The budget is broken down into 20 general articles, of which only one includes a breakdown of spending on Arab and Jewish education, namely the Pedagogy Administration, the executive arm of the MOE. The Pedagogy Administration allocated 4% of its budget to Arab education in 2006 and 3% in 2007. In addition, in line with the State Budget for 2006, drawn up by the MOE, just 1.5% of the state funds allocated to NGOs working in the field of education were allocated to NGOs providing educational services to Arab children and students. Source: The State Budget, 2006 and 2007 (Hebrew).

<sup>130</sup> CBS, “New Survey – Investment in Education 2000/1,” 3 August 2004 (Hebrew).

schools, and the more crowded classrooms: the average class size in Jewish schools is 26 pupils compared with 30 pupils in Arab schools.<sup>131</sup> In terms of long-term investment in the education, only four teacher training institutes operate in the Arab education system, compared to 55 in the Hebrew education system.<sup>132</sup> A report issued by Minister of Education Gideon Saar in August 2009 proposes that schools with high rates of army drafting among their pupils receive higher budgetary allowances.<sup>133</sup> This provision clearly discriminates against Arab schools since the vast majority of Arab citizens are exempted from military service.

### Measures to raise educational standards

The MOE's spending policies actually act to entrench the gaps between Arab and Jewish school children. One of the main channels for the allocation of additional grants and benefits to towns, villages and their residents is the government's policy of designating certain areas as "National Priority Areas", a classification that qualifies them for a host of lucrative benefits in several fields including education. Despite the large disparities in educational attainment levels and the quality of facilities between Jewish and Arab schools, the 553 towns and villages previously awarded NPA status by the government included only *four small Arab villages*. The remaining NPAs were Jewish towns and villages that received a range of educational benefits, incentives and grants paid for by the public purse. Thus, for example, Migdal HaEmek and Natserat Illit—two Jewish towns in the north—received extra educational funding as a result of their designation as NPAs, while eleven neighboring Arab towns of a lower socio-economic status were excluded.<sup>134</sup>

In February 2006, the Supreme Court ruled that the government's NPAs decision constituted illegal discrimination against Arab citizens and ordered the state to cancel it. However, the state failed to implement the court's decision and to devise clear, objective criteria for the distribution of educational benefits to towns and villages.<sup>135</sup> In December 2009 the government approved a new NPAs decision which classifies large areas as NPAs, including the Be'er Sheva district in the south and the entire northern region, both areas with high Arab populations. Crucially, though, towns and villages located in these areas are not automatically entitled to additional budgetary allocations; despite the Supreme Court's decision to the contrary, the law leaves the allocation of enormous state resources to the discretion of government ministers. In the absence of clear standards to govern the awarding of NPA benefits, the decision is likely to perpetuate inequality and discrimination against Arab citizens. The decision also excludes the entire center of the country on the basis of the average socio-economic level of the area as a whole, thereby denying

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<sup>131</sup> CBS, Statistical Abstract of Israel 2008, No. 59, Table 8.9.

<sup>132</sup> CBS, Statistical Abstract of Israel 2008, No. 59, Table 8.44.

<sup>133</sup> Gideon Saar, "The Government of Israel Believes in Education," August 2009 (Hebrew).

<sup>134</sup> See H CJ 2773/98 and H CJ 11163/03, *The High Follow-up Committee for the Arab Citizens in Israel, et al. v. The Prime Minister of Israel* (decision delivered on 27 February 2006).

<sup>135</sup> In June 2009, the Knesset passed *The Economic Efficiency Law—2009*, to which an additional article entitled "National Priority Areas" was inserted. Contrary to the Supreme Court's decision, the law is vaguely worded and affords the government sweeping discretion to classify towns, villages or larger areas as NPAs, and accordingly to award a range of unspecified benefits to them.

NPA status to poor Arab towns and villages located there, while awarding such status to Jewish settlements in the West Bank, which are illegal under international law.<sup>136</sup> In June 2010, after four years of non-compliance, Adalah filed a further motion for contempt of court to the Supreme Court due to the government's failure to implement the court's decision.<sup>137</sup>

Another example is provided by the "Shahar" academic enrichment programs. The MOE has also admitted before the Supreme Court that its "Shahar" programs have privileged Jewish schools to the detriment of Arab schools.<sup>138</sup> Shahar programs, instituted in the 1970s, were intended to assist academically weak school pupils from socio-economically disadvantaged backgrounds to reach a par with other pupils. In 2000, the Supreme Court confirmed a state commitment to allocate 20% of Shahar funds to Arab schools. Prior to this commitment, the MOE had not implemented the Shahar programs in any Arab schools, although their pupils were often in greatest need of extra educational assistance. The Supreme Court accepted the state's request that it increase implementation of the program in Arab schools on a gradual basis, thereby prolonging discrimination against them. The program has still not been implemented in any Arab schools.

### **Under-investment in Arab Bedouin education in the Naqab**

Under-investment in Arab education is most blatant in the Naqab, where Arab Bedouin schools often lack basic services and facilities including toilets, electricity, telephone and internet connections, and safe access roads, particularly in the unrecognized villages that have schools.<sup>139</sup> A further example is the funding for psychological counselors to Arab Bedouin and Jewish schools. Psychological counselors are appointed by the MOE and are primarily responsible for diagnosing and treating students with learning and developmental disabilities, providing suitable educational frameworks for students with special needs, and providing consultation to educators. The following table details the number of psychological counselors allocated to schools in selected (recognized) Bedouin and Jewish towns in the Naqab, compared to the number of required positions according to the MOE's own criteria. In June 2005, in response to a petition filed by Adalah that challenged the lack of psychological counselors in seven recognized Bedouin villages in the Naqab, the state acknowledged before the Supreme Court that the MOE had discriminated against schools in the villages in the appointment of psychological counselors.<sup>140</sup> No psychological counselors work in schools in the unrecognized villages.<sup>141</sup>

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<sup>136</sup> For more information, see "[Adalah Position Paper on the Israeli government's new decision classifying communities as National Priority Areas](http://www.adalah.org/newsletter/eng/feb10/docs/english%20layout.pdf)," February 2010. Available in English at: <http://www.adalah.org/newsletter/eng/feb10/docs/english%20layout.pdf>.

<sup>137</sup> See, Adalah, "After Four Years of Non-Compliance, Adalah Submits Motion for Contempt to Israeli Supreme Court against the Prime Minister for Failure to Implement National Priority Areas Decision," 21 June 2010, available at: [http://www.adalah.org/eng/pressreleases/pr.php?file=21\\_06\\_10](http://www.adalah.org/eng/pressreleases/pr.php?file=21_06_10)

<sup>138</sup> See, HCJ 2814/07, *The Follow-Up Committee on Arab Education, et al. v. The Ministry of Education, et al*, submitted to the Supreme Court by Adalah in May 1997.

<sup>139</sup> See, e.g. Adalah's news update, *Adalah Petitions Supreme Court to Compel Connection of Two Arab Bedouin Schools in the Naqab (Negev) to the National Electricity Network*, 9 July 2009, available at: [http://www.adalah.org/eng/pressreleases/pr.php?file=09\\_07\\_10](http://www.adalah.org/eng/pressreleases/pr.php?file=09_07_10)

<sup>140</sup> See HCJ 4177/04, *Yusef Abu-Abied, et al. v. The Ministry of Education, et al.*

*Allocation of psychological counselors in Jewish and Bedouin towns in the Naqab*<sup>142</sup>

Town (Jewish towns shown in grey)	No. of positions needed according to MOE criteria	No. of positions allocated	% of required positions allocated
Rahat	18.8	6.0	31.9
Ofakim	8.9	7.4	83.1
Hura	4.4	1.3	29.5
Dimona	12	9.2	76.6

**Still not open: The first high school in the “unrecognized” Arab Bedouin villages**

No high schools currently exist in any of the Arab Bedouin unrecognized villages in the Naqab. The region of Abu Tulul – El-Shihabi, for example, is home to approximately 12,000 Arab Bedouin citizens, and contains seven unrecognized villages. Around 750 female and male students are of high school age; however, only approximately 170 attend high school. The rest, around 77% of the total, drop out of the system permanently, as a direct consequence of the lack of a local high school. The nearest high school is located 12-15 kilometers away; no public transport is provided for the students and many parents will not allow their daughters to travel unaccompanied outside the vicinity of the village. In 2005, Adalah filed a petition to the Supreme Court on behalf of 35 Arab Bedouin girls and six local NGOs to demand that an accessible high school be built in Abu Tulul – El-Shihabi.<sup>143</sup> In January 2007, the Supreme Court approved a settlement between the MOE and Adalah, according to which the MOE would establish a high school, the first in any unrecognized village, and operate it from 1 September 2009. Despite this agreement, the MOE has yet to begin work on the school. In September 2009, Adalah filed a new petition to the Supreme Court demanding that the state open the school, and that the non-implementation of the decision be considered a contempt of court.<sup>144</sup>

**15. Persistent gaps in educational attainment**

***Suggested question***

- *Given the relatively low numbers of Arab students enrolled in universities and colleges in Israel, what affirmative action measures, if any, is Israel taking to increase university admission, and what resources are allocated to any such programs?*

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<sup>141</sup> Adalah demanded the appointment of psychological counselors in five Arab Bedouin schools in the unrecognized villages in the Naqab serving 3,650 students, none of which has such a position. On 1 July 2009, the Supreme Court affirmed the urgent need for such counselors and the need to resolve the problem. However, it was satisfied with the state’s commitment to establish special educational courses to prepare counselors in order to overcome the shortage. See HCJ 3926/06, *Al-Sayed Abed El-Dayem, et al v. The Ministry of Education and The Abu Basma Regional Council* (decision delivered 1 July 2009).

<sup>142</sup> Data cited in a letter from the Ministry of Education to Adalah, annex 4, HCJ 3926/06, *Al-Sayed Abed El-Dayem et al v. The Ministry of Education and the Abu Basma Regional Council*.

<sup>143</sup> HCJ 2848/05, *Fatimah Abu Sabila (Ali) et al., v. The Ministry of Education, et al.* (decision issued 23 January 2007).

<sup>144</sup> HCJ 7562/09, *Fatmeh Abu Sbeli, et al. v. The Ministry of Education, et al.* In March 2010, the court ordered the state to inform it about the finalization of the planning process by September 2010.

