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Re: Key concerns regarding Palestinian Arab citizens of Israel under the EU-Israel ENP Action Plan, 2010 (including two Annexes)

Dear Colleagues,

In response to the EU's request for contributions, Adalah is sending its key concerns regarding the rights of Palestinian Arab citizens of Israel and Israel's implementation of the EU-Israel ENP Action Plan in 2010, towards the drafting of the new ENP progress reports. Adalah welcomes this opportunity to raise five key concerns:

- (1) A slew of newly enacted laws and pending bills in the Knesset that discriminate against Arab citizens of Israel;
- (2) Attacks on the Arab political leadership in Israel;
- (3) The government's push to demolish and evacuate the unrecognized Arab Bedouin villages in the Naqab_(Negev);
- (4) Over a decade of impunity for those responsible for the October 2000 killings;
- (5) Rights violations against the Arab minority in Israel as addressed by the UN Human Rights Committee in its Concluding Observations on Israel, July 2010

We hope these issues will be noted with grave concern and raised in a critical manner by the European Union in its upcoming progress report. The information contained in this report demonstrates that Israel has made little-to-no progress in fulfilling its commitments towards the Palestinian Arab minority in Israel under the EU-Israel ENP Action Plan in 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 from May 2010, where it found 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.

Key Concerns

1. New laws and bills that discriminate against Arab citizens of Israel

The current right-leaning Knesset, elected in February 2009, has continued to bring a flood of discriminatory legislation that targets Palestinian Arab citizens of Israel in a wide range of fields.² New bills that directly or indirectly target Palestinians in Israel – as well as Palestinians in the OPT and the Palestinian refugees – have appeared on a near-weekly basis during 2010, as the legislative agenda of the government coalition is pushed through the Knesset. These new laws and bills seek, inter alia, to dispossess and exclude Arab citizens from the land; turn their citizenship from a right into a conditional privilege; undermine the ability of Arab citizens of Israel and their parliamentary representatives to participate in the political life of the country; criminalize political expression or acts that question the Jewish or Zionist nature of the state; and privilege Jewish citizens in the allocation of state resources. A group of new bills also seek to curtail the freedom of association and expression of NGOs in Israel. Some of the legislation is specifically designed to preempt, circumvent or overturn Supreme Court decisions providing protection for these rights.

Annex 1 provides details of 20 discriminatory new laws and bills tracked by Adalah since the election of the new government. They include:

- *Amendment (2010) to the Negev Development Authority Law (1991): Individual settlements*
- *Amendment (2010) to The Land (Acquisition for Public Purposes) Ordinance (1943)*
- *Absorption of Discharged Soldiers Law (1994) (Amendment No. 12) (2010)*
- *Bill to revoke citizenship for acts defined as espionage and terrorism*
- *Bill to amend the Citizenship Law (1952): Loyalty oath for non-Jews seeking citizenship*
- *Bill on disclosure requirements for recipients of support from a foreign political entity (2010) (“NGO Funding Bill”)*
- *Bill for Protecting the Values of the State of Israel (Amendment Legislation) (2009) (“Jewish and Democratic State Bill”)*

2. Attacks on the Arab political leadership

This section discusses the criminal indictments issued by the Attorney General and the revocation of rights and privileges by the Knesset for the legitimate political activities of Arab Members of Knesset (MKs). Adalah is currently representing MKs Mohammed Barakeh, Said Naffaa’ and Haneen Zoabi in these cases.

- *The Indictment of MK Mohammed Barakeh (Head of the Democratic Front for Peace and Equality, “al-Jabha” or “Hadash”):* Member of Knesset (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. After opening in March 2010, the trial proceedings remain on hold, as Adalah submitted a petition to the Supreme Court in August 2010 against the joinder of the four offences, arguing that the

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.

joinder stood to substantially harm the legal defense of MK Barakeh and undermine his rights to parliamentary immunity and a fair trial.

The Inter-Parliamentary Union (IPU) Committee on the Human Rights of Parliamentarians affirmed in March 2010 that leading and participating in demonstrations was an integral part of the parliamentary mandate. It noted its concern that the charges had been brought against MK Barakeh years after the events, and that complaints filed on his behalf against persons who attacked him and other protestors were not investigated. It emphasized that it would examine the possibility of sending an international observer to the relevant proceedings.³

- *The Indictment of MK Said Naffaa – 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, and a meeting he allegedly held in Syria with a Palestinian leader. 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. Adalah has learned that MK Naffaa has been indicted.⁴
- *Revocation of the Parliamentary Privileges of MK Haneen Zoabi*: MK Haneen Zoabi participated in the Gaza Freedom Flotilla as 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 voted to revoke three of MK Zoabi's parliamentary privileges relating to travel abroad and legal expenses for cases until the end of the 18th Knesset. The decision followed several stormy sessions in the Knesset during which MK Zoabi was branded a "terrorist" and "traitor" by Israeli Jewish MKs and subjected to racist remarks and physical threats. On 7 November 2010, Adalah, on behalf of MK Zoabi and the Association for Civil Rights in Israel (ACRI) submitted a petition to the Supreme Court against the Knesset's decision. The petitioners argued that the Israeli Law of Immunity protects every political action of an MK undertaken in his or her role as an MK, and that the Knesset does not have the authority to revoke MK Zoabi's rights and privileges for these political acts.⁵

The President of the EU parliament also expressed concern about the possibility of revocation of MK Zoabi's parliamentary privileges due to her participation in the Gaza Freedom Flotilla in a letter to the Speaker of the Knesset, MK Reuven Rivlin, dated 19 July 2010.⁶ The Speaker of the Knesset responded by letter dated 6 September 2010, maintaining that the decision to revoke three parliamentary privileges is neither "punishment nor does it, in any way, infringe on Ms. Zoabi's parliamentary rights, her immunity or her ability to fulfill her mission as a Member of Knesset in Israel or abroad".⁷

The Inter-Parliamentary Union (IPU) criticized the Knesset's decision on the grounds that it violates a parliamentarian's freedom of expression rights, characterized it as "a punishment,

³ Inter-Parliamentary Union (IPU) Committee on the Human Rights of Parliamentarians, Decision March 2010, On file with Adalah.

⁴ See Adalah's news update, 28 January 2010: http://www.adalah.org/eng/pressreleases/pr.php?file=28_01_10

⁵ See Adalah's press release, 7 November 2010: http://www.adalah.org/eng/pressreleases/pr.php?file=07_11_10

⁶ Letter on file with Adalah.

