



16 August 2010

EU High Representative Catherine Ashton
External Action Service

Re: EU-Israel Informal Human Rights Working Group: The Arab Minority in Israel

Dear High Representative Ashton,

In view of the upcoming meeting of the EU-Israel Informal Human Rights Working Group on 2 September 2010, Adalah welcomes this opportunity to raise five key concerns with regard to the Arab Palestinian minority in Israel:

- (1) New laws that discriminate against Arab citizens of Israel;
- (2) Attacks on the Arab political and civil society leadership in Israel;
- (3) Home demolitions in the Naqab (Al Araqib);
- (4) A decade of impunity for those responsible for the October 2000 killings; and
- (5) Rights violations addressed by the UN Human Rights Committee in its Concluding Observations on Israel issued in July 2010.

We hope that these concerns will be raised with the representatives of the State of Israel at the meeting of the Working Group. We also provide a series of related recommendations that aim to ensure that the human rights of Arab citizens of Israel are upheld.

The information contained in this report demonstrates that Israel has made little-to-no progress in fulfilling its commitments towards the Arab Palestinian minority in Israel under the EU-Israel ENP Action Plan since the last ENP progress report on Israel, published on 12 May 2010, and in particular its obligations to *"Promote and protect rights of minorities, including enhancing political, economic, social and cultural opportunities for all citizens and lawful residents."* This conclusion was also reached by the European Commission in its latest progress report, which stated that, "little progress was registered in the situation of the Arab minority."¹

¹ European Commission, Implementation of the European Neighbourhood Policy in 2009, SEC(2010) 520, Progress Report Israel, 12 May 2010.

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Key Concerns

1. New laws that discriminate against Arab citizens of Israel

Over the last three years, Adalah has tracked ten new laws that have been enacted that discriminate against Palestinian Arab 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.²

Adalah has identified over 35 main laws enacted since the establishment of the state that are discriminatory on their face or use neutral language and general terminology, but have a discriminatory effect on Arab citizens.³ Israel lacks a written constitution or Basic Law that constitutionally guarantees the right to equality and prohibits direct or indirect discrimination. While several ordinary statutes provide protection for the right of equality for women and people with disabilities,⁴ no statute relates to the right to equality for the Palestinian minority. The Basic Law: Human Dignity and Liberty does not enumerate a right to equality, but instead emphasizes the Jewish character of the state.⁵ While some Supreme Court justices have interpreted the Basic Law: Human Dignity and Liberty as including the principle of equality, the fundamental importance of the principle of equality requires that it be explicitly guaranteed in the Basic Laws or by statute.

Annex 1 provides details of ten new laws tracked by Adalah. They include:

- *The Citizenship Law (1952): Amendment No. 9 (Authority for Revoking Citizenship) – 2008 to article 11 of the Citizenship Law*
- *Amendment No. 39 (Candidate who Visited a Hostile State Illegally) – 2008 to Article 7A (a1) of The Basic Law: The Knesset, enacted in 1958*
- *The Regional Councils Law (Date of General Elections) (1994) Special Amendment (no. 6) – 2009*

² The coalition is composed of the Likud, Labor, Yisrael Beiteinu, Shas, United Torah Judaism, and the Jewish Home parties. The main campaign slogan used by Yisrael Beiteinu was “No loyalty, no citizenship,” and with this clearly racist message the party won 15 seats in the Knesset, making it the third largest party in the parliament.

³ The Jewish character of the state is evident in numerous Israeli laws. The most important immigration laws – *The Law of Return (1950)* and *The Citizenship Law (1952)* – allow Jews to freely immigrate to Israel and gain citizenship, but exclude Arabs who were forced to flee their homes in 1947 and 1967. Israeli law also confers special quasi-governmental standing on the World Zionist Organization, the Jewish Agency, the Jewish National Fund and other Zionist bodies, which by their own charters cater only to Jews. Various other laws such as *The Chief Rabbinate of Israel Law (1980)*, *The Flag and Emblem Law (1949)*, and *The State Education Law (1953)* and its 2000 amendment give recognition to Jewish educational, religious, and cultural practices and institutions, and define their aims and objectives strictly in Jewish terms.