### **Background information**

Arab children attend school for fewer years than Jewish children, and in recent years the gap between the two groups has not closed: from 2003 to 2006, Arab children aged 15 and over received an average of 11.1 years of schooling as compared to Jewish children, who received an average of 12.7 years of schooling, i.e. *over one and a half additional years*.<sup>145</sup> Accordingly drop-out rates are higher among Arab citizens: in 2006-2008, 7.2% among Arab pupils in grades 9-12, almost double the figure among Jews (3.7%); a similar pattern of dropping-out applies to grades 9-11: 8.7% among Arab compared to 4.4% among Jewish pupils.<sup>146</sup> The drop-out rate is particularly alarming among the Arab Bedouin in the Naqab, at around 70% overall.<sup>147</sup>

Arab students are dramatically underrepresented in Israel's institutes of higher education: in 2006/2007, 9.1% of Jews in Israel aged 20-29 were students at universities, compared to 3.8% of Arabs.<sup>148</sup> A major obstacle to the admission of Arab students into universities is their relatively poor performance on matriculation exams (the *Baghrout*). In 2007, 54.1% of Arab young women and 39.5% of Arab young men received matriculation certificates, compared to 70.5% of Jewish women and 61.1% of Jewish men.<sup>149</sup> Furthermore, the gap between Arab and Jewish students widens further when it comes to meeting the requirements for entering university, as the following table illustrates.

*Pupils in Grade 12 with matriculation certificates who met university entrance requirements in 2006*<sup>150</sup>

	Jewish	Arab
Entitled to a matriculation certificate	54.9%	46.3%
Met university entrance requirements	48.3%	34.4%

In fact, Arab students account for just 11.2% of all first degree students. This proportion has an inverse relationship to educational level: At the level of second degree, Arabs account for 6.1% of all students, and by third degree level, the percentage of Arab students falls to an average of 3.5% of all students.<sup>151</sup> The following table shows the falling percentages of Arab students at first, second and third degree level in four key subjects.

<sup>145</sup> CBS, Statistical Abstract of Israel 2008, No. 59, Table 8.3.

<sup>146</sup> CBS, Statistical Abstract of Israel 2008, No. 59, Table 8.24.

<sup>147</sup> Hannan el-Sana and Ajaj Asif, "The Arab Bedouin Population in the Naqab: Economics and Employment," The Naqab Institute for Peace and Development Strategies, 2007.

<sup>148</sup> CBS, Statistical Abstract of Israel 2008, No. 59, Table 8.47.

<sup>149</sup> Israel's Fifth Period Report to the UN Committee on the Elimination of Discrimination against Women, CEDAW/C/ISR/5, 21 October 2009, p.157, para. 366.

<sup>150</sup> CBS, Statistical Abstract of Israel 2008, No. 59, Table 8.25.

<sup>151</sup> CBS, Statistical Abstract of Israel 2008, No. 59, Table 8.52.



University students by degree, field of study, and population group<sup>152</sup>

Degree	Engineering and architecture		Sciences and mathematics		Medicine		Law	
	Jews	Arabs	Jews	Arabs	Jews	Arabs	Jews	Arabs
First degree	90.0%	6.0%	85.3%	9.5%	79.3%	19.7%	92.4%	6.7%
Second degree	91.6%	3.1%	92.9%	3.3%	86.6%	12.3%	94.8%	4.7%
Third degree	91.7%	2.5%	95.1%	2.1%	93.1%	4.1%	96.9%	3.1%

### Arab citizens of Israel in academia

Arab academics are sorely underrepresented in the faculties of Israel's institutions of higher education, and are consequently marginalized in the production of knowledge in society. In 2007, Arabs accounted for as few as 1.2% of all academics employed by Israeli universities and colleges in tenure track positions, and received on average salaries worth 50% less than their Jewish counterparts.<sup>153</sup> Arab women are particularly underrepresented in higher education: it was not until 2008 that the first Arab woman was appointed to the position of professor by the Israeli Appointments Committee of the Higher Education Council.<sup>154</sup>

## 16. Status of the Arabic language and Arab culture

### *Suggested questions*

- *Please comment on the July 2009 decision by the Transport Minister to remove the Arabic names of towns and villages from all road signs in Israel and to replace them with the Hebrew names of the places using Arabic letters, regardless of the common and historical Arabic name of the place.*
- *In practical terms, what is the meaning and content of the status of Arabic as an official language of the state, alongside the Hebrew? What measures is the State Party taking to ensure that Arab citizens of Israel are able to use their own language in the public sphere?<sup>155</sup>*
- *Please comment on the information that several laws establish Jewish cultural institutions but that none create similar centers for Arab citizens other than Arab Druze. Please provide*

<sup>152</sup> Ibid.

<sup>153</sup> Adel Manna, *Kitab al-Mustaqbali al Arabi fi Israel*, 2<sup>nd</sup> Annual Book of Van Leer, 2007 (Arabic).

<sup>154</sup> Israel's Fifth Period Report to the UN Committee on the Elimination of Discrimination against Women, CEDAW/C/ISR/5, 21 October 2009, p. 161, para. 374

<sup>155</sup> See Concluding Observations of the Human Rights Committee: Israel, 29 July 2010, CCPR/C/ISR/CO/3/CRP.1, para. 23.

*data about any state funding to promote and protect the language, heritage and culture of the Arab minority in Israel.*

### **Background information**

Arabs in Israel are a national minority within the State of Israel. The state is therefore obliged to protect the rights of members of this minority, together with their fellow members, to culture, religion and language, in line with article 27 of the International Covenant on Civil and Political Rights (ICCPR).

Israel's Report contains a section entitled "Cultural identity and heritage", which discusses respectively "Jewish Heritage" and "Druze Heritage" (paras. 630-633). These sections provide information about a number of laws enacted in order to protect and foster Jewish and Druze heritage in Israel. Immediately striking is the **State's complete omission of any mention of Palestinian, Christian or Muslim heritage** in this discussion, and of any laws or other measures taken to protect or foster them. This omission demonstrates the state's policy of marginalizing the heritage, history and culture of the Palestinian minority in Israel, including its various denominational sub-groups, from the official state narrative.

### **The status of the Arabic language in Israel**

Arabic is an official language of the State of Israel, alongside Hebrew. This status was established by Article 82 of the Palestine Order-in-Council – 1922, which was subsequently adopted into Israeli law and remains valid today.<sup>156</sup> It was further reinforced by the Knesset and the Israeli government in several statutes and regulations.<sup>157</sup> Arabic's official-language status is also evident in the Declaration of Independence.

In practice, however, Arabic speakers in Israel have little opportunities to enjoy and use their language after completing their primary and secondary schooling outside the private sphere and within their own community. As a result of government policy, the status of Arabic is vastly inferior to that of Hebrew in terms of the resources dedicated to its use and there is clear inequality in the opportunities granted to Arabic speakers to enjoy and use their language in official and public fora. The minimal use of Arabic in the public sphere and by public institutions stands in stark contrast to its official status.

For example, over 200 major principle decisions issued by the Supreme Court have been translated to English and have been published on the court's website along with the original Hebrew decisions. Although the majority of these decisions are relevant to Palestinian citizens of Israel and Palestinians in the OPT, however, none of these decisions has been translated to

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<sup>156</sup> This article was amended through Section 15B of the Law and Government Ordinance – 1948 to eliminate English as an official language, as stipulated by Article 82 of the Palestine Order-in-Council – 1922, leaving Arabic and Hebrew as Israel's two official languages.

<sup>157</sup> See the Supreme Court's decision in H CJ 4112/99, *Adalah, et al. v. The Municipality of Tel Aviv-Jaffa, et al.*, delivered on 25 July 2002, Justice Dalia Dorner's decision.

Arabic.<sup>158</sup> In addition, ministries routinely refuse to accept official documents in Arabic, including for issues of personal status that are dealt with by the religious courts; many of the relevant forms are provided by the *Shari'a* (Islamic) court system in Arabic only. Individuals are sometimes required to provide notarized translations of the documents in Hebrew, which incurs significant expenses.

### **The threatened Hebraization of road signs**

In July 2009, the Transport Minister announced his decision to Hebraize all road signs in Israel, and remove the Arabic names of towns and villages from all road signs and to replace them with the Hebrew names of the places using Arabic letters, regardless of the common and historical Arabic name of the place. For example, "Jerusalem" would become "Yerushalaim" in Hebrew, English and Arabic, and "Al-Quds" (the Arabic name for Jerusalem) would cease to exist on road signs. The decision is contrary to an Israeli Supreme Court judgment delivered in 2002 on a petition submitted by Adalah and the ACRI, which obliges the municipalities in the mixed cities to add Arabic to the traffic and warning signs as well as other informational signs in areas under their jurisdiction.<sup>159</sup> For Palestinian citizens of Israel, the name of the town is not a formality, but an integral part of the Arabic language and Palestinian history and culture. Furthermore, under Israeli law Arabic is an official language in the State, as well as the mother tongue of the national minority, and thus Israel has a duty to maintain and develop Arabic and use it in a way that will ensure its preservation in all areas and at all levels. Following Adalah's letter of July 2009 demanding the cancellation of the decision, in September 2009, the Attorney General's Office (AG) responded, stating that the Transport Minister's decision was not final, and that the issue remains under consideration by a sub-committee.<sup>160</sup> No further update has since been received. However, Adalah has recently received reports that new or replaced road signs, signs denoting street names, signs for public institutions, etc. in the mixed Arab-Jewish city of Natzaret Illit had been erected that display Hebrew and English only, in violation of the Supreme Court's decision of 2002.<sup>161</sup>

### **The status of Arab culture**

State support for cultural institutions reflects a strong bias against the Palestinian minority. No law concerning Arab Palestinian culture or heritage has been legislated by the State of Israel to help Arab citizens of Israel to realize their rights to culture and to participate in cultural

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<sup>158</sup> On 20 April 2010 Adalah sent a letter to the Director of Courts and the Ministry of Justice asking that major decisions with significance for Arabic speakers be translated and published in Arabic on the Supreme Court's website. The Director of Courts responded on 16 May that for budgetary reasons the translation of court decisions to Arabic was "complicated" but under consideration. Correspondence on file with Adalah.

<sup>159</sup> H.C. 4112/99, *Adalah, et al. v. The Municipality of Tel Aviv-Jaffa, et al* (decision delivered 25 July 2002).

<sup>160</sup> The AG's letter is on file with Adalah (Hebrew).

<sup>161</sup> On 19 November 2009, Adalah wrote to the Municipality of Natzaret Illit and the AG demanding the implementation of the Supreme Court's 2002 decision in Natzaret Illit. The AG replied on 29 November 2009, stating that they would check the answer and revert to Adalah. No further response has been received. The letters are on file with Adalah (Hebrew).

activities on an equal basis with Jewish citizens other than for the Arab Druze. In addition, there is no law that establishes or recognizes existing independently-run Arab cultural or educational institutions, nor has the state devoted any resources to establishing an Arab university. By contrast, several laws have been enacted to support and encourage Jewish culture and to establish specific Jewish cultural institutions. *The High Institution for Hebrew Language Law – 1973* established a special institute to further the Hebrew language and conduct academic research on the history of the Hebrew language. *The Law of Yad Yitzhak Ben-Zvi – 1969* and *The Law of Mikve Yisrael Agricultural School – 1976* define the aims of these institutions as, inter alia, the development and fulfillment of Zionist goals, and represent examples of the statutory recognition that may be afforded Jewish cultural and educational institutions.