⁷ Letter on file with Adalah.

for the expression of a political position", which is "unacceptable in a democracy", and called on the Speaker of the Knesset "to take necessary measures to restore all of Ms. Zoabi's parliamentary rights and privileges."⁸

3. The government's push to evacuate the unrecognized Arab Bedouin villages in the Naqab

In 2010, Israel escalated its policy of demolishing homes in the unrecognized villages in the Naqab (Negev) to demolishing entire villages. Once demolished, 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 an attempt to preserve a Jewish demographic majority in the Naqab.⁹ The case of the unrecognized village of al-Araqib illustrates Israel's new stepped-up policy.

On 27 July 2010, residents of the Arab Bedouin unrecognized village al-Araqib in the Naqab were awoken by police at dawn. Police declared the village a "closed area" and began to demolish the homes while the residents were trying to rescue their belongings. As many as 1,300 police officers took part in the evacuation. All 45 houses were razed to the ground and the village's 250 residents were left without roofs over their heads.

During the demolition, the police confiscated all the residents' personal possessions including refrigerators, ovens, closets, bedroom and dining room furniture, textiles, carpets, crafts, etc. They also took property from around, the houses such as electricity generators, plows and flour bags. Representatives of the Tax Authority accompanied the police and illegally seized property of residents in debt to the tax authorities, without prior warning or demand for payment. 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. Residents have attempted to rebuild the village several times, and the state has demolished the new structures each time.¹⁰

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). **Annex 2** is a position paper demonstrating the illegality of Israel's policy of home demolitions in the unrecognized Arab Bedouin villages in the Naqab.

In two other unrecognized villages, Atir-Umm al-Hieran and Tel Arad, the direct intervention of the Prime Minister's Office (PMO) recently resulted in the reversal of a decision to grant recognition to all or part the villages. On 20 July 2010, the National Council for Planning and Building (NCPB) decided to recognize the two villages, in line with a recommendation made by a

⁸ Inter-Parliamentary Union (IPU), Committee on the Human Rights of Parliamentarians, Decision October 2010, On file with Adalah.

⁹ 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.

¹⁰ 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. See Adalah's news update, 3 August 2010:

http://www.adalah.org/eng/pressreleases/pr.php?file=03_08_10_2

special investigator appointed by the NCPB to help consider objections submitted against the Metropolitan Plan for Beer el-Sabe (Beer Sheva) by Adalah, the Regional Council for Unrecognized Villages in the Naqab (RCUV) and Bimkom.¹¹ In response, the PMO requested that the NCPB reconsider its decision; the NCPB held a meeting for that purpose on 16 November 2010, following which it retracted its decision.¹²

Holding the additional session and changing the decision was illegal, unconstitutional and in violation of the principle of the rule of law. It also compromises the independence of the NCPB, the highest decision-making authority in the state in land planning matters, and demonstrates that the government acts as the ultimate decision-maker. Adalah has been struggling for years on behalf of the 1,000 Arab Bedouin residents of Umm al-Hieran-Atir, citizens of Israel, to enable them to remain on their land. Adalah represents the residents in court proceedings, including state lawsuits to evacuate them and demolish their homes, and planning objections.

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

2010 marks the 10th anniversary of the October 2000 killings and to date, no one has been held accountable for the deaths and injuries of Palestinian citizens of Israel. 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,¹³ 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.

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.¹⁴ 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 and the political leadership is extremely dangerous and stands to make similar incidents of state violence more likely in the future.¹⁵ In October 2010, the Israel Democracy Institute (IDI) released a report in Hebrew in which it examined the AG's decisions to close investigations into three

¹¹ See Adalah's news update, 26 November 2007: http://www.adalah.org/eng/pressreleases/pr.php?file=07_11_26

¹² On 16 November 2010, Adalah sent an urgent letter in the name of the RCUV, and Bimkom to the NCPB asking that it reject the request to change its decision and not hold a special session.

¹³ 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.

¹⁴ The Attorney General 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>

¹⁵ 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."

killings cases in October 2000. The IDI concluded that the closure of the three cases was unjustified and improper and that the investigations were not completed.¹⁶

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 an Arab citizen 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 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. The court emphasized that Ghanayim had not posed any threat to his life when Mizrahi shot at him deliberately at close range. 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. Not one word of criticism was raised against his criminal conduct.

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 in which 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.¹⁷

Adalah subsequently uncovered that Mizrahi received a total of NIS 350,000 (over USD \$90,000) in financial assistance from the Israeli police for his legal defense. Mizrahi remained as an employee of the Israeli police after his indictment, after his conviction for manslaughter and after the Supreme Court rejected his appeal and doubled his sentence.¹⁸ Mizrahi began serving his sentence in August 2010.

5. Rights violations against the Arab minority in Israel addressed by the UN Human Rights Committee in its Concluding Observations on Israel, July 2010

Many of the aforementioned issues and others were recently raised by the UN Human Rights Committee, which monitors the International Covenant on Civil and Political Rights (ICCPR), in

¹⁶ See Tomer Zarchin and Jack Khoury, "Police mishandled probe into Israeli Arab riot deaths, report finds," *Haaretz*, 4 October 2010.

¹⁷ *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>

¹⁸ See Adalah's news update, 5 September 2010: http://www.adalah.org/eng/pressreleases/pr.php?file=05_09_10_1

its Concluding Observations on Israel issued on 29 July 2010.¹⁹ The Committee found a large number of violations by Israel of its 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 Observations addressed many issues brought before the Committee by Adalah in its two NGO reports²⁰ 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).
- *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).

¹⁹ 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>

²⁰ See <http://www.adalah.org/newsletter/eng/jun10/docs/REPSONE AAP.pdf>

Recommendations

Adalah calls on the European Union to raise the issues discussed above in its progress report on Israel's implementation of the EU-Israel ENP Action Plan during 2010, and to criticize:

- The legislation of new laws and bills that discriminate against Arab Palestinian citizens of Israel, directly or indirectly, and harm their right to equality, particularly where the government has promoted and lent its support to such legislation.
- The sustained attacks on the political rights and freedoms of Arab MKs in Israel.
- The state's intensified efforts to forcibly demolish and evacuate the unrecognized villages and to relocate Arab Bedouin citizens of Israel to over-crowded townships in the Naqab, and the state's rejection of the alternative of granting recognition to the villages and allowing their residents to remain on their land.
- The failure, over ten years since the events, to indict anyone for the killings of 13 Arab Palestinian citizens of Israel in October 2000 and the injury of hundreds of others and lack of accountability for the victims and their families; and the pervasive culture of impunity within the police and security forces for acts of excessive force and brutality against Arab citizens and lack of accountability for law enforcement officers guilty of criminal conduct.
- Israel's lack of compliance with its obligations under the ICCPR, as documented in by the UN Human Rights Committee in its Concluding Observations, which found serious violations of rights of Arab citizens of Israel in a wide range of areas.