⁴ There are three key equality statutes: The Women’s Equal Rights Law – 1951, The Prevention of Sexual Harassment Law – 1998, and The Equal Rights for People with Disabilities Law – 1998.

⁵ 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.

- *Absorption of Discharged Soldiers Law (1994) Amendment No. 7: Benefits for Discharged Soldiers – 2008*
- *The Israel Land Administration Law – 2009*
- *Amendment (2010) to The Land (Acquisition for Public Purposes) Ordinance (1943)*

In addition, a slew of discriminatory legislative proposals are currently at different stages of passage through the Knesset. These bills seek, for example, to undermine the ability of Palestinian citizens of Israel to participate in the political life of the country by imposing “loyalty” oaths to Zionism, to turn citizenship from a right into a conditional privilege, and to criminalize political expression or acts that question the Jewish/Zionist nature of the state. Many of these bills have received strong support within the Knesset and have been endorsed by the government.

In its Concluding Observations on Israel from July 2010, the UN Human Rights Committee called on Israel to “amend its Basis Laws and other legislation to include the principle of non-discrimination...” (para. 6).

2. Attacks on the Arab political and civil society leadership in Israel

Annex 2 discusses the criminal indictments and investigations into the legitimate political activities of Arab political and civil society leaders, including Knesset Members:

- *The Indictment of MK Mohammed Barakeh (Head of the Democratic Front for Peace and Equality, “al-Jabha” or “Hadash”):* MK Barakeh was criminally indicted in November 2009 on four counts of allegedly assaulting or insulting a police officer and a right-wing activist during four different demonstrations against the Separation Wall in the OPT, the Second Lebanon War, and the October 2000 killings of 13 Arab citizens.
- *The Indictment of MK Said Naffa – National Democratic Assembly-Balad:* In January 2010, the Knesset House Committee voted to lift MK Naffaa’s parliamentary immunity to allow the Attorney General to criminally indict him for various offenses surrounding a visit he made to Syria, considered an “enemy state” under Israeli law. Three years ago, MK Naffaa 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.
- *The Detention of Arab leaders: The Gaza Freedom Flotilla:* In May 2010, four Palestinian Arab citizens were arrested from the *Mavi Marmara*: three political leaders – Mr. Muhammed Zeidan, Chairman of the High Follow-up Committee for Arab Citizens of Israel; Sheikh Raed Salah, Head of the Islamic Movement in Israel; and Sheikh Hamad Abu Daabes, Head of the Islamic Movement in Israel (southern branch) – and Ms. Lubna Masarwa of the Free Gaza Movement and Al Quds University. The police prosecutor asked to remand the four and contended that it was the state’s policy to detain citizens of Israel who participated in the flotilla.

- *Attempts to Revoke the Parliamentary Privileges of MK Haneen Zoabi:* MK Haneen Zoabi participated in the Gaza Freedom Flotilla and was a passenger on the *Mavi Marmara*. As MK Zoabi enjoys parliamentary immunity, she was not detained but she was subjected to an extensive interrogation. On 13 July 2010, the Knesset plenum voted to revoke MK Zoabi's parliamentary privileges until the end of the 18th Knesset.
- *The arrest and indictment of civil society leaders Ameer Makhoul & Dr. Omar Saeed:* In May 2010, the state filed indictments against Ameer Makhoul, the Director of the Arab NGO network Ittijah – The Union of Arab Community-Based Associations, and Dr. Omar Saeed, a political activist. Mr. Makhoul is accused of assisting the enemy in time of war and aggravated espionage. He vehemently denies the charges. In July 2010 Dr. Saeed was sentenced to seven months' imprisonment after accepting a plea agreement, after the state dropped graver charges of contact with a foreign agent and the delivery of information to an enemy.