A further two laws were enacted by the Knesset more recently: *The Museum of the Jewish Diaspora Law (2005)* and *The Council for the Promotion of Sephardi and Oriental Jewish Heritage Law (2002)*. The former law recognizes the Museum of the Jewish Diaspora as a national center for Jewish communities in Israel and around the world. The museum conducts research and gathers information on the history of Jewish communities. The law recognizes the museum as a national institution and ensures funding and resources allocation for its various activities, including research, documentation and collecting data and information on the communities of Israel and the history of the Jewish people, and providing education on Jewish heritage. The latter law aims to establish a 19-member council to provide advice for government ministers on the “Sephardi” and “Oriental” Jewish heritage and its preservation, and to promote cooperation among different bodies engaged with the “Sephardi” and “Oriental” Jewish heritage. No similar cultural institutions have been established to promote and protect the cultural heritage of the Arab minority in Israel.<sup>162</sup>

## **17. Denial of cultural contact with the Arab world**

### ***Suggested question***

- *Given the severe limitations imposed on travel by citizens of Israel to Arab and Muslim countries classified by Israel as “enemy states,” please provide information on steps taken to ensure that the rights of Palestinian Arab citizens of Israel, a national minority, to enjoy their own culture.*

### ***Background information***

State policies impose limitations on social, cultural and religious ties between Palestinians in the OPT and Palestinian citizens of Israel (predominantly the ban on family unification), and especially on contact with the wider Arab and Muslim nations. For example, travel is prohibited to states designated as “enemy states,” all of which are Arab and/or Muslim states. This policy is arbitrary and discriminatory, in violation of the right to take part in cultural life, as protected by Article 15 of the Convention.

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<sup>162</sup> See in this regard Concluding Observations of CERD: Israel, 14 June 2007, CERD/C/ISR/CO/13, para. 28.

In April 2010, the Supreme Court decided – for the first time in Israeli legal history – to permit an Arab citizen of Israel to travel to a state defined as an “enemy state” under Israeli law, despite the opposition of the Prime Minister and Interior Minister, both of whom refused to issue a permit.<sup>163</sup> The court decided to allow Arab author and journalist Alaa Hlehel to travel to Lebanon in order to receive an award for Arabic literature at the “Beirut 39” festival on the grounds that there was **no security reason** presented by the General Security Services (GSS) to prevent his travel. The court’s decision is a precedent, and the exception that proves the rule. The AG argued before the Supreme Court that it was the Interior Minister’s policy that traveling to Lebanon, and other countries defined as “enemy states” under Israeli law – all of which are Arab and/or Muslim states – is prohibited except in extreme humanitarian cases. The court commented that the state’s position does not clarify what constitutes an extreme humanitarian case, and does not provide a convincing explanation for why Mr. Hlehel was prevented from travelling to Beirut.

In a separate case, on 26 January 2010, the Knesset House Committee voted to lift the parliamentary immunity of Arab Member of Knesset (MK) Said Naffa of the National Democratic Assembly-Balad political party. The vote allows the Attorney General to criminally indict him for various offenses surrounding a visit he made to Syria, considered an “enemy state” under Israeli law.<sup>164</sup> Three years ago, MK Naffa arranged for a group of 280 Druze religious clerics to make a pilgrimage to holy sites in Syria after they were repeatedly refused a permit by the Interior Minister. MK Naffa argues that the clerics were unfairly and arbitrarily denied their religious freedom. MK Naffa is also accused of “contact with a foreign agent”, charged with meeting Palestinian leaders in Syria. MK Naffa maintains that his visit was entirely political in nature and that the Knesset’s actions are designed to prevent him from fulfilling the role as an MK. The State Prosecutor recently informed Adalah that an indictment against MK Naffa had been submitted to court; other Druze leaders who traveled to Syria have also been indicted.

Recently the State Prosecution has charged numerous Arab citizens of Israel with the criminal offense of “contact with a foreign agent”. The definition of such contact is so broad that any meeting, telephone conversation or internet contact with individuals from states classified by Israel as Arab and/or Muslim “enemy states” may be considered suspicious and a potential criminal offense. In many cases, suspects are released after questioning by the General Security Services (GSS or *Shabak*) or else sentenced to relatively light prison sentences. These outcomes strongly suggest that the individual’s actions did not pose a serious security threat to the state. In this way, the broad application of “contact with a foreign agent” acts as a barrier to cultural contact between the Arab minority in Israel and the wider Arab world.

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<sup>163</sup> HCJ 2390/10, *Hlehel v. The Minister of the Interior* (petition accepted 13 April 2010). See: Adalah, *In Landmark Ruling on Adalah Petition, Israeli Supreme Court Permits Arab Author Alaa Hlehel to Travel to Beirut to Receive Prestigious Literary Prize*, 15 April 2010, available at:

[http://www.adalah.org/eng/pressreleases/pr.php?file=13\\_04\\_10](http://www.adalah.org/eng/pressreleases/pr.php?file=13_04_10)

<sup>164</sup> Adalah, *Knesset Committee strips Arab MK Sa'id Naffaa of his parliamentary immunity; Attorney General to criminally indict him for political offenses surrounding his visit to Syria; Adalah to represent MK Naffaa*, 28 January 2010, available at: [http://www.adalah.org/eng/pressreleases/pr.php?file=28\\_01\\_10](http://www.adalah.org/eng/pressreleases/pr.php?file=28_01_10)

## 18. Lack of protection for Muslim holy sites in Israel

### **Suggested questions**

- Please comment on the 2009 Supreme Court decision denying demands by religious leaders for Muslim holy sites located in Israel to be afforded legal protection under the Protection of Holy Sites Law – 1967. How does the State reconcile the fact that the law has **only been used** to declare 135 Jewish holy sites as such, despite the law’s applicability to all holy sites? How is Israel guaranteeing the preservation and protection of non-Jewish holy sites and access to them for their respective local and international religious communities? Please further indicate what measures the State party envisage taking to ensure equal protection for all holy sites and to ensure peaceful access to Muslim holy sites?<sup>165</sup>

### **Background information**

In March 2009, after five years of litigation, the Israeli Supreme Court rejected a petition demanding that Israel promulgate regulations for the protection of Muslim holy sites in Israel, in accordance with the Protection of Holy Sites Law – 1967.<sup>166</sup> Around 135 sacred places have been declared as holy sites, **all** of which are Jewish.<sup>167</sup> The result of this discrimination is the neglect and desecration of Muslim holy sites in Israel: many mosques and holy sites have been converted into bars, night clubs, stores and restaurants.<sup>168</sup>

The court rejected the need for the promulgation of regulations to bind various government ministries in this regard, arguing that defining specific sites as Muslim holy sites was a “sensitive matter.” While the court acknowledged the miserable state of Muslim holy sites and the need to repair them, it further ruled that the state’s commitment to designate a budget of NIS 2 million (approximately US \$500,000) for the maintenance of Muslim holy sites was sufficient. The meager budget committed to by the state will not be sent directly to Islamic committees for them to invest in the protection of the holy sites, but to the Israel Land Administration (ILA) to undertake this task. However, over the past 60 years, the ILA has done nothing to prevent the desecration of Muslim holy sites and in many instances has played an active role in their desecration.

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<sup>165</sup> See Concluding Observations of the Human Rights Committee: Israel, 29 July 2010, CCPR/C/ISR/CO/3/CRP.1, para. 20; Concluding Observations of CERD: Israel, 14 June 2007, CERD/C/ISR/CO/13, para. 28.

<sup>166</sup> Adalah submitted the petition in November 2004 in its own name and on behalf of Sheikh Abdullah Nimer Darwish, Sheikh Kamel Rayyan, MK Sheikh Ibrahim Sarsour, and formed MK Abd al-Malek Dahamshe, as well as the Al-Aqsa Association for the Preservation of Muslim Holy Sites. HCJ 10532/04, *Sheikh Abdullah Nimr Darwish, et al. v. Minister of Religious Affairs, et al.* (petition rejected 16 March 2009).

<sup>167</sup> A list of the sites in Hebrew is available at: [http://www.religions.gov.il/list\\_holy\\_places.htm#top](http://www.religions.gov.il/list_holy_places.htm#top)

<sup>168</sup> See also: The Arab Association of Human Rights, “Sanctity Denied: The Destruction and Abuse of Muslim and Christian Holy Places in Israel,” (December 2004), reporting that some 250 non-Jewish places of worship were destroyed during or since the 1948 war or made inaccessible to Arab citizens of Israel. Available at: <http://www.arabhra.org/publications/reports/index.htm>

The Protection of Holy Sites Law aims to safeguard and preserve sacred places from desecration, from anything which could obstruct access to these places by followers of religious traditions, or could offend their religious sensitivities. The law requires the Minister of Religious Affairs to regulate holy sites in general. Article 4 of the law states that, “The Minister of Religious Affairs is responsible for the implementation of the law, and is authorized, after consultation with the religious leaders, or in accordance with their advice and the agreement of the Minister of Justice, to promulgate regulations in order to implement the law.”

## Appendix 1

### 10 New Discriminatory Laws

June 2010

#### Land and Planning Rights

1. *The Israel Land Administration Law (2009)*: Institutes broad land privatization (much of the land owned by the Palestinian refugees and internally displaced persons would be subject to privatization under the law); permits land exchanges between the state and the JNF, the land of which is exclusively reserved for the Jewish people; allows lands to be allocated in accordance with “admissions committee” mechanisms and only to candidates approved by Zionist institutions working solely on behalf of the Jewish people; and grants decisive weight to JNF representatives in a new Land Authority Council, which would replace the ILA.
2. *Amendment (2010) to The Land (Acquisition for Public Purposes) Ordinance (1943)*: This Mandate-era law authorizes the Finance Minister to confiscate land for “public purposes,” leaving the definition of such purposes to the absolute discretion of the Finance Minister. It has been used extensively by the state to confiscate Palestinian land. The amendment confirms state ownership of land confiscated under this law, even where it has not been used to serve the original purpose of its confiscation. It authorizes the state not to use the confiscated land for the original confiscation purpose for 17 years, and denies landowners the right to demand the return of confiscated land not used for the original confiscation purpose if ownership has been transferred to a third party, or if more than 25 years have passed since the confiscation. The amendment expands the Finance Minister’s authority to confiscate land for “public purposes,” which, according to the new law, includes the establishment and expansion or development of towns, and allows the Minister to declare a new purpose if the initial purpose has not been realized.