Yours sincerely,

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Annex 1

New Discriminatory Laws and Bills in Israel

29 November 2010

Since the elections in February 2009, which brought one of the most right-wing government coalitions in the history of Israel to power, a flood of discriminatory legislation has been introduced in the Knesset that targets Palestinian Arab citizens of Israel in a wide range of fields. New bills that directly or indirectly target Palestinians in Israel – and Palestinians in the OPT and the Palestinian refugees – appear on a near-weekly basis, as the legislative agenda of the right-wing government coalition is pushed through the Knesset. These new laws and bills seek, inter alia, to dispossess and exclude Arab citizens from the land; turn their citizenship from a right into a conditional privilege; undermine the ability of Arab citizens of Israel and their parliamentary representatives to participate in the political life of the country; criminalize political expression or acts that question the Jewish or Zionist nature of the state; and privilege Jewish citizens in the allocation of state resources. Some of the legislation is specifically designed to preempt, circumvent or overturn Supreme Court decisions providing protection for these rights.

This short paper provides a list of 20 main new laws and currently-tabled bills that discriminate against the Palestinian minority in Israel and threaten their rights as citizens of the state, and in some cases harm the rights of Palestinian residents of the OPT.²¹ While this paper does not cover the entire body of discriminatory and/or racist legislation currently pending in the Knesset, it lists bills that have a serious chance of passing into law and/or stand to cause significant harm to the rights of Palestinians, if enacted. This paper further details legal action taken by Adalah and international advocacy initiatives intended to raise awareness of the legislation, before both the UN and EU.²² These new discriminatory laws and bills accompany a series of criminal indictments issued by the Attorney General and Knesset-instigated punitive measures pursued against Arab Members of Knesset (MKs).²³ Adalah is currently representing Arab MKs Mohammed Barakeh, Said Naffaa' and Haneen Zoabi in these cases.

Land and Planning Rights

1. The Israel Land Administration (ILA) Law (2009)

The law, enacted by the Knesset on 3 August 2009, institutes broad land privatization. Much of the land owned by the Palestinian refugees and internally-displaced persons (currently held by the state as “absentees’ property”), some of the lands of destroyed and evacuated Arab villages, and land otherwise confiscated from Palestinian citizens, can be sold off under the law and

²¹ See also, Briefing Note by Adalah and the Arab Association for Human Rights, 4 June 2009:

http://www.adalah.org/features/var/Adalah_HRA_EU_upgrade_letter_FINAL_4.6.09%5B1%5D.pdf; Adalah’s Special Report: 10 New Discriminatory Laws, June 2010: <http://www.adalah.org/eng/10.php>

²² See, e.g., Adalah’s NGO report to the UN Human Rights Committee, June 2010:

http://www.adalah.org/newsletter/eng/jun10/docs/hrc_response.pdf; Adalah’s NGO report to the UN Committee on Economic, Social and Cultural Rights, October 2010:

<http://www.adalah.org/newsletter/ara/oct10/Adalah%20CESCR%20Report%20October%202010.pdf>

²³ See Adalah Briefing Paper, “Restrictions on Human Rights Organizations and the Legitimate Activities of Arab Political Leaders in Israel,” submitted to the European Parliament, Committee on Foreign Affairs, Sub-Committee on Human Rights, June 2010: <http://www.adalah.org/newsletter/eng/jun10/docs/bp.pdf>. Since the publication of this paper, Adalah has submitted petitions to the Supreme Court on behalf of MK Mohammed Barakeh (HCJ 5754/10, *Barakeh v. Tel Aviv Magistrate Court, et. al*), and MK Haneen Zoabi (HCJ 8148/10, *Zoabi v. The Knesset*).

placed beyond future restitution claims. The law further permits land exchanges between the state and the Jewish National Fund (JNF), the land of which is exclusively reserved for the Jewish people.²⁴ It also grants decisive weight to representatives of the JNF (6 out of 13) in a new Land Authority Council, to replace the ILA, which manages 93% of the land in the state.

[Position Paper](#) | [Press Briefing](#)

2. Amendment (2010) to The Land (Acquisition for Public Purposes) Ordinance (1943)

This British Mandate-era law allows the Finance Minister to confiscate land for “public purposes”. The state has used this law extensively, in conjunction with other laws such as the Land Acquisition Law (1953) and the Absentees’ Property Law (1950), to confiscate Palestinian land in Israel. The new amendment, which passed on 10 February 2010, confirms state ownership of land confiscated under this law, even where it has not been used to serve the original confiscation purpose. It allows the state not to use the confiscated land for the original confiscation purpose for 17 years, and prevents landowners from demanding the return of confiscated land not used for the original confiscation purpose if it has been transferred to a third party, or if more than 25 years have elapsed since the confiscation. The amendment expands the Finance Minister’s authority to confiscate land for “public purposes,” which under the law includes the establishment and development of towns, and allows the Minister to declare new purposes. The new law was designed to prevent Arab citizens from submitting lawsuits to reclaim confiscated land: over 25 years have passed since the confiscation of the vast majority of Palestinian land, and large tracts have been transferred to third parties, including Zionist institutions like the JNF.

[Press Briefing](#)

3. Amendment (2010) to the Negev Development Authority Law (1991): Individual settlements

“Individual settlements” are a tool used by the state to provide individual Jewish families with hundreds and sometimes thousands of dunams of land for their exclusive use, and keep it out of the reach of Arab citizens of Israel in the Naqab (Negev). There are around 60 individual settlements in the Naqab, stretching over 81,000 dunams, often established without permits and contrary to planning laws. The amendment, passed in July 2010, recognizes all individual settlements in the Naqab and gives the Negev Development Authority the power to make recommendations the Israel Land Administration to allocate lands for individual settlements. The amendment followed an Israeli Supreme Court ruling in June 2010 that allowed for the recognition of individual settlements in the Naqab covered by the “Wine Path Plan”. The court delivered the ruling on a petition filed against the Wine Path Plan by Adalah, Bimkom and the Negev Coexistence Forum in 2006.²⁵ While the amendment affords official status to the individual settlements, which are provided with all basic services, the unrecognized Arab Bedouin villages in the Naqab are denied status and their 80,000 inhabitants, all citizens of Israel,

²⁴ See HCJ 9205/04, *Adalah v. Israel Land Administration (ILA), et al.* (case pending). This Supreme Court petition was filed by Adalah in 2004 demanding the cancellation of an ILA policy permitting the marketing and allocation of JNF-controlled lands by the ILA (a state agency) through bids open only to Jewish individuals. .