3. Home demolitions in the Naqab (Al Araqib)

Israel is continuing to implement its policy of demolishing homes in the unrecognized villages in the Naqab (Negev) and evicting their residents, even those that were established before the founding of the state in 1948 or moved to their current locations at the order of the state. Through the policy, Israel seeks 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.

There has been no official registration of the ownership of the majority of land in the Naqab. According to Bedouin custom, land ownership was governed by social and traditional rules which developed over hundred of years. The state does not recognize these customs of land ownership. The case of the unrecognized village of al-Araqib illustrates Israel's policies of forced evacuation towards the Arab Bedouin living in the unrecognized villages in the Naqab.

On 27 July 2010, residents of the Arab Bedouin unrecognized village al-Araqib in the Naqab (Negev) in the south of Israel were woken at dawn to find themselves surrounded by police officers. The police declared the village a "closed area" and warned residents that any attempt to resist their orders would lead to their forced evacuation. The police ordered the residents to leave their homes in two minutes. The police began to demolish the homes immediately while the residents were trying to rescue belongings from their houses. No less than 1,300 police officers, accompanied by the Green Patrol, a unit within the Nature Reserves and Parks Authority that often harass the Arab Bedouin, took part in the brutal destruction of the village. Throughout the demolition operation, a helicopter flew above the village. When the demolition ended, all 45 houses of the houses had been razed to the ground and its 250 residents – men, women, elderly people and children – were left without a roof over their heads or their belongings.

During the demolition operation of destruction, the police confiscated all personal possessions of the residents from their homes including refrigerators, ovens, closets, bedroom and dining room furniture, textiles, carpets, crafts, etc. They also took other property from the area surrounding the houses such as electricity generators, plows and flour bags. Representatives of the Tax Authority also accompanied the police and seized property of residents in debt to the tax authorities. This confiscation was undertaken without prior warning or demand from the residents to pay their debt, and therefore, it too was illegal. Residents were required to pay NIS 22,500 (almost US \$6,000) to retrieve their property. The police also uprooted around 4,500 olive trees planted by residents of al-Araqib.

Adalah has demanded a criminal investigation against the police involved in the demolition operation and an investigation into the presence of Tax Authority officials in al-Araqib and the illegal debt collection operation, as well as compensation for the residents.⁶ The village was destroyed attacked for the second time a week later, with police again using violent means and excessive force, including pushing, stomping, dragging, assaulting and cursing the people who were present in the village at the time.⁷

In its Concluding Observations on Israel from July 2010, the UN Human Rights Committee stated its concern about the forced evictions of the Bedouin population and inadequate consideration of their traditional needs in the planning and development of the Naqab. It also called on Israel to “respect the Bedouin population’s right to their ancestral land and their traditional livelihood based on agriculture...” (para. 24).

4. A decade of impunity for those responsible for the October 2000 killings

On the eve of the tenth anniversary of the events, no one has yet been held accountable for the deaths and injuries of Palestinian citizens of Israel in October 2000. In November 2000, the official Or Commission of Inquiry was established to investigate the causes and circumstances of the killing of 13 unarmed Palestinian citizens and injury of hundreds of others at the hands of security forces during protest demonstrations in October 2000. After three years of work, the Commission issued its findings and conclusions,⁸ in which it recommended that Mahash (the Israeli Police Investigation Unit) investigate the killings. Mahash released its own report on the investigation in September 2005, in which it recommended that no indictments should be issued, in contradiction to the Or Commission’s recommendations. Shortly afterwards, following intense public pressure, the Attorney General (AG) decided to conduct a review of Mahash’s decision.