#### Civil and Political Rights

3. Amendment No. 9 (Authority for Revoking Citizenship) (2008) to article 11 of the Citizenship Law (1952) revokes citizenship due to “breach of trust or disloyalty to the state”. “Breach of trust” is broadly defined and even includes the act of naturalization or obtaining permanent residency status in one of nine Arab and Muslim states which are listed by the law, and the Gaza Strip. Allows for the revocation of citizenship without requiring a criminal conviction.
4. *The Citizenship and Entry into Israel Law (Temporary Order) (2003)*: Bans family unification where one spouse is an Israeli citizen (in practice almost all of whom are Palestinian citizens) and the other a resident of the OPT (excluding Jewish settler living in the OPT). Minor exceptions to the ban were introduced in 2005, which did not diminish the discriminatory nature of the law. An additional amendment in 2007 expanded the ban to include citizens and residents of Iran, Lebanon, Syria and Iraq. In accordance with the law, a cabinet decision added further restrictions in 2008 affecting residents of the Gaza Strip. Although the law was originally enacted as a temporary order, its validity has been



repeatedly extended by the Knesset making it in effect a permanent law. Thousands of Palestinian families have been affected by the law, forced to split apart, move abroad or live in Israel in fear of constant deportation.

### **Political Participation**

#### *5. Basic Law: The Knesset, enacted in 1958:*

*a.* An amendment from 1985 added Section 7(A) to the Basic Law: The Knesset, which provides that, “A list of candidates shall not participate in the elections for the Knesset if its aims or actions, expressly or by implication, point to one of the following: (1) denial of the existence of the State of Israel as the state of the Jewish people: (2) denial of the democratic nature of the state; and (3) incitement to racism.”

*b.* Amendments in 2002 changed Section 7(A)(1) to read as, “denial of the existence of the State of Israel as a Jewish and democratic state” and added Section 7(A)(3), “support for armed struggle by a hostile state or a terrorist organization against the State of Israel.” as an additional basis for disqualifying candidates and candidates’ lists. This law is used to seek to disqualify Arab candidates and political party lists from running in Knesset elections.

*c.* Amendment No. 39 (Candidate who Visited a Hostile State Illegally) (2008) to Article 7A (a1) of The Basic Law: The Knesset denies the right to stand as a candidate for election to the Knesset to any individual who visited Arab and/or Muslim states defined as “enemy states”—such as Syria, Lebanon, Iraq and Iran—without prior permission from the Interior Minister. The law was enacted to deter Arab members of Knesset from travelling to so-called “enemy states”.

#### *6. The Regional Councils Law (Date of General Elections) (1994) Special Amendment (no. 6), 2009:* Grants the Interior Minister absolute power to declare the postponement of the first election of a Regional Council following its establishment for an indefinite period of time. The law previously stipulated that elections must be held within four years. The Knesset passed the law shortly before elections were due to take place to the Abu Basma Regional Council, which includes ten Arab Bedouin villages in the Naqab (Negev). The result of the law is that the current government-appointed council, comprised of a majority of Israeli Jewish members, remains in place.

### **Economic and Social Rights**

#### *7. Absorption of Discharged Soldiers Law (1994) Amendment No. 7: Benefits for Discharged Soldiers (2008):* Allows the use of military/national service as a criterion for the allocation of benefits in higher education. The vast majority of Palestinian citizens of Israel are exempted from military service and do not serve in the Israeli army for political and historical reasons. Grants broad discretion to higher education institutions to award economic benefits to discharged soldiers beyond those provided to them under any other law.

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

a. A section of this law concerns “National Priority Areas” (NPAs). It grants the government sweeping discretion to classify towns, villages and areas as NPAs and to allocate enormous state resources without criteria, in contradiction to the Israeli Supreme Court’s 2006 decision in HCJ 2773/98 and HCJ 11163/03, *The High Follow-Up Committee for Arab Citizens in Israel v. The Prime Minister of Israel*. This decision ruled unconstitutional a government decision from 1998 which classified 553 Jewish towns as NPAs and only 4 small Arab villages as such.

b. A further section of this law concerns the distribution of “child allowances”. Under the new law, children who do not receive the vaccinations recommended by the Ministry of Health (MOH) will no longer be provided with financial support. This provision mainly affects Arab Bedouin children living in the Naqab (Negev), since most of the children who do not receive the vaccinations come from this group. Thus, the provision discriminates against them on the basis of their national belonging. To note, that the MOH recently closed down “mother and child” clinics in three Arab Bedouin towns which provide these vaccinations.

### **Criminal Procedure**

9. *Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Provision) Law 2006*: Removes a number of essential procedural safeguards to detainees suspected of security offenses that are provided to criminal suspects. While neutral on its face, in practice the law is used solely against Palestinian citizens of Israel and Palestinian residents of the OPT, who make up the overwhelming majority of detainees classified by Israel as “security” detainees, thus divesting them of judicial procedural safeguards. The law allows for the detention of a security suspect for up to 96 hours before being brought before judge, versus 48 hours in other cases, and for up to 35 days without being indicted, versus 30 days in other cases. It also allows security suspects to be denied access to a lawyer for up to 21 days, versus 48 hours in other cases. Originally passed by the Knesset as a “temporary order” for 18 months, the law was extended in January 2008 for a further three years.
10. *Criminal Procedure (Interrogating Suspects) Law 2008*: Exempts the police and the Israeli Security Agency from making audio and video documentation of their interrogations of suspects in security offences. Though ostensibly neutral, the law is used exclusively against Palestinians, the overwhelming majority of “security” detainees. This exemption violates the constitutional rights of detainees to equality, dignity and fair legal proceedings, creates conditions that may facilitate the torture of suspects during the interrogation, and it also affects the reliability of the evidence presented before the court against suspects.

## Appendix 2

17 August 2010

Mr. Benjamin Netanyahu  
Prime Minister  
3 Kaplan Street, Hakiryia  
Jerusalem

Mr. Yehuda Weinstein  
Governmental Legal Advisor  
29 Salah Adin Street  
Jerusalem

Dr. Yuval Steinitz  
Minister of Finance  
1 Kaplan Street  
Jerusalem

Mr. Gideon Sa'ar  
Minister of Education  
34 Shivtei Israel St.,  
Jerusalem 91991

Mr. Benjamin Ben-Eliezer  
5 Bank of Israel  
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Kiryat Ben-Gurion  
P.O.B. 3166  
Jerusalem 91036

Dear Sirs,

Re: **Preference for Discharged Soldiers in Institutions of Higher Education and Employment, and Discrimination against the Arab Minority**

Further to the enactment of the Absorption of Discharged Soldiers Law (Amendment No. 12) – 2010, as well as other legislative amendments that have been approved and recently-proposed legislation which all make increasing use of the criterion of military service for the purpose of allocating economic and social benefits to former soldiers, I hereby address you as follows:

1. On 21 July 2010, the Knesset approved Amendment No. 12 of the Absorption of Discharged Soldiers Law. According to this amendment, as of the coming academic year (2010-2011), anyone who has completed military and/or national service (hereinafter: “Discharged Soldiers”) will benefit from a range of benefits in the field of higher education, including financing tuition fees for undergraduate studies for all discharged soldiers studying at institutions of higher education in peripheral areas (National Priority Area, i.e. the Naqab [Negev], the Galilee and the West Bank settlements). It is emphasized that, according to the statements in the Knesset issued in the course of the voting on the second and third reading of this amendment, the intention of the law is to grant full payment for one academic year to discharged soldiers studying in peripheral areas. Amendment No. 12 further grants discharged soldiers financing for tuition fees as well as additional programs and activities intended to encourage discharged soldiers living in peripheral areas to attend institutions of higher education. These benefits include financing of tuition fees for pre-academic preparatory courses, as well as employment guidance. For that purpose, a new fund is to be established to encourage discharged soldiers to study at institutions of higher education.
2. These benefits were added to all the benefits in the field of higher education to which discharged soldiers are already entitled under the Absorption of Discharged Soldiers Law, including one free academic year at preparatory courses for students studying all over the

country, not only in the periphery; and contributions to tuition fees for all years of study for both students studying at institutes of higher education and vocational institutions. The law also includes recently-approved benefits, specified in Amendment No. 7 to the law, adopted in 2008, which stipulate that every institution of higher education or vocational training or pre-academic preparatory course has the right to give preference to discharged soldiers with respect to the use of student residences and dormitories, and also to grant them other economic benefits.

3. Added to these benefits is the indirect use that is made of military service for the purpose of admitting students to various courses at institutions of higher education. Thus, for instance, increased use is made of the criterion of age for the purpose of admission to certain courses, the condition being that a student should be at least 20 or 21 years of age for the majority of para-medical courses, although there is no age restriction on the admittance of reservists to these courses.
4. In parallel, a draft law has recently been introduced by MK Hamed Amar, under which preference would be granted to discharged soldiers with respect to acceptance for positions in the civil service. As reported in the *Ha'aretz* newspaper on 12 July 2010, the government approved the draft law on 11 July 2010. If the law is approved by the Knesset, it will create a slippery slope of the increased use of the military service criterion in the field of private business as well. Since, where the draft law enables employers in the public service to give preference to discharged soldiers, it will also constitute authorization for private employers, who in any event already make illegal use of this criterion, to prefer discharged soldiers.
5. Consequently, the benefits granted to the discharged soldiers under Amendments Nos. 7 and 12 to the Absorption of Discharged Soldiers Law are double those granted under the law. They therefore add further and far-reaching benefits, although the military service criterion is not relevant to the granting of assistance to those who really do require assistance in the fields of higher education and employment. After all, not all discharged soldiers require economic assistance: Some come from affluent families and others do not. Thus, a distinction is made between students in the fields of higher education and employment based on an irrelevant criterion; the distinction should have been made on the basis of each individual's socio-economic status.
6. Where the authorities are required to consider and decide on assistance to students attending institutes of higher education, it is incumbent on them to take account of the socio-economic situation of all students requiring assistance, including Arabs. An examination of these considerations would demonstrate that Arab students are actually in the population group in greatest need of governmental assistance in the field of higher education. According to figures from the National Insurance Institute (NII) for 2009, about 49% of Arab families were living below the poverty line; according to the Central Bureau of Statistics (CBS) the level of unemployment among Arabs is around 10% compared with 7% among Jews. The gap in unemployment between Jewish and Arab women is even higher: the rate of unemployment among Arab women is about 17% compared with 8.5% among

Jewish women. According to the CBS, the rate of participation by Arab women in the workforce is only about 21%, and the percentage of Arab men in the workforce stands at around 62%. The various state authorities should have also considered the interests of the Arab minority, particularly in light of their socio-economic situation.<sup>169</sup>