²⁵ HCJ 2817/06, *Adalah, et al. v. The National Council for Planning and Building, et al.* (decision delivered 15 June 2010)

live without the most basic of services. In its judgment, the court did not address the petitioners' arguments concerning the unequal land distribution and discrimination against the unrecognized villages entailed by the plan.

[Press Briefing](#)

4. "Admissions Committee" Law

The Admissions Committees Law is due to be submitted for final reading before the Knesset during the week of 29 November 2010, and is expected to be passed into law.²⁶ The new legislation anchors into law the operation of "admissions committees," bodies that select applicants for housing units and plots of land in "community towns" and in community neighborhoods in agricultural towns in Israel, which sit on "state land". The committees include "a representative from the Jewish Agency or the World Zionist Organization", quasi-governmental entities, and are used in part to filter out Arab applicants, in addition to other marginalized groups. Admissions committees currently operate in 695 agricultural and community towns, which together account for 68.5% of all towns in Israel and around 85% of all villages. Under the new law, admissions committees assess applicants according to whether they suit the "social life in a community" and fit into the "social, cultural fabric" of the town,²⁷ in addition to other specific conditions stipulated by the communal associations in each community. Entrenching the arbitrary criterion of "social suitability" in the law stands to perpetuate discrimination against Palestinian citizens of Israel in accessing state land and further institutionalize racially-segregated towns and villages throughout the state.²⁸ The ILA instituted "social suitability" criteria in order to bypass the landmark Supreme Court decision in *Qa'dan* from 2000,²⁹ in which the court ruled that the state's use of the Jewish Agency to exclude Arabs from state land constituted discrimination on the basis of nationality. Adalah petitioned the Supreme Court in 2007 to challenge the operation of admissions committees on behalf of the Arab Zubeidat family – who had been rejected by the admissions committee in the community town of Rakevet on the humiliating ground of their "social unsuitability" – as well as Mizrakhi Jewish groups and gays.³⁰ Adalah plans to challenge the law, if enacted, before the Supreme Court.

[Data Paper](#)

Civil and Political Rights

5. Bill to revoke citizenship for acts defined as espionage and terrorism

A bill currently before the Knesset seeks to permit the revocation of the citizenship of persons convicted of espionage and assisting the enemy in time of war, and acts of terrorism as defined

²⁶ On 15 November 2010, Adalah sent a letter to several ministers, the Chair of the Knesset's Constitution, Law and Justice Committee, the Attorney General, and the Director General of the Israel Land Administration asking that the bill be cancelled. The letter is on file with Adalah (Hebrew).

²⁷ Article 6C(a) of the bill.

²⁸ See Adalah news update, 4 November 2010: http://www.adalah.org/eng/pressreleases/pr.php?file=04_11_10_2

²⁹ HCJ 6698/95, *Qa'dan v. The Israel Land Administration, et al.*, P.D. 54(1) 258, decision delivered March 2000.

³⁰ HCJ 8036/07, *Fatima Ebriq Zubeidat, et al. v. The Israel Land Administration, et al.* In May 2010, Adalah submitted an amended petition challenging a new ILA decision permitting admissions committees and their use of the criterion of "social suitability". See Adalah news update, 27 July 2010:

http://www.adalah.org/eng/pressreleases/pr.php?file=27_07_10_1

under the Prohibition on Terrorist Financing Law (2005).³¹ On 26 October 2010, Adalah wrote to the Chair of the Knesset's Internal Affairs and Environment Committee asking him not to support the bill. Adalah argued that the legitimate path for dealing with such alleged crimes is criminal law, and that the bill is one of a series of laws and bills targeting Arab citizens that seek to make their citizenship conditional, in line with the right-wing political rallying cry of "no citizenship, no loyalty." This new amendment follows a prior amendment made to the Citizenship Law in 2008 which provides that citizenship may be revoked for "breach of trust or disloyalty to the state".³² The revocation of citizenship is one of the most extreme punitive measures at the disposal of states, and may result in cruel and disproportionate punishment, particularly when pursued against a particular group of citizens, in this case Palestinian citizens of Israel. The bill appeared following the arrest and indictment of Arab civil society leader Ameer Makhoul on charges of espionage.

6. Bill to amend the Citizenship Law (1952) imposing loyalty oath for non-Jews seeking citizenship

A proposed amendment to the Citizenship Law requires all non-Jews seeking citizenship via the naturalization process to declare an oath of loyalty to Israel as a "Jewish and democratic state." It would replace the text of the current declaration, which reads, "I declare that I will be a loyal citizen of the State of Israel." Requiring new citizens to swear allegiance to Israel as a "Jewish and democratic state" marginalizes the status of Arab citizens of Israel by deeming Israel a state for Jews only. The enactment of the amendment may prove to be a slippery slope as, in accordance with numerous other bills introduced in the Knesset, declarations of allegiance to a Jewish and democratic state could soon be required of all ministers, Knesset members, civil service employees, etc.³³ Adalah sent a letter to the Prime Minister, Attorney General, and Justice Minister on 7 October 2010, arguing that the bill specifically targets Palestinian Arab citizens of Israel, whose "non-Jewish" spouses – Palestinians from the Occupied Palestinian Territory (OPT) and other Arab states – are those who would have to swear the oath. The bill received governmental approval on 10 October 2010 but does not currently enjoy the support of a Knesset majority.

[Press briefing](#)

7. Bill (2009) to amend the Basic Law: Human Dignity and Liberty and limit the judicial review powers of the Supreme Court to rule on matters of citizenship

³¹ Legislative bill no. 2366/18, introduced on 3 May 2010.

³² See, e.g., Amendment No. 9 (Authority for Revoking Citizenship) (2008) to article 11 of the Citizenship Law (1952). "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. The law allows for the revocation of citizenship without requiring a criminal conviction.