⁶ See, Adalah, *Adalah Demands Immediate Criminal Investigation into Police Officers Brutal Destruction of Arab Bedouin Unrecognized Village al-Arakib in the Naqab*, 3 August 2010, available at: http://www.adalah.org/eng/pressreleases/pr.php?file=03_08_10_2

⁷ See, Adalah, *For the Second Time in Eight Days Police Use Brutal Force to Violently Evacuate Arab Bedouin Residents of Unrecognized Village of al-Arakib in the Naqab*, 4 August 2010, available at: http://www.adalah.org/eng/pressreleases/pr.php?file=04_08_10

⁸ In its final report issued in September 2003, the Commission found no justification for opening fire, deemed the use of live ammunition and snipers unjustified in every instance, and found chief police commanders responsible for the unjustified use of excessive force.

Three years later, in January 2008, the AG endorsed Mahash's report and announced the final closure of the case against the police over the deaths and injuries, with not one indictment filed.⁹ **The inability or unwillingness of Israel to properly investigate and prosecute this most serious instance of police brutality and the state-sanctioned impunity afforded to the police** is extremely dangerous and stands to make similar incidents of state violence more likely in the future.¹⁰

While none of the police officers responsible for the shootings, killings, and injuries faced indictment, approximately 750 Palestinian citizens of Israel who took part in the protest were detained, hundreds of whom were indicted.

The official Or Commission of Inquiry emphasized in its report that the hostility to Arab citizens by police, which is fueled by negative views prior to these incidents, must be changed. A recent case in which a police officer shot a Palestinian dead at close range clearly demonstrates that no such change has occurred. This event is not an isolated incident, but one which has been repeated on numerous occasions.

On 7 June 2009, Police Officer Shahar Mizrahi was convicted of killing Mr. Mahmoud Ghanayem, a 24-year-old Palestinian Arab citizen of Israel from the Palestinian village of Baqa al-Garbiyyah, in July 2006. In a decision delivered on 21 July 2010, the Israeli Supreme Court doubled a 15-month prison sentence imposed on Officer Mizrahi by the Haifa District Court to 30 months. In increasing the sentence, the court emphasized that Mr. Ghanayim had not posed any threat to the officer's life when Officer Mizrahi shot at him deliberately at close range.

Despite the clear condemnation, the Supreme Court's decision was met by an unprecedented wave of protest by the police authorities, the Organization for the Rights of Police Officers and the Minister of Internal Security, who made a joint request to grant Officer Mizrahi a pardon to prevent his imprisonment. However, not one word of criticism was raised against his criminal conduct, and no mention was made of the lessons to be learned.

On 25 July 2010, Adalah sent a letter to the Minister of Justice and the Attorney General requesting that they not support a request to pardon Mizrahi. In the letter, Adalah stated that in requesting the pardon, the police leadership is sending the message that a police officer can break the law with impunity and with the support of his fellow officers. This attitude creates an environment where those who are expected to be held to the highest standards become the very people who encourage the use of excessive force and violation of law.¹¹

⁹ The AG has filed indictments in relation to the events of October 2000 only against Arab citizens, including relatives of the deceased. For more information, see: <http://www.adalah.org/eng/october2000.php>. To view a summary of the AG's decision, see: <http://www.justice.gov.il/NR/rdonlyres/5B88648A-D537-47E1-9CE8-EE9D586CFCFE/9728/english2.doc>

¹⁰ The UN Special Rapporteur on Extra-Judicial Executions discussed the failure to issue indictments in his report of 2 May 2008. Referring to his previous communication to Israel, he stated that, "This outcome... would appear to fall short of the international standards."

¹¹ *Haaretz*, "The lawmen vs. the law: The support former policeman Shahar Mizrahi received from top officers as he entered prison sends a message that Mizrahi acted legally even though the court saw it differently," 10 August 2010, available at: <http://www.haaretz.com/print-edition/opinion/the-lawmen-vs-the-law-1.307059>

5. Rights violations addressed by the UN Human Rights Committee in its Concluding Observations on Israel, issued 29 July 2010

Many of the aforementioned issues and others were recently raised by the UN Human Rights Committee. The Committee, which monitors the implementation of the International Covenant on Civil and Political Rights (ICCPR), issued its [Concluding Observations on Israel](#) on 29 July 2010. The Committee found a large number of violations of Israel's obligations under the ICCPR and voiced concerns about Israeli laws, policies and practices that violate the rights of Arab Palestinian citizens of Israel. It made a series of recommendations to Israel to uphold the rights of the Palestinian minority in Israel, as protected by the ICCPR.