7. In this context, the enactment of the above amendment coincides with the recently stated intention of the Minister of Finance to raise tuition fees for institutes of higher education to NIS 20,000 per academic year. Thus, Arab students will not be entitled to financial assistance under the Absorption of Discharged Soldiers Law and will also bear the full burden of the tuition fees, which are already very high. Should the Minister of Finance make a final decision to raise tuition fees, this obstacle will add to the many other obstacles facing Arab students in higher education, which will in turn will increase the existing inequality in access to higher education between Jewish and Arab citizens. Thus, according to CBS figures for 2008, the percentage of Arab students in higher education stood at 9.6% in 2008, despite the fact that they constitute around 20% of the country's population. To this figure must be added the low rate at which Arab students obtain matriculation certificates, the entry ticket to higher education. A publication by the Adva Center entitled, "Entitlement to Matriculation Certificate, Breakdown by Town/Village, 2007-2008," published in November 2009, shows that the highest rates of entitlement to a matriculation certificate were in long-established Jewish towns and villages (67.1%). The lowest rate was recorded among the Arab Bedouin in the Negev (26.6%). In "development towns" the rate of entitlement was 46.9%, and in Arab towns/villages it was 32.4%.
8. Preferential treatment in higher education contradicts the spirit of the Students Rights Law – 2007, the purpose of which is set forth in Section 2: "The purpose of this law is to assert the principle of the right of Israeli citizens and residents to access to higher education, as well as to assert the principles of students' rights, by recognizing Israeli society's commitment to these rights and equal opportunity in higher education." Section 3 of the law emphasizes the principle of equal opportunity in acceptance to study programs, and stipulates that, "every Israeli citizen and resident has an equal right to be accepted to an institution for the purpose of acquiring a higher education and post-high school education, subject to provisions of this law."
9. Furthermore, if the draft law granting preference to discharged soldiers in entry to the civil service is adopted, then the existing inequality between Jewish and Arab citizens concerning their representation in the civil service must be added to the above. As of 2008, there were 58,180 employees – male and female – in the public service, of whom only 6.7% were Arab.<sup>170</sup> In addition, if the draft law is approved, it will contradict the duty imposed on the various government ministers to ensure appropriate representation for Arab citizens, by

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<sup>169</sup> For more detailed data, see Yosef Jabareen, "Arab Employment in Israel – The Challenge of the Israeli Economy," The Israel Democracy Institute, June 2010.

<sup>170</sup> See Yasser Awad, "Project of Appropriate Representation and Equality in Employment: Summary of Activity for 2009," Sikkuy, 2009.

virtue of Section 15A(a) of the Civil Service (Appointments) Law – 1959. This Section makes it obligatory to ensure appropriate representation to members of both sexes within the Arab minority in civil service positions. Over the years after this Section has been ratified, and since nothing was done to comply with this provision, the government adopted a series of resolutions to assure appropriate representation for members of the Arab minority in public functions. Thus, for instance, in 2003, the government adopted Resolution 1402, which states that it is necessary to ensure representation for Arab employees at a rate of 8%; this resolution was never complied with. In 2006 the government adopted Resolution No. 4729, which stipulates that 337 positions must be set aside for Arab employees in the civil service. Since this latter Resolution was also never implemented, in 2007 the government adopted Resolution No. 2579, according to which the percentage of Arab employees in the civil service must reach 10% by 2012. Again, this resolution was also not complied with, and in 2009 the government adopted a further Resolution – No. 4436 – which stipulates that 20 positions must be added each year to be manned by Arab employees. None of these resolutions has yet been implemented, and the gap in representation of Jews and Arabs in the civil service has remained just as great. Ratification of the draft law granting preference to discharged soldiers in the civil service will only amplify the inequality, contradict the purpose behind Section 15A(a) of the Civil Service (Appointments) Law, and thwart still further the application of the aforementioned government resolutions.

10. In such a situation, granting preference to discharged soldiers on such an enormous scale disregards the discriminatory socio-economic effect of this preference for the Arab citizens of Israel. It is therefore indifferent to the violation of their right to equality (see in this context also the *Qa'adan* case, in which the Supreme Court considered the discriminatory effect of the use of the military service criterion against the Arab community (HCJ 6698/95, *Adel Qa'adan v. The Israel Land Administration*, 54(1) IsSC 258, 279-280).
11. Thus, military service has become an effective tool for discrimination against the Arab minority in Israel, given that Arab citizens are generally exempt from military service. The result is preference for discharged soldiers both in higher education and in civil service employment; that is, preference for Jews over Arabs. Therefore, in light of the exemption granted to the Arab minority from military service, any benefit granted on the basis of military or national service excludes the Arab population, and their share of these significant benefits is nil. In the field of higher education, this preference will have a negative effect by increasing the obstacles faced by Arabs in entering higher education, which is also the case in the field of employment.
11. In 2006, following a petition filed by Adalah to the Haifa District Court against the use of the military service criterion by Haifa University to grant significant additional dormitory housing benefits to discharged soldiers, the court expressly ruled that the use of military service for the purpose of distributing benefits to students constitutes racial discrimination against Arab students. The court further ruled that there is no reasonable connection between military service and the allocation of dormitory places to students, especially

when the purpose behind the allocation of dormitories is socio-economic. Moreover, Haifa University granted the benefit to all discharged soldiers, without placing a limit on the period following their discharge from military service, which led the court to rule that the damage to Arab students was disproportionate, and contravened the Absorption of Discharged Soldiers Law, which limits the granting of benefits to a period of five years after the date of discharge (see Opening Motion [Haifa] 217/05, *Na'aman v. Haifa University* (decision delivered 17 August 2006)).

A similar ruling, in the field of employment, was recently handed down by the Regional Labor Court in Tel Aviv, which heard the claim by employees of the Israel Railways Co. Ltd. against imposing the military service criterion as a condition for acceptance for work as guards for the Israel Railways Company. Here, too, the court held that the use of military service or similar criteria constituted racial discrimination against Arab workers, who are exempt from military service (see Labor Court 4516/09 [MCA 3863/09] *Abdulkarim Qadi v. The Israel Railways Company* (decision dated 6 September 2009)). In another context with respect to housing, the Supreme Court considered the case of *Suhad Bishara v. The Minister of Construction and Housing*, in a petition against assistance in the form of loans for public housing awarded to discharged soldiers. In this matter, the Supreme Court rejected the petition, but nonetheless emphasized and held that permitting the use of the military service criterion is correct solely in the case at hand, and that in the future the court must examine every case on its merits and specific circumstances. It further held that it was not possible to make use of the military service criterion for the purpose of granting benefits, and not in every case in which such use was made is it possible to state unequivocally that the benefit was not illegitimate (see HCJ 11956/05, *Suhad Bishara v. The Minister of Construction and Housing* (decision delivered dated 13 December 2006, paragraph 9 of the judgment of the Chief Justice (Ret.) Barak [unpublished])).

Another case in point is a petition filed in 2002 against the use of the criterion of whether a child's parents performed military service for the allocation of child allowance. Then it was also argued that such use of military service constituted discrimination against the Arab population on the basis of their national belonging (see HCJ 4822/02, *Committee of the Heads of Arab Authorities in Israel, et al. v. The National Insurance Institute* [unpublished decision]). The hearing on this petition was conducted before a panel of 13 justices, who issued an *order nisi* on the case. Subsequently the Section in the Emergency Economic Plan Law for 2002, which made the allocation of child allowances conditional on the parents' military service, was revoked.

13. In fact, the increased use of the military service criterion, both by means of legislation and by means of setting acceptance conditions, reinstates the legal situation as it was prior to the enactment of the Absorption of Discharged Soldiers Law and the enactment of the Basic Laws. Prior to the Absorption of Discharged Soldiers Law, all institutions, including institutions of higher education, were able to make unlimited use of the criterion. There was even an attempt to stipulate differential tuition fees in universities based on the military/national service criterion without reliance on proportionate legislation. Military

service was a code name for discrimination against the Arab minority. Prof. Amnon Rubinstein described the arbitrariness of the situation at the time as follows:

In a situation where almost 18% of the population does not serve in the IDF [Israeli military] on national grounds, there is certainly the risk of exploiting the rights of discharged soldiers... Thus, for instance on 17 May 1987, by a narrow margin, the government adopted the proposal of Minister Gideon Pat to establish a lower tuition fee for 'ex-soldiers (or ex-national servicemen)'. This decision raised a public storm, and appeared to be directed against Arab students. Consequently, the government swiftly revoked this resolution, and on 14 June 1987 appointed a public committee to set tuition fees, which eventually established a uniform fee. We must draw a clear distinction between granting rights to discharged soldiers and breaking the principle of equal rights for citizens of Israel without discrimination. For that purpose, in the author's opinion, we must establish the constitutional rule proposed above: No discrimination in social rights among residents of Israel – Jews or Arabs, those who served in the IDF and those who did not – all are entitled to the same social benefits, the same tuition fee in the universities, the same acceptance criteria, the same housing, the same child allowance. Reward for serving in the IDF and the loss of precious years of study and work should be clear and limited – payment in money for that service, whether an appropriate monthly installment or in the form of a discharge grant, the size of which will be determined in accordance with the period of military service. Whoever does not serve does not deserve this reward – whether he is a Jew or not.

See A. Rubinstein, *Constitutional Law of the State of Israel* (Vol. I, Shoken Press, 1991).

14. Prof. David Kretzmer also related explicitly to the use of the criterion of military service in granting preference in acceptance to university and students' rights to dormitory places. He stated that these preferences were limited to discharged soldiers only. He also criticized the use made in the past of the criterion of military service for the purpose of paying child allowances by the National Insurance Institute:

It seems clear to the present writer that payment of extra child allowances to 'soldiers' and 'family members' is an instance of covert discrimination. There is no reasonable connection between service in the army and the extra allowances, as can be seen if the following factors are considered: A soldier is a person who served at any time in the past in the army, and for any length of time. Thus, for example, a person who served for a month thirty years ago and was then discharged, automatically becomes eligible for the extra allowances. The type of payment, a child allowance for medium-sized and large families, bears no relation to the criterion for payment: service in the army, police or prison service. This type of payment is clearly a social benefit and not some kind of benefit granted to ex-soldiers in order to enable them to adjust to civilian life. Benefits of this type, whether paid universally or according to income



criteria, are understandable. However, it is difficult to understand how army service can at any time be regarded as a relevant criterion for entitlement to such benefits. David Kretzmer, *The Legal Status of the Arabs in Israel* (Westview Press, 1990), p. 101.

15. Legal scholars Profs. Amnon Rubinstein and Barak Medina have also argued against the use of military service to “launder” discrimination against the Arab minority:

An important expression of recognition of the special group characteristics of the Arab minority – this time on an obviously national basis – is indicated by their exemption from recruitment to military service [...]. Exemption from service has very important implications for the internal coherence of the Arab minority in Israel, and in the present circumstances it is perceived as vital to preserving the special status of the Arab minority in the complex relationships between the State of Israel and the Palestinian people. At the same time, no group discrimination can be justified, whether on the level of principle (‘Arabs cannot be trusted’) or on the level of the civil and economic rights of the Arab citizens of Israel.