³³ See, e.g., a currently-proposed amendment to The Basic Law: The Government – Loyalty Oath (Legislative bill no. 5/18, introduced 1 April 2009), which stipulates that upon taking office, all ministers must make an oath to the state as a "Jewish, Zionist and democratic state" and to the values and symbols of the state. Ministers are currently required to make an oath only to the state. Two similar bills seeking to amend *The Basic Law: The Knesset* propose to impose loyalty oaths on MKs. The first (Legislative bill no. 7/18, introduced 1 April 2009) requires all MKs to make an oath to the state as a "Jewish, Zionist and democratic state" and to the values and symbols of the state. The second (Legislative bill no. 226/18, introduced 1 April 2009) requires MKs to swear allegiance to the State of Israel as a "Jewish and democratic state." These bills place severe restrictions on the rights of Arab citizens of Israel of political participation.

This bill was proposed in December 2009 and seeks to limit the judicial review powers of the Israeli Supreme Court on issues related to citizenship. It was put forward in the context of Supreme Court hearings on petitions filed against provisions of the Citizenship and Entry into Israel Law (Temporary Order) – 2003 that prohibit entry into Israel by Palestinians in the OPT and other “enemy states,” as defined by Israel (such as Syria, Lebanon, Iran and Iraq) for purposes of family unification with Israeli citizens, overwhelmingly Arab citizens of Israel.³⁴ Adalah sent a letter to the Justice Minister and the Attorney General on 18 December 2009 requesting that they reject the bill on the grounds that it violates the right of every person to access the courts, as well as the principle of the separation of powers, and thus the rule of law.³⁵ There is no coalition agreement to date to promote the bill.³⁶

8. Bill (2009) to Amend to The State Budget Law (1985) (The “Nakba Bill”)

The “Nakba Bill” proposes to ban all bodies that receive state funding on an activity that, inter alia, “commemorates Independence Day or the day of the establishment of the state as a day of mourning.”³⁷ Palestinians traditionally mark Israel’s official Independence Day as a national day of mourning and organize commemorative events. In its original form, the bill sought to ban all commemoration of the Nakba. According to the current draft of the legislation, any state-funded body found to have commemorated the Nakba on Israel’s Independence Day faces a fine of up to ten times the sum expended on the commemoration. The ban affects not only public institutions like schools, but also NGOs and other civil society and political organizations that receive even a small amount of state funding. The bill imposes severe limitations on freedom of expression and association.³⁸ The Knesset passed the bill on first reading in March 2010.

Political Participation

9. The Regional Councils Law (Date of General Elections) (1994) Special Amendment No. 6 (2009)

The law 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 of the establishment of a new regional council. 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 (pop: 25,000) and was established over six years ago. The result of the law is that no elections have been held and local people are not represented or governing themselves. The current government-appointed council, which is comprised of a majority of Israeli Jewish members and appointed by the Interior Minister, remains in place. On 27 April 2010, Adalah and the

³⁴ See e.g., HCJ 830/07, *Adalah v. The Minister of the Interior, et al.* (case pending).

³⁵ Letter on file with Adalah (Hebrew).

³⁶ A series of bills pending in the Knesset seek to amend The Basic Law: The Judiciary in order to cancel the power of the Supreme Court to invalidate laws enacted by the Knesset. The Ministerial Committee on Legislation considered the bill on 18 October 2010, but the Prime Minister opposed it and it did not advance further.

³⁷ Article 3B(a)(1) of The State Budget Law, Amendment: Prohibited Expenses (2009), legislative bill no. 18/1403, introduced 9 March 2010.

³⁸ See Sawsan Zaher, “The Prohibition on Teaching the Nakba in the Arab Education System in Israel,” Adalah’s Newsletter, Volume 74, August/September 2010:

<http://www.adalah.org/newsletter/eng/sep10/docs/Sawsan%20Nakba%20English%20final.pdf>

Association for Civil Rights in Israel (ACRI) petitioned the Supreme Court of Israel to demand the cancellation of the amendment and ask the court to order the Interior Minister to announce the holding of democratic elections in the regional council immediately.³⁹

[Press briefing](#) | [Petition](#) (Hebrew)

Economic, Social and Cultural Rights

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

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 a landmark Israeli Supreme Court decision from 2006⁴⁰ in which the court ruled unconstitutional a government decision from 1998 which classified 553 Jewish towns and only 4 small Arab villages as NPAs. On 20 June 2010, after four years of non-compliance by the state and additional litigation, Adalah filed a motion for contempt of court to the Supreme Court against the Prime Minister due to the government’s failure to implement the court’s decision and the resulting perpetuation of discrimination against Arab citizens of Israel.⁴¹

[Press briefing](#) | [Motion for contempt](#) (Hebrew)

A further section of the law stipulates that children who do not receive the vaccinations recommended by the Ministry of Health will no longer be provided with financial support in the form of “child allowances”. 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 due to the inaccessibility of health care. The provision therefore discriminates against them on the basis of their national belonging. The Ministry of Health recently closed down “mother and child” clinics in three Arab Bedouin towns which provide these vaccinations, and reopened just two of them after Supreme Court litigation by Adalah.⁴² Adalah submitted a petition to the Israeli Supreme Court on 7 October 2010, demanding the annulment of the amendment, which will come into effect on 15 December 2010.⁴³

[Press briefing](#) | [Petition](#) (Hebrew)

11. Absorption of Discharged Soldiers Law (1994) (Amendment No. 12) (2010)

According to the new law, enacted in July 2010, any registered university or college student who has completed his or her military service and is a resident of a designated “National Priority Area” such as the Naqab, the Galilee or the illegal Jewish settlements in the West Bank will be

³⁹ HCJ 3183/10, *Hussein Rafeea, et al. v. The Minister of the Interior, et al.* (case pending). A court hearing has been scheduled for 9 February 2011.

⁴⁰ HCJ 2773/98 and HCJ 11163/03, *The High Follow-Up Committee for Arab Citizens in Israel v. The Prime Minister of Israel*. Decision delivered February 2006, case brought by Adalah.

⁴¹ A court hearing has been scheduled for 2 February 2011.