The Concluding Observations¹² addressed many of the issues brought before the Committee by Adalah in its [two NGO reports](#) on Palestinian Arab citizens of Israel, and in oral interventions at the review sessions in Geneva in July 2010. The Committee's Concluding Observations on the Arab minority addressed the following issues:

- *Principle of equality:* Israel's Basic Law: Human Dignity and Liberty does not contain a general provision for equality; Israel should amend its Basic Laws and other legislation to include the principle of non-discrimination (para. 6).
- *Permanent state of emergency:* The Committee is concerned at Israel's prolonged review of the ongoing state of emergency, declared in 1948 (para. 7).
- *Ban on family unification:* The Committee is concerned that the Citizenship and Entry into Israel Law remained in force and called on Israel to revoke the law and facilitate family reunifications of all citizens and permanent residents (para. 15).
- *Non-Jewish holy sites:* The Committee is concerned at frequent disproportionate restrictions for non-Jews to access places of worship; Israel should protect the rights of religious minorities, ensure equal access to places of worship, and include holy sites of religious minorities in its list of holy sites (para. 20).
- *Status of the Arabic language:* The Committee is concerned at the limited use of Arabic by Israel's authorities; Israel should make its public administration fully accessible in Arabic, consider translating Supreme Court cases into Arabic, and ensure that all road signs are available in Arabic (para. 23).
- *Cultural contact with other Arab communities:* The Committee is concerned at severe limitations on the right to cultural contact with other Arab communities based on the travel ban to an "enemy State"; Israel should guarantee the right of minorities to enjoy their own culture, including by travelling abroad (para. 23).

¹² Concluding Observations of the Human Rights Committee – Israel, CCPR/C/ISR/CO/3, 29 July 2010, available at: <http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.ISR.CO.3.doc>

- *The Arab Bedouin in the Naqab (Negev)*: The Committee is concerned at forced evictions of the Bedouin population; Israel should respect the Bedouin's right to their ancestral land and their traditional livelihood, and guarantee access to health, education and water in the unrecognized villages (para. 24).

Recommendations

Adalah calls on the European Union to urge the State of Israel to:

- Implement the Concluding Observations of the UN Human Rights Committee, including as they relate to the rights of Arab Palestinian citizens of Israel, as protected by the ICCPR.
- Amend or repeal laws that discriminate against Arab Palestinian citizens of Israel, directly or indirectly, and harm their right to equality, and oppose all pending bills that discriminate against Arab citizens of Israel, on the basis of the principle of non-discrimination.
- Respect and uphold the political rights and freedoms of Arab civil society leaders and MKs, as the elected representatives of the Arab national minority in Israel.
- Cease home demolitions in the Arab Bedouin unrecognized villages in the Naqab as they constitute cruel, inhuman and degrading treatment (UN Committee Against Torture, Concluding Observations on Israel, para. j, 2002). Allow the residents of the unrecognized village of al-Araqib to return to their land with full compensation, and grant official recognition al-Araqib and the other unrecognized villages and refrain from forcibly evicting the Arab Bedouin from them.
- Re-examine the Attorney General's decision of 2008 to close the cases into the killings of 13 Arab Palestinian citizens of Israel in October 2000 and the injury of hundreds of others in order to ensure accountability for the victims' families.
- Bring an end to the pervasive culture of impunity within the police and security forces for acts of excessive force and brutality against Palestinians and ensure that all law enforcement officers guilty of criminal conduct are held to account.

Yours sincerely,

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