A. Rubinstein & B. Medina, *The Constitutional Law of the State of Israel: Basic Principles* (Jerusalem: Shoken Press, 7<sup>th</sup> Ed., 2005), pp. 452-454.

16. There is no doubt that the increased use of military service for the purpose of granting economic assistance is a by-product of the heightened political perception, including that of the Yisrael Beitenu ("Israel is our Home") party, that equal citizenship is measured by a citizen’s loyalty to the state, the index of “loyalty” being calculated, inter alia, according to the citizen’s performance or otherwise of military service. Discrimination between citizens on the basis of their national belonging, on the basis of political perceptions, is illegitimate discrimination in all respects and action must be taken to eliminate it.

17. In light of the foregoing, I would ask you to act as follows:

- (a) To end discrimination against the Arab minority, including with respect to higher education and employment;
- (b) To refrain from supporting legislation that stipulates military or national service as the criterion for receiving socio-economic benefits, thereby widening the socio-economic gap between Jews and Arabs in Israel;
- (c) To extend the application of assistance in the fields set forth above to include the Arab minority;
- (d) To refrain from raising tuition fees in the higher education system to NIS 20,000 or any other amount that stands to widen the existing social gaps, as described above;
- (e) To act to ensure that socio-economic benefits are granted on the basis of an individual’s socio-economic status.

I look forward to receiving your response at the earliest opportunity.

Sincerely,  
Sawsan Zaher, Adv.

### Appendix 3

3 October 2010

To:

**Mr. Benjamin Netanyahu**  
Prime Minister  
3 Kaplan Street  
Government Center  
Jerusalem

**Mr. Yehuda Weinstein**  
Attorney General  
Ministry of Justice  
29 Saladin Street  
Jerusalem

**Mr. Yaakov Neeman**  
Minister of Justice  
Ministry of Justice  
29 Saladin Street  
Jerusalem

Dear Sirs,

**Re: The unconstitutionality of the state's policy of demolishing Arab Bedouin unrecognized villages in the Negev**

1. We hereby approach you with a request to order a halt to the policy of demolishing villages in the Negev [Naqab] as a policy that disproportionately violates the constitutional rights of the Bedouin, in particular the rights to dignity, equality and property. This policy is also contrary to the conclusions and recommendations of official Israeli committees and bodies that have discussed this matter. In addition, and as will be explained below, this policy is contrary to the concluding observations of UN human rights committees that recommended a halt to the continued demolition of homes in the Negev and that planning solutions be found for the unrecognized villages.
2. In this letter, we also ask you to adopt the Supreme Court's recommendation in the case of *Abu Medeghem*, which proposed replacing the current aggressive policy with systemic solutions based on dialogue and the inclusion of the Arab Bedouin living in the unrecognized villages. In the words of Justice Arbel in the *Abu Medeghem* ruling:<sup>171</sup>

In addition to this, the state of affairs described in this petition, together with the distress and difficulties described, should again remind all of us of what we have long known: that the difficult reality the Bedouin population faces in the State of Israel requires a systemic, complete and comprehensive solution, and the sooner the better. Local solutions, regardless of how good they may be, cannot constitute real solutions in the long term. The time has come to formulate and implement a truly comprehensive solution to this problem.

3. Justice Arbel further stated in the ruling that the way to resolve the matter was via dialogue and by involving the public:<sup>172</sup>

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<sup>171</sup> See HCJ 2887/04, *Salem Abu Medeghem v. The Israel Land Administration* (decision delivered on 14 April 2007), para. 54 of Justice Arbel's ruling.

<sup>172</sup> *Ibid.*, para. 49.

Only through dialogue, cooperation, tolerance, recognition of shared interests and readiness to compromise – on both sides – can we succeed in changing it. This change is an interest of the state and certainly also of the Bedouin population.

### **The unrecognized villages – a government failure**

4. Some of the unrecognized villages – today home to more than 80,000 citizens of the state – pre-existed the establishment of the State of Israel, and others were built in accordance with forced evacuation orders from the military governor in the region during the 1950s. These orders aimed to transfer a large section of the Arab Bedouin to what is called “the Al-Siyyaj area”. After concentrating what remained of the Bedouin in the eastern part of the Negev, in the 1990s the State of Israel began to implement a policy of reducing their living space in the region. In the framework of this policy throughout the years, seven towns were initially recognized and built. The plan was to transfer the entire Bedouin population to these towns. In recent years, the government recognized an additional five town. Nonetheless, the objective of the policy remained one and the same: to reduce as far as possible the area of habitation and livelihood of the Arab Bedouin in the Negev, while completely disregarding their basic rights.
5. Since the state’s establishment, the various master plans in the Negev region have completely ignored the existence of the unrecognized villages. These villages did not receive any designation in these plans, and no local or detailed master plans were prepared for them. It was impossible to obtain building permits in the area of the villages, and the authorities did not provide basic services to them because of their unrecognized status. However, rather than identifying an overall solution for the matter and ending the ongoing injustice to the residents of the unrecognized villages, today the authorities are pursuing a policy of demolishing entire villages, solely focused on the evacuation of the villages and for that purpose. Instead of examining planning options for recognizing the villages, the authorities are seeking to forcibly evacuate the residents of the unrecognized villages, even in the absence of a clear public interest to justify these exceptionally severe actions.

### **Examples of the policy of demolishing villages in the Negev**

6. On 27 July 2010, at 4:30 am, the entire village of **Al-Araqib** was razed to the ground. All 45 of the homes were brutally demolished, using force and illegal means against the residents of the homes, women, children and the elderly alike, in order to intimidate and punish them. No demolition orders were issued against some of the homes in the village. Police forces entered the village wearing masks on their faces and without identification badges. Police forces also entered accompanied by minors who taunted the residents and egged on the police forces each time a home was demolished. The police were also accompanied by representatives of the Income Tax Authority, who

seized assets of residents without warning and without verifying their debts. Moreover, the residents, including women and children, were evacuated from their homes, razed minutes later, without being provided with any professional or psychological guidance to assist them in this time of distress. Worst of all, the various authorities ordered the destruction of all of the homes in the village without arranging for alternative housing for the residents. As a result they were all left without a roof over their heads. From the date of this first demolition of the village and until the day this letter is being written, the village has been destroyed four more times after its residents returned to rebuild their homes.

7. Another example of this policy can be found in the unrecognized village of **Umm al-Hieran—Atir**, currently home to 1,100 people. Evacuation and expulsion orders are pending against the residents of the village based on the charge of trespassing. Demolition orders have been issued against many houses in the village. Umm al-Hieran—Atir was built in 1956 after members of the Abu al-Qi'an tribe were expelled from their lands in the region of Wadi Zuballa (which is today part of the agricultural lands of Kibbutz Shoal), and were ordered by the military governor to settle in the area of Nahal Yatir, where they have remained to this day. According to the various master plans, part of the area of the village is earmarked for the establishment of a Jewish town named Hiran.
8. A third example is provided by the unrecognized village of **Al-Sura**, which predates the establishment of the state and is situated on lands of the Al-Nasasra tribe.<sup>173</sup> The authorities have issued demolition orders against all houses in the village and its land is earmarked for an industrial zone according to existing master plans.
9. In August 2010, a number of homes were also demolished in the villages of Jarabe, Abda, Abu al-Sulab, Al-Shihabi (Abu Tulul) and Baqurnub. This phenomenon is not new. Over many years, the authorities have demolished the homes of residents in many villages. In 2008, Human Rights Watch issued report entitled "Off the Map – Land and Housing Rights Violations in Israel's Unrecognized Bedouin Villages," which examined the phenomenon of home demolitions and published data. According to the report, 227 homes were demolished in 2007, 96 homes in 2006, 15 homes in 2005, 23 homes in 2004, 63 homes in 2003, 23 homes in 2002, and 8 homes in 2001.<sup>174</sup> Home demolitions continued in subsequent years, with a dramatic rise in 2010; over 200 homes have already been demolished this year. In addition, youth centers have been demolished, the property of many residents has been destroyed, property has been seized and confiscated, hundreds of olive trees have been uprooted and agricultural crops have been destroyed. For a full list of the demolitions, see the website of the Negev Co-

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<sup>173</sup> Legal claims were submitted by members of the Al-Nasasra tribe in the 1970s, but these lawsuits did not reach a judgment.

<sup>174</sup> Human Rights Watch, "Off the Map – Land and Housing Rights Violations in Israel's Unrecognized Bedouin Villages," March 2008, Appendix B, p. 117. See: <http://www.hrw.org/en/reports/2008/03/30/map-0>

Existence Forum:

<http://www.dukium.org/modules.php?name=Content&pa=showpage&pid=56>

### **The violation of constitutional rights as a result of this policy**

*A. The demolition of homes violates the constitutional rights to dignity and housing, and the constitutional rights to life and health*

10. The demolition of homes violates the residents' right to housing, since it leaves them without a roof over their heads. The Supreme Court has already ruled that the right to housing is a part of the right to minimal subsistence, and is therefore part of the constitutional right to dignity. In the *Preminger*<sup>175</sup> case, Justice Strasberg-Cohen ruled that "human dignity is a fundamental constitutional value in our society. No one would dispute that it is necessary to safeguard a person's dignity even if he has failed or fallen into debt, and that he should not be left without a roof over his head." In the *Ajouri*<sup>176</sup> case, it was stated that, "A person's home is not only a roof over his head, but also a means for the physical and social location of the person, of his private life and social relations."<sup>177</sup>
11. Moreover, and since the socio-economic situation of the Bedouin citizens in the Negev is known to be difficult, the government authorities have a heightened responsibility to ensure that citizens of meager economic means are not left without shelter. In the case of the *NGO Commitment to Peace and Social Justice*, the Supreme Court ruled that the right to dignity included the right to minimal living conditions that ensure the protection of human life, in a way that imposes a duty on the state to care for those of meager means within society so that their material conditions do not lead to a lack of subsistence. In the words of the honorable (retired) Supreme Court Chief Justice Barak in this case:<sup>178</sup>

The basic laws protect the right to dignity, including the aspect of material subsistence required for the exercise of the right to dignity. From this viewpoint, a person's right to dignity is also the right to conduct his normal life as a human being without his distress defeating him and bringing him to a state of intolerable impoverishment. According to this view, the right to a life of dignity is the right that ensures a person a minimum of material means to enable him to subsist in the society in which he lives.

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<sup>175</sup> Civil Appeal 3295/94, *Preminger v. Mor*, P.D. 50(5) 111, 121 (1997).

<sup>176</sup> HCJ 7015/02, *Ajouri v. Commander of IDF Forces in the West Bank*, P.D. 56(6) 352, 365 (2002).