⁴² HCJ 10054/09, *Wadad El-Hawashly, et al. v. Ministry of Health*. For more information, see Adalah news update, 11 August 2010: http://www.adalah.org/eng/pressreleases/pr.php?file=11_08_10

⁴³ HCJ 7245/10, *Adalah v. Minister of Welfare and Social Affairs* (case pending). A hearing has been scheduled for 29 November 2010.

granted a “compensation package” including: full tuition for the first year of academic education; a year of free preparatory academic education; and additional benefits in areas like student housing. This benefits package goes far beyond and adds to the already extensive educational benefits package that is enjoyed by discharged soldiers in Israel. In general, Palestinian Arab citizens of Israel are exempt from military service and thus they are excluded from receiving these state-allocated benefits and discriminated against on the basis of their national belonging. This new law follows a 2008 amendment to the Absorption of Discharged Soldiers Law that anchors the use of the military service criterion in determining eligibility for student dormitories in all higher education institutions into law, and grants broad discretion to these institutions to grant additional economic benefits to discharged soldiers, regardless of the benefits provided to them under any other law.⁴⁴ A number of other bills that condition various benefits on the performance of military/national service are also pending in the Knesset.⁴⁵

[Press briefing](#) | [Position paper](#) (Hebrew)

12. Bill to strip MKs suspected of crimes of their Knesset pension

The bill affects current or former Members of Knesset declared by the Attorney General to be alleged suspects or defendants or convicted of crime, who do not appear at a criminal trial against them while under investigation for a crime punishable by at least five years' imprisonment. The bill was drafted in response to the exile of former Arab MK Dr. Azmi Bishara (Balad/Tajammaa), who left Israel in March 2007 after police announced he was suspected of providing information to Hezbollah during the Second Lebanon War. However, the state has not pointed to any clear evidence against Dr. Bishara; if there is any evidence, it has been kept secret and undisclosed and no indictment has been issued against him. These facts indicate the arbitrary nature of the bill; even MKs against whom there is no clear evidence could be harmed and lose their pensions. On 9 November 2010, the Knesset House Committee voted to approve the bill in its first reading and to pass it to the Knesset plenum.⁴⁶

Criminal Procedure Laws: Prisoners and Detainees

13. Bill threatening to further violate basic rights of security detainees

This bill,⁴⁷ tabled in 2010, is designed to extend the validity of harsh, special detention procedures for those suspected of security offenses. While neutral on its face, in practice the bill would apply to and be used mainly against Palestinians from Gaza and Palestinian citizens of Israel. The special procedures allow law enforcement authorities to delay bringing a security suspect before a judge for up to 96 hours after arrest (instead of 48 hours for other detainees). It

⁴⁴ The amendment followed a precedent-setting decision by the Haifa District Court which accepted a petition filed by Adalah on behalf of three Arab students from the University of Haifa. The court ruled that the use of the criterion of military service in determining eligibility for student dormitories discriminates against Arab students. The petition argued that the university is not authorized to add benefits to discharged soldiers that exceed those granted to them by the Absorption of Discharged Soldiers Law. Civil Lawsuit (Haifa District Court) 217/05, *Naamnih et al. v. University of Haifa*, delivered August 2006.

⁴⁵ See Adalah and the Arab Association for Human Rights (HRA), Briefing to the EU, 4 June 2009:

http://www.adalah.org/features/var/Adalah_HRA_EU_upgrade_letter_FINAL_4.6.09%5B1%5D.pdf

⁴⁶ See, e.g., Zvi Zrahiya, Former Israeli Arab MK set to lose pension for skipping trial, *Haaretz*, 9 November 2010.

⁴⁷ Entitled Criminal Procedure Law (Suspects of Security Offenses) (Temporary Order) (Amendment No. 2) (2010), the bill was discussed by the Knesset's Constitution, Law and Justice Committee on 25 October 2010.

also allows the courts to extend a security suspect's detention for up to 20 days at a time (instead of 15 days) and to hold extension of detention hearings in his/her absence. In this last respect, the bill seeks to bypass a February 2010 Supreme Court decision that struck down article 5 of the Criminal Procedure (Detainees Suspected of Security Offences) (Temporary Order) Law (2006),⁴⁸ which stipulated that security suspects could have their pre-trial detention extended in their absence.⁴⁹ The law removes a number of essential procedural safeguards from detainees, thus placing them at a greater risk of torture and ill-treatment. Adalah sent a letter to the Knesset's Constitution, Law and Justice Committee on 21 October 2010 to demand that the bill be rejected. The bill has passed first reading in the Knesset's Constitution, Law and Justice Committee. The next reading is scheduled for 14 December 2010.

[Press briefing](#)

14. Bill to expand the circumstances in which lawyers can be prohibited from meeting sentenced security prisoners or and prisoners involved in organized crime

This bill would allow the Israel Prison Service (IPS) to prohibit lawyers from meeting sentenced security prisoners for 7 days (currently the law allows 24 hours), a period that which could be extended for up to as many as 90 days (the law currently allows for only 5 days), with the approval of the state prosecutor. According to the bill, the District Court can extend this prohibition for up to 6 months, instead of 21 days under the current law. Currently there are over 4,700 sentenced Palestinians being held as security prisoners in Israeli prisons. The bill also applies to sentenced prisoners involved in "organized crime". Significantly, the legislation targets the lawyers as well as the prisoners. The bill will be discussed by the Ministerial Committee on Legislation on 28 November 2010.

15. The "Shalit laws"

Several bills currently before the Knesset's House Committee seek to impose further severe restrictions on Palestinian security prisoners held in Israeli prisons. All of these bills have passed a preliminary vote in the Knesset plenum and enjoy strong, broad-based support among MKs. The purpose of these additional restrictions on Palestinian prisoners is to bring pressure to bear on Hamas to release captured Israeli soldier Gilad Shalit. This is an illegitimate political purpose that cannot be used to justify the denial of prisoners' basic rights. If approved by the Knesset, these bills would render Palestinian prisoners vulnerable to being used as hostages or bargaining chips in negotiations for prisoner exchanges.

- *The Preventing Visits Bill – 2009*⁵⁰155 seeks to impose a blanket ban on prisoners who belong to an organization designated as a terror organization from receiving visits in prison.⁵¹

⁴⁸ Originally passed by the Knesset as a "temporary order" for 18 months, the law was extended in January 2008 for three years.

⁴⁹ HCJ 2028/08, *The Public Committee Against Torture in Israel, et al. v. The Minister of Justice* (petition withdrawn 24 March 2009). For more information, see Adalah news update, 23 February 2010: http://www.adalah.org/eng/pressreleases/pr.php?file=23_02_10

⁵⁰ Bill no. P/18/735, passed by the Knesset by a 52-10 majority, with 1 abstention

⁵¹ In accordance with this bill, such prisoners would only be entitled to visits by the International Committee of the Red Cross (ICRC), and these would be limited to once every three months.