<sup>177</sup> Permission for Civil Appeal 4905/98, *Gimzo v. Yeshayahu*, P.D. 55(3) 360, 375 (2001), where (retired) Chief Justice Barak stated: "The dignity of a person includes ... safeguarding a minimum of human existence... a person living in the streets, who has no housing, is a person whose human dignity is violated; a person hungry for bread is a person whose human dignity is violated; a person who has no access to elementary medical care is a person whose human dignity is violated; a person who is forced to live in humiliating material conditions is a person whose human dignity is violated."

<sup>178</sup> HCJ 366/03, *Commitment to Peace and Social Justice NGO v. The Minister of Finance* (decision delivered on 12 December 2005).

12. Moreover, the principles of international law, including those anchored in the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Israel has signed and ratified, recognized the right to adequate housing as one of the rights that are accorded to every human being.<sup>179</sup> The right to adequate housing includes a number of elements that are incumbent upon the member states, including the State of Israel, to fulfill. General Comment 4, designed to interpret Article 11 of the Covenant, defines the elements that are included within the right to adequate housing: the right to affordable housing, which entails that every person has the ability to obtain housing without jeopardizing their other essential needs; equality in access to housing, according to which every person has an equal right of access to housing, and this right also includes a prohibition on discrimination in access to housing; housing that ensures living in privacy; the right to be protected against arbitrary eviction, which holds that every person has the right to a legal proceeding before his eviction, as well as the right not to be arbitrarily evicted from his home; housing that is accessible to services and infrastructure, which guarantees that every person has the right to live in housing that is accessible to services, including health, education, infrastructure and employment services; the right to choose a place of residence, and the right to live in housing that is adapted to the culture of the inhabitant.

13. In addition, international law specifically prohibits violations of the rights of women who live in rural areas to enjoy adequate living conditions, particularly with regard to housing. Article 14(2)(8) of the International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which Israel has signed and ratified, states:

States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

14. The International Convention on the Rights of the Child (CRC), which Israel has ratified, also states that the Member States are obliged to take measures to ensure assistance to parents and authorities in order to provide housing, nutrition and clothing to all children. Article 27(3) of the convention states:

States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programs, particularly with regard to nutrition, clothing and housing.

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<sup>179</sup> See Article 11(1) of the International Covenant on Economic, Social and Cultural Rights of 1966.

15. It should be noted that the courts in various states in the world have explicitly stipulated that the demolition of homes, and even mobile structures, that leave their residents without shelter is unconstitutional because it violates the constitutional rights to shelter, adequate living conditions and life.<sup>180</sup>

#### *B. The violation of the principle of equality*

16. The policy of evacuation and demolition of unrecognized villages discriminates against the Arab Bedouin citizens of the state on the basis of their nationality and violates the constitutional right to equality. The principle of equality is based on equal treatment of the legitimate interests of the relevant group. The government's failure to find planning solutions for these villages violates the legitimate interests of this group to live in dignity and equality.
17. In parallel to demolishing the Bedouin villages, the authorities are working to establish new and developing existing Jewish towns and villages. For example, the authorities are in the process of establishing a new Jewish community named Hiran in place of and on the land of the unrecognized village of Umm al-Hieran. They are also developing a town named Givot Barr adjacent to the village of al-Araqib, on land that has been used by the Al-Uqbi tribe for many years for both housing and agriculture. In addition, while demolishing Bedouin villages in the Negev, the authorities are concurrently granting official recognition to individual settlements in the Negev built by individual Jewish families in violation of the law and contrary to planning policy. In this context, in July 2010 an amendment was passed to the Negev Development Authority Law – 1991. In the framework of this amendment, all of these individual settlements in the Negev will be recognized and master plans prepared for them. This amendment also stipulates that combined agricultural-tourism projects should be encouraged under the auspices of the Negev Development Authority. Such projects are defined in the amendment as, “an initiative in the Negev in which lands will be used for both agriculture and tourism, including uses associated with these uses, such as **use for the residences of those who hold** these lands for the aforementioned purposes” [emphasis added]. Just as the state authorities are striving to ensure the settlement of Jews in the Negev, they are also obliged, under the principle of equality, to settle the Bedouin on their land or on land to

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<sup>180</sup> Thus ruled the constitutional court in **India** when discussing the constitutionality of the Bombay Municipality's decision to evacuate all of the residents of the slums, as well as those living on the streets and sidewalks of the city. The court stated that residents should be provided with shelter and that residents of the slums, which have existed in the city for 20 years and more, should not be evacuated except in the service of public needs and even then the residents should be provided with alternative housing, with priority given to rebuilt settlement. See, *Olga Tellis and Ors v. The Bombay Municipal Council* (1985) Supp SCR 51. In **South Africa**, the government evicted squatters from an illegal settlement who were later housed in a municipal sports center that was without any infrastructure, electricity and sanitation. The squatters petitioned the Constitutional Court, which ruled that there was a violation of Article 26 of South Africa's constitution (which anchors the right to adequate housing), and that the government had failed to provide the basic living needs of the neediest population. In this case, the court even issued an order to the government to plan, finance and work for the wellbeing of those of meager means and the neediest residents. See, *Government of the Republic of South Africa v. Grootboom* [2000] (11) BCLR 1169 (CC).

which they were transferred by the military government, equally and according to their choice.

18. The policy of demolishing the villages discriminates against the rights of Bedouin citizens to equality as an indigenous minority. International law explicitly stipulates that the state must recognize the property and ownership rights of the indigenous peoples that live within it in terms of the land they traditionally hold, and special attention is to be given to nomadic indigenous people and nomadic farmers.<sup>181</sup> The UN Declaration on the Rights of Indigenous Peoples was passed in 2007. This declaration states that it is prohibited forcibly to evacuate indigenous peoples from their lands or living areas;<sup>182</sup> indigenous peoples have the right to own the land they hold;<sup>183</sup> and states must recognize and protect the right of indigenous people to the land, in accordance with their customs, traditions and methods of ownership of their land.<sup>184</sup> Academic experts have addressed the issue of recognizing the Arab Bedouin as an indigenous minority whose living conditions correspond to the international norms that define a minority group as an indigenous group. For example, Dr. Sandy Kedar argues<sup>185</sup> that the Bedouin in the Negev are recognized as an indigenous minority group in light of their historical existence that predates the establishment of Israel; the fact that their cultural characteristics set them apart from those of the general population; their lack of a position of dominance; and their self-definition as a distinct group.
  
19. It should be emphasized that it was the authorities themselves that failed to give serious consideration to the interests of the Bedouin and the planning of their villages, and they gave no consideration to the legitimate interests of the residents living in these villages, which constitute a nucleus of their social life. Thus, the authorities have ignored the principle of equality, which requires that equal weight is afforded to the legitimate interests of the various population groups. This policy violates the right to dignity of the Bedouin and does not even purport to explore planning alternatives, preferring to establish new towns in place of or adjacent to these villages. Therefore the objective of this policy is illegitimate. In this context, it should be noted that the District Court, sitting as an appeals tribunal, canceled a demolition order without conviction issued in accordance to Section 212 of the Planning and Construction Law – 1961, on the ground that the construction had existed illegally for many years. The court canceled the order since it aimed to exert pressure to evacuate the Bedouin residents in order to implement the policy of concentrating the Bedouin population in settled and recognized towns. In the words of the court:

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<sup>181</sup> Convention 169 of the International Labor Organization pertaining to the rights of indigenous peoples.

<sup>182</sup> The UN Declaration on the Rights of Indigenous Peoples, Article 10.

<sup>183</sup> *Ibid.*, Article 26(1) and (2).

<sup>184</sup> *Ibid.*, Article 26(3).

<sup>185</sup> Dr. Alexander (Sandy) Kedar, "Land Arrangements in the Negev in the Contexts of International Law," *Adalah's Newsletter*, vol. 8, December 2004.



The correct interpretation [...] is that the authority is trying to use the demolition order as leverage to prompt the appellant to abandon the place and move to live in the Bedouin township of Farush Rumneh, where the appellant would enjoy urban infrastructure and modern conditions. On the other hand, we have not heard the witness say whether and for which purpose the authority needed the territory on which the building is situated. In any case, such need or “necessity” (in the words of the respondent’s representative) was not proven. As noted, there is no plan for this territory and no planning there.

It does not seem to us that the use of the demolition order the authority is seeking to use here under the relevant directive, is a proper and legitimate use that we could approve. Of course, we can appreciate the authorities’ desire to help the appellant and offer him alternative land in a different community that is organized and has municipal services, but the authorization discussed here is not intended for such a purpose.

Criminal Appeal (Nazareth District Court) 224/91, *Falah v. The State of Israel*, P.D. 1992 332 (3), 337 (1992).

### *C. The constitutional right to own property*

20. The right of the residents of the unrecognized villages to use the land that has served them for housing for long periods of time creates a constitutional right to property under Section 3 of the Basic Law: Human Dignity and Liberty. As noted, regardless of whether they are villages that existed prior to the establishment of the State of Israel; or villages that were created as a result of an expulsion policy and at the orders of the military government in the Negev region in the early 1950s; or villages whose residents decided to return to their original lands after the authorities’ failings, the investment of the residents of the unrecognized villages in constructing their homes and developing their villages and their lives within them, as well as the expectation and assumption that this was their home and this was land that they could use on a permanent basis – all of this reinforces a constitutional right to property that deserves protection, and no monetary reparation can compensate them for such a severe and sweeping violation of this right resulting from the policy of demolition and evacuation.

### **Recommendations of Israeli committees and organizations**

21. Official committees formed by the state have recommended that the Bedouin villages in Negev should be recognized and developed. The report of the Official Commission of Inquiry into the clashes between the security forces and Israeli civilians in October 2000 (the Or Commission) described the ongoing conflict between the Bedouin and the state over the issue of land ownership as follows:<sup>186</sup>

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<sup>186</sup> Volume A of the Or Commission Report, paras. 39-40.

The land conflict has existed since the first days of the state between the state and the Bedouin. The government sought to register in its name most of the land that was used by the Bedouin in the Galilee and the Negev, and to concentrate the Bedouin in a number of planned towns. This policy encountered opposition from the Bedouin, who claimed rights to the land. The state tried to reach agreements over disputed land, but as of the year 2000 agreements were reached only with regard to 140,000 dunams, which comprise a small part of the land in dispute. The main part of the dispute entails a large expanse of land in the Negev that sprawls over most of the territory of the Rahat-Dimona-Arad triangle. The Arab public strongly supports and identifies with the Bedouin's stance.