- *The Restriction of Visitation for a Security Prisoner Bill – 2010*⁵² proposes that any prisoner who belongs to an organization designated as a terror organization that holds an Israeli captive should be denied visits in prison and the right to meeting a lawyer.
- *The Release of Captives and Kidnapped Persons Bill – 2009*⁵³ states that if an organization designated as a terror organization holds an Israeli captive and demands the release of a specific prisoner held in an Israeli jail, then this prisoner should be placed in “absolute isolation and be prevented from contact with another human being.”
- *The Imprisonment of Requested Prisoners – 2009*⁵⁴ states that any prisoner whose release is conditioned on the release of an Israeli held captive by an organization designated as a terror organization should be denied any right that could be restricted on security reasoning, held in isolation indefinitely and not be entitled to early release or parole. Once such prisoners have served their sentence, they should be declared a detainee and continue to be held.

Freedom of Association

The following series of bills seek to curtail the freedom of association and expression of NGOs in Israel. This barrage of bills is mainly a response to claims that the legitimate work of these organizations in defense of the rights of Palestinians constitutes a deliberate campaign to “delegitimize” Israel following the publication of the Goldstone Report in September 2009.⁵⁵ The fourth bill noted here specifically targets Arab organizations in Israel on lines similar to that of the “loyalty bills” noted above.

16. Bill on disclosure requirements for recipients of support from a foreign political entity (2010) (“NGO Funding Bill”)

The original version of this draconian bill received the government support and was passed a preliminary Knesset vote in February 2010. The bill threatened the work and existence of human rights NGOs by defining them as “political entities”; forcing NGO representatives to declare foreign government funding at every public appearance; revoking their tax-exempt charity status; and demanding the registration of members’ identity numbers and addresses. The bill has since been modified twice and some of the harshest provisions deleted. However, recent drafts of the bill impose invasive reporting requirements for foreign government funds, including details of the purpose of the grant, the sum, the identity of the donor, and details of all undertakings between donor and grantee. These details must also be publicized on the websites of the NGOs, Ministry of Justice and Registrar of Associations.⁵⁶

While the bill’s declared purpose is to increase transparency, it is superfluous since all non-profit organizations in Israel are required to list their donors, including foreign governments, on their website and report annually to the government.⁵⁷ Its purpose is rather to hinder NGOs and

⁵² Bill no. P/18/2396, passed by the Knesset by a 51-10 majority.

⁵³ Bill no. P/18/829, passed by the Knesset by a 53-9 majority.

⁵⁴ Bill no. P/18/758, passed by the Knesset by a 54-10 majority, with 1 abstention.

⁵⁵ See, e.g., The Reut Institute, *Building a Political Firewall Against Israel's Delegitimization*, March 2010: <http://www.reut-institute.org/data/uploads/PDFVer/20100310%20Delegitimacy%20Eng.pdf>

⁵⁶ See, e.g.: <http://www.jnews.org.uk/news/modified-bill-to-monitor-funding-of-israeli-ngos-discussed>

⁵⁷ The Association for Civil Rights in Israel (ACRI) has cautioned against “misuse of (purported) transparency and reporting mechanisms for the purpose of negatively impacting the legal and legitimate activities of individuals, groups or bodies of various sorts, and against utilizing these tools to eliminate and silence political or ideological

damage their financial viability, as these restrictions may strongly discourage foreign government funding. It further targets human rights NGOs, the groups in Israel that receive foreign government funding. Right-wing and settler groups are privately funded and will not be affected. Thus the bill is inherently discriminatory. Palestinian organizations and organizations that promote Palestinian rights are particularly vulnerable since they often have no access to funding from Israeli governmental sources and more limited access to private local funding. The bill passed its first reading in the Knesset on 18 October 2010.

[Briefing paper](#) | [English translation of the bill](#)

17. The Associations (Amutot) Law (Amendment – Exceptions to the Registration and Activity of an Association) (2010) (“Universal Jurisdiction Bill”)

This bill, introduced in February 2010, seeks to outlaw associations that provide information to foreigners or are involved in litigation abroad against senior officials of the Israeli government and/or army chiefs for war crimes.⁵⁸ The bill would prohibit the registration of any NGO if “there are reasonable grounds to conclude that the association is providing information to foreign entities or is involved in legal proceedings abroad against senior Israeli government officials or IDF [Israeli military] officers, for war crimes.” An existing NGO would be shut down under the proposed law for engaging in such activity. The text of the bill refers directly to the Goldstone Report to justify its provisions. Because it essentially seeks to conceal information or suspicions of a crime, it contradicts the customary norms of international criminal law and international humanitarian law. It constitutes a dangerous attack against human rights organizations and anyone opposed to war crimes. This private bill has not yet been approved by the government.

[Press briefing](#) | [English translation](#)

18. Bill to Prohibit Imposing a Boycott (2010) (“Ban on BDS Bill”)

The bill, tabled in June 2010, proposes to outlaw any activities promoting any kind of boycott against Israeli organizations, individuals or products. In its original form, the bill targeted Israelis, the Palestinian Authority, Palestinians and foreign governments and individuals, and sought to impose heavy fines, economic sanctions and entry bans on supporters of boycott activities. However, when the bill passed the preliminary vote by the Knesset on 14 July 2010, the application of the prohibition to foreign citizens and foreign political entities was cancelled, leaving only a prohibition and fine on Israeli citizens and residents.⁵⁹ According to the bill, any “injured party” can sue any organization or person who initiated boycott against them for a sum of up to NIS 30,000, without having to provide evidence for the damage incurred. If passed, the bill will criminalize the activities of many NGOs in Israel and seriously damage their ability to function in their capacity as human rights defenders.

[English translation of the bill](#)

opponents.” ACRI position paper on the bill, 23 February 2010, available at:

<http://www.acri.org.il/eng/story.aspx?id=706>

⁵⁸ Bill no. P/18/2456.

⁵⁹ See, JNews, *Antiboycott bill passes preliminary reading in the Knesset*, 14 July 2010:

<http://www.jnews.org.uk/news/antiboycott-bill-passes-preliminary-reading-in-the-knesset>

19. Bill for Protecting the Values of the State of Israel (Amendment Legislation) (2009) (“Jewish and Democratic State Bill”)

This private member’s bill would authorize the Registrar of Associations and the Registrar of Companies to close down associations or companies if their goals or actions are against the state as a “Jewish and democratic” state.⁶⁰ The bill, proposed in 2009, violates the right of freedom of association and freedom of expression of all Arab organizations in Israel which seek through democratic means to challenge discrimination, improve the political, legal, and social status of Palestinians in Israel, and promote the concept of Israel as a democratic state for all its citizens. It asks them to express their loyalty to the Jewish state and therefore seeks to limit the rights of the Arab minority. The bill bears similarities to Section 7A of the Basic Law: The Knesset – 1985 asks every Arab political party list not to deny the existence of Israel as a “Jewish and democratic” state, an un-democratic provision that has been used in every election to attempt to disqualify the Arab political parties from running in elections. The bill seeks to undermine the daily operation of Arab organizations and put them under ultra-nationalist, ideological investigation, threatening their legitimate activities. The Ministerial Committee for Legislation decided in early November 2010 that the text shall be modified in coordination with the Minister of Justice and re-discussed after 30 days.

[Press briefing](#) | [English translation of the bill](#)

Occupied Palestinian Territory (OPT)

20. Amendment No. 8 (2007) to the Civil Wrongs (Liability of the State) Law (1952)

This bill seeks to exempt the state from its responsibility for injuries and damages inflicted on Palestinians in the OPT. Although proposed before the current government took office, it is sponsored by the government and is now being actively promoted. The proposed law would apply retroactively to injuries and property damages sustained by Palestinians from 2000 onwards. It stipulates that even the victims of unlawful acts by Israeli security forces carried out outside the context of any wartime action will be left without a legal remedy in the form of torts. In the absence of the right to claim damages in such cases, the possibility of investigating incidents of wanton damage to property, theft and abuse by soldiers or other members of the security forces would be further diminished. The bill seeks to reverse a unanimous, nine-justice Supreme Court decision delivered in December 2006 to invalidate a similar law.⁶¹ In that case, the court ruled that the law violated the rights to life, dignity, property and liberty and was in breach of the Basic Law: Human Dignity and Liberty. The Knesset’s Constitution, Law, and Justice Committee reviewed the amendment on 16 November 2010.⁶²

[Press Briefing](#) | [Position paper](#)

⁶⁰ Bill no. P/18/1220. The bill was discussed by the Ministerial Committee for Legislation on 7 November 2010.

⁶¹ See HCJ 8276/05, *Adalah, et al. v. Minister of Defense* (decision delivered 12 December 2006). An English translation of the Supreme Court’s decision is available at:

[http://www.icrc.org/ihl-nat.nsf/46707c419d6bdfa24125673e00508145/d40d96289166cdddc12575bc00361c74/\\$FILE/HCI%208276.05.doc](http://www.icrc.org/ihl-nat.nsf/46707c419d6bdfa24125673e00508145/d40d96289166cdddc12575bc00361c74/$FILE/HCI%208276.05.doc)

⁶² See also, Ido Rosenzweig and Yuval Shany, Israel Democracy Institute, *Definition of “Combat Action” in Civil Tort Law (Liability of the State) – Amendment Bill (No. 8)*:

[http://www.idi.org.il/sites/english/ResearchAndPrograms/NationalSecurityandDemocracy/Terrorism and Democracy/Newsletters/Pages/10th%20Newsletter/2/2.aspx](http://www.idi.org.il/sites/english/ResearchAndPrograms/NationalSecurityandDemocracy/Terrorism%20and%20Democracy/Newsletters/Pages/10th%20Newsletter/2/2.aspx)

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:⁶³

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:⁶⁴

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.

⁶³ 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.

⁶⁴ *Ibid.*, para. 49.

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 Shoval), 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.⁶⁵ 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 2001.⁶⁶ 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-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*⁶⁷ 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*⁶⁸ case, it was

⁶⁵ Legal claims were submitted by members of the Al-Nasasra tribe in the 1970s, but these lawsuits did not reach a judgment.

⁶⁶ 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>

⁶⁷ Civil Appeal 3295/94, *Preminger v. Mor*, P.D. 50(5) 111, 121 (1997).

⁶⁸ HCJ 7015/02, *Ajouri v. Commander of IDF Forces in the West Bank*, P.D. 56(6) 352, 365 (2002).

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."⁶⁹

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:⁷⁰

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.

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.⁷¹ 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.

⁶⁹ 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."

⁷⁰ HCJ 366/03, *Commitment to Peace and Social Justice NGO v. The Minister of Finance* (decision delivered on 12 December 2005).

⁷¹ See Article 11(1) of the International Covenant on Economic, Social and Cultural Rights of 1966.

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.

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.⁷²

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.

⁷² 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).

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 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.⁷³ 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;⁷⁴ indigenous peoples have the right to own the land they hold;⁷⁵ 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.⁷⁶ 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 argues⁷⁷ 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

⁷³ Convention 169 of the International Labor Organization pertaining to the rights of indigenous peoples.

⁷⁴ The UN Declaration on the Rights of Indigenous Peoples, Article 10.

⁷⁵ Ibid., Article 26(1) and (2).

⁷⁶ Ibid., Article 26(3).

⁷⁷ Dr. Alexander (Sandy) Kedar, “Land Arrangements in the Negev in the Contexts of International Law,” *Adalah’s Newsletter*, vol. 8, December 2004.

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:

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:⁷⁸

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:

⁷⁸ Volume A of the Or Commission Report, paras. 39-40.

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 unrecognised 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 2009,⁷⁹ 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.⁸⁰
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."⁸¹ 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 3rd 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 Israel to respect the right of the

⁷⁹ www.pmo.gov.il/PMO/Archive/Decisions/2009/01/des4411.htm [Hebrew]

⁸⁰ 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.

⁸¹ Prof. Oren Yiftachel, "Toward Recognition of Bedouin Villages? Planning Metropolitan Beersheva vis-à-vis the Goldberg Committee, *Tichnun*, 6(1), 165-184, (2009).

Bedouin to the land and their right to make their livelihood from agriculture. In the committee's words:⁸²

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:⁸³

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 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

⁸² 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>

⁸³ 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>

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:⁸⁴

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:⁸⁵

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, 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

⁸⁴ 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>

⁸⁵ 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)

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:⁸⁶

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 (Adalah)

On behalf of the following organizations:

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

⁸⁶ The *Abu Medeghem* case, para. 50 of Justice Arbel's ruling.