Another problem that primarily pertains to Bedouin citizens is the problem of the Arab villages that have not received official recognition from the Ministry of the Interior. Villages grew as a result of unauthorized construction, mostly on state land, by those who sought to build homes near or on land they claimed to use. Over the years, several dozens of such groupings of homes have arisen, and about 70,000 people live in them in the Negev, as well as around 10,000 in the Galilee. Since the villages are not recognized, they have not been provided with infrastructure and services, and in many places they lack running water, electricity, roads or sewerage; no health clinics or schools have been built in them. The authorities have recognized, after the fact, a small number of such villages in the north. The vast majority of residents of the unrecognized villages were required to move to a number of central towns that were planned for them. The state has acted to enforce the law in these towns and over the land that serves their residents, including by submitting demands to court to evict them from the land and issue demolition orders to hundreds of homes. Several public associations have formed to promote the struggle of the residents of the illegal villages. The "Association for the Protection of Bedouin Rights" was formed in the Negev, and the "Association of the Forty" in the Galilee. The Arab sector has been mobilized in the struggle of the residents of the unrecognized villages, and thus another element of conflict was added that weighs upon its relations with the state.

22. The Goldberg Committee for resolving Bedouin settlement in the Negev, which was appointed in 2007 by the Minister of Housing and Construction, and which presented its recommendations to the minister on 11 November 2008, recommended that all the unrecognized villages in the Negev should be recognized and ownership rights to the land should be awarded to Bedouin citizens in consideration of their historical connection to it. The committee stated as follows:

Our proposal for the settlement solution is also based on the principle that the State grant land ownership rights on the basis of due consideration for the Bedouin's historical attachment to the land, and not in recognition of any legal bond (which does not exist).

...

In principle, we recommend recognition, as far as possible, of all the unrecognized villages which have a critical mass of residents, at a level to be determined, and which can maintain themselves as municipal units, on condition that such recognition in no way contradicts the District Master Plan.

23. Following the publication of the Goldberg Committee's recommendations, the government approved Decision No. 4411 of 18 January 2009,<sup>187</sup> in which it decided that it "regards the outline proposed by the committee as a basis for resolving the settlement of the Bedouin in the Negev." In addition, in June 2010, the "Investigator's Recommendations Regarding the Objections to District Master Plan 23/14/4 – A Partial District Master Plan for the Beersheva Metropolitan Area" was published, which examined the objections submitted to this master plan. Here, too, it was recommended to recognize the unrecognized villages.<sup>188</sup>
24. Prof. Oren Yiftachel, who has researched many issues of land ownership involving the Bedouin in the Negev, has also addressed the real potential alternatives for resolving the dispute over land ownership in the Negev. According to Prof. Yiftachel, "a fair mechanism" needs to be established for "clarifying pending land claims, which will enable property rights to be granted on a basis of traditional ownership. The property rights that are recognized will 'drive' the track of planning solutions, and thus enable rational, consensual and just development of the settlement array."<sup>189</sup> Prof. Yiftachel added that once the process of land resolution has been completed, it will then be time to move onto "the 'planning stage' while recognizing the villages and/or establishing new villages according to equal and accepted criteria in the planning system; this stage will be accompanied by a gradual transition to an Arab municipal array that will manage the rural Bedouin space over the long term."

### Recommendations of UN committees

25. In July 2010, the UN Human Rights Committee, responsible for monitoring the state's implementation of the International Covenant on Civil and Political Rights, issued its "Concluding Observations" on the 3<sup>rd</sup> periodic report submitted by Israel. The committee expressed concern about the phenomenon of home demolitions and the state's forcible evacuation of residents from their homes, while at the same time disregarding the need to develop the Bedouin villages and failing to take into account their unique way of life in the Negev desert. The committee called upon the State of

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<sup>187</sup> [www.pmo.gov.il/PMO/Archive/Decisions/2009/01/des4411.htm](http://www.pmo.gov.il/PMO/Archive/Decisions/2009/01/des4411.htm) [Hebrew]

<sup>188</sup> See, investigator's report for district master plan 23/14/4, a partial district master plan for the metropolitan Beersheva area and the Bedouin population outside of the recognized communities, submitted to the Objections Subcommittee of the national council by Attorney Talma Duchin, June 2010.

<sup>189</sup> Prof. Oren Yiftachel, "Toward Recognition of Bedouin Villages? Planning Metropolitan Beersheva vis-à-vis the Goldberg Committee, *Tichnun*, 6(1), 165-184, (2009).

Israel to respect the right of the Bedouin to the land and their right to make their livelihood from agriculture. In the committee's words:<sup>190</sup>

The committee notes that school enrollment rates increased and infant mortality declined among the Bedouin population. Nevertheless, the committee is concerned at allegations of forced evictions of the Bedouin population based on the Public Land Law (Expulsion of Invaders) of 1981 as amended in 2005, and of inadequate consideration of traditional needs of the population in the state party's planning efforts for the development of the Negev, in particular the fact that agriculture is part of the livelihood and tradition of the Bedouin population. The committee is further concerned at difficulties of access to health structures, education, water and electricity for the Bedouin population living in towns, which the state party has not recognized (Articles. 26 and 27).

**In its planning efforts in the Negev area, the state party should respect the Bedouin population's right to their ancestral land and their traditional livelihood based on agriculture. The state party should further guarantee the Bedouin population's access to health structures, education, water and electricity, irrespective of their whereabouts on the territory of the state party.**

[Emphasis in the original]

26. The UN CERD Committee, responsible for monitoring the state's implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, which Israel has signed and ratified, also addressed the lack of consideration for such alternatives in the summary of its recommendations of June 2007. The committee expressed concern that the State of Israel had not examined alternatives to the evacuation and transfer of the population, and noted that the fact that basic services had not been provided is liable to ultimately compel the residents to move to the towns planned by the state. The committee went on to call upon the State of Israel to examine alternatives to relocating the Bedouin to recognized villages and also to recognize the rights of the Bedouin to own and develop their land:<sup>191</sup>

The committee expresses concern about the relocation of inhabitants of unrecognized Bedouin villages in the Negev/Naqab to planned towns. While taking note of the State party's assurances that such planning has been undertaken in consultation with Bedouin representatives, the committee notes with concern that the State party does not seem to have inquired into possible alternatives to such relocation, and that the lack of basic services provided to the Bedouins may in

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<sup>190</sup> Para. 24 of the Committee's Concluding Observations can be read at:

<http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.ISR.CO.3.doc>

<sup>191</sup> See para. 25 of the Concluding Observations of the UN Committee for the Elimination of Racial Discrimination, published in June 2007, which can be read at:

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/424/79/PDF/G0742479.pdf?OpenElement>

practice force them to relocate to the planned towns. (Articles 2 and 5 (d) and (e) of the Convention)

**The Committee recommends that the State party inquire into possible alternatives to the relocation of inhabitants of unrecognized Bedouin villages in the Negev/Naqab to planned towns, in particular through the recognition of these villages and the recognition of the rights of the Bedouins to own, develop, control and use their communal lands, territories and resources traditionally owned or otherwise inhabited or used by them. It recommends that the State party enhance its efforts to consult with the inhabitants of the villages and notes that it should in any case obtain the free and informed consent of affected communities prior to such relocation.**

[Emphasis in the original]

27. More specifically, in 2005 the UN CEDAW Committee, responsible for monitoring the state's implementation of the International Convention on the Elimination of All Forms of Discrimination Against Women (ICEDAW) expressed its concerns over the difficult living conditions of Bedouin women, as follows:<sup>192</sup>

The committee is concerned that Bedouin women living in the Negev desert remain in a vulnerable and marginalized situation, especially in regard to education, employment and health. The committee is especially concerned about the situation of Bedouin women who live in unrecognized villages with **poor housing conditions** and limited or no access to water, electricity and sanitation.

[Emphasis added]

And, in 2002, the UN CAT Committee, responsible for monitoring the state's implementation of the International Convention Against Torture (CAT), which Israel has also ratified and signed, published a summary of observations that, inter alia, addressed Israel's policy of home demolitions. This committee determined that Israel's policy of home demolitions could in some cases constitute cruel, inhuman and degrading punishment, in violation of the Convention Against Torture.<sup>193</sup>

Israeli policies on house demolitions may, in certain instances, amount to cruel, inhuman or degrading treatment or punishment (Article 16 of the Convention).

## Summary

28. In light of the above, we ask that you grant our request as stated at the beginning of this letter and order a halt to the policy of demolishing the Bedouin villages in the Negev,

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<sup>192</sup> Para. 39. The Concluding Observations of the UN Committee for the Elimination of Discrimination Against Women can be read at: <http://daccess-ods.un.org/TMP/9422238.html>

<sup>193</sup> See UN document A/57/44, § 6(j)

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3260e70453995e8fc1256e4000501519?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3260e70453995e8fc1256e4000501519?Opendocument)

and to replace the current aggressive approach with one of dialogue with the population in order to create planning solutions for the unrecognized villages. This approach would address fundamental solutions and respond to the recommendations of the Israeli Supreme Court, and the aforementioned official Israeli committees and UN human rights treaty bodies.

29. Finally, we note the Supreme Court's ruling in *Abu Medeghem*, where the Supreme Court ordered an end to the policy of spraying crops in the unrecognized villages, arguing that it was liable to violate the right of the residents of the sprayed areas to dignity and health. In this case, the court ruled that even though the residents were not entitled to grow the crops, and **despite the fact that the land, according to this ruling, does not belong to them**, the authorities are prohibited from taking the step of spraying, even though it was aimed at preventing the takeover of lands, because the policy of spraying does not give adequate consideration to the health of the public. And in the words of the honorable Justice Arbel in the *Abu Medeghem* case:<sup>194</sup>

The spraying, as it has been conducted, violates, in my view, a cluster of rights and values whose protection is essential for maintaining the existence and dignity of a person as a human being. Alongside the state's role in protecting land, it bears another duty of supreme importance – to defend the wellbeing and welfare of its citizens: men and women; young and old; law-abiding ones and lawbreakers. In this framework, the state bears a responsibility to protect the health, bodily integrity and dignity of the members of the Bedouin sector in the Negev, each of whom is a citizen of the state, and thus it must pursue its objectives and policy in the field of land and in general via means that are consistent with this responsibility to protect the basic rights of its citizens.

Respectfully yours,  
Sawsan Zaher, Attorney (with Adalah)

On behalf of the following organizations:

**The Association for Civil Rights in Israel**  
**The Regional Council for the Unrecognized Villages in the Negev**  
**The Popular Committee for Protecting the Lands of Al-Araqib**  
**Adalah – The Legal Center for Arab Minority Rights in Israel**  
**The Sidreh NGO**  
**Forum of Bedouin Arab Women's Organizations in the Negev**  
**Negev Co-existence Forum**  
**Negev Recognition Forum**  
**Physicians for Human Rights**  
**Shatil – Support and Consultation Services for Promoting Social Change**

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<sup>194</sup> The *Abu Medeghem* case, para. 50 of the Justice Arbel's ruling.