

Adalah's Submission to the United Nations
Human Rights Council's
Universal Periodic Review of Israel
December 2008

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Adalah ("Justice" in Arabic) is an independent human rights organization. Established in 1996, it works to promote and defend the rights of Palestinians in Israel and the Occupied Palestinian Territory (OPT). Adalah has special consultative status with ECOSOC. Adalah welcomes the opportunity to contribute to the Universal Periodic Review of Israel's compliance with international human rights law. As submissions may not exceed five pages, this document gives a very brief summary of a selection of relevant issues.

P.O. Box 8921 Haifa 31090 Israel Tel: (972)-4-950-1610 Fax: (972)-4-950-3140

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Email: adalah@adalah.org

<http://www.adalah.org>

Adalah – The Legal Center for Arab Minority Rights in Israel
Submission to the UN Universal Periodic Review of Israel, December 2008

Key words: Constitution building process, right to equality, police impunity, access to justice, home demolitions, family unification.

The Arab Palestinian minority in Israel comprise close to 20% of the total population of the state, numbering around 1,200,000. A part of the Palestinian people, they are citizens of Israel and belong to three religious communities: Muslim (81%), Christian (10%) and Druze (9%). Under international human rights instruments, they are indigenous and constitute a national, ethnic, linguistic and religious minority.

I. BACKGROUND AND FRAMEWORK

A. CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK

1.1 *The Israeli constitution building process.* In recent years serious attempts have been made by Jewish Israeli institutions and intellectuals to develop a constitution for the state. These documents have not been based on human rights or democratic values, but on the lowest common denominator of political compromise among Jewish secular and religious citizens of Israel. None of these projects have provided Palestinian citizens with a meaningful way of contributing to the process, and threaten to merely constitutionalize the existing discrimination against them.

1.2 The Knesset's Constitution, Law and Justice Committee is the official body advancing the constitutional effort, based primarily on the "Constitution by Consensus" campaign of the Israel Democracy Institute, which emphasizes the "Jewish and democratic" character of the state. The process has been neither inclusive nor participatory. While two Arab members of Knesset sit on this committee, there has been no negotiated process with the Arab political leadership to ensure minority rights protections in a future constitution, and no agreement over fundamental principles such as equality. Voting takes places on a majority basis and there is no mechanism to ensure true participation in constitution-making.

1.3 In response to these efforts, a number of Arab civil society organizations published documents in late 2006 and 2007 setting forth their future vision for Israel.¹ These proposals, the central call of which is for a democratic state with equal rights for all of its citizens as opposed to a "Jewish and democratic state", deal with highly contentious issues such as the Israeli Law of Return and the Palestinian Right of Return. They were met with harshly negative responses. For example, the Director of the General Security Service (GSS or *Shabak*), Yuval Diskin, stated in March 2007 that "the radicalization of the Arab citizens of Israel constitutes a strategic danger to the state," and that the GSS is "required to thwart the subversive activity of entities seeking to harm the character of the State of Israel as a Jewish and democratic state, even if their activity is conducted through democratic means." The AG subsequently stated his full agreement with the position of the GSS Director, thereby undermining these proposals.² The portrayal of Palestinian citizens of Israel as a strategic threat to the state combined with lack of a meaningful way in which they can contribute to the constitution-building process threatens to produce a constitution that disregards their rights and render their second-class citizenship status permanent.

¹ The documents are Adalah's "Democratic Constitution"; "The Future Vision," led by the National Committee of Arab Mayors; the "Haifa Declaration," led by Mada al-Carmel; and "Ten Points," issued by Mossawa.

² For more information, see: http://www.adalah.org/eng/pressreleases/pr.php?file=07_05_22.

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

B. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

a. Equality and non-discrimination

2.1 *The lack of a constitutionally-guaranteed right to equality.* The State of Israel lacks a written constitution or a Basic Law that constitutionally guarantees the right to equality and prohibits direct or indirect discrimination. Although ordinary statutes do provide protection for the right of equality for women, such as The Women's Equal Rights Law – 1951, which declares total gender equality³, no statute guarantees the right to equality for Palestinian citizens of Israel. Coupled with Israel's self-definition as a "Jewish and democratic" state, as explicitly declared in the Basic Laws, the Palestinian minority faces severe discrimination in all fields. Numerous laws, decisions and policies favor or prioritize Jewish citizens on the basis of their national belonging, and/or exclude or discriminate against Palestinian citizens either directly or in their application. Legal challenges launched against such discriminatory measures are weakened due to the lack of a constitutionally-guaranteed right to equality.

b. Right to life, liberty and security of person

2.2 *Impunity for police officers and commanders responsible for the October 2000 killings of 13 Palestinian citizens of Israel.* Adalah wishes to express its grave concern at a decision made by the Attorney General (AG) in January 2008 not to file any indictments against those responsible for the killings of 13 Palestinian citizens in October 2000 and the injury of thousands. In October 2000, Palestinian citizens held protests at the outbreak of the second Intifada, and the response of the security forces included firing live ammunition and rubber-coated steel bullets at unarmed demonstrators and the use of snipers. In November 2000 Israel established the official Or Commission of Inquiry to investigate the events, which found the security forces' opening of fire unjustified, the use of live ammunition and snipers unjustified in every instance, found police commanders responsible for using excessive force, and recommended that the Police Investigations Unit (Mahash) investigate the killings.

2.3 Mahash released its report on the investigation in September 2005, in which it recommended that no indictments, in contradiction of the Or Commission's recommendations. Shortly afterwards, as a result of widespread public pressure, the AG decided to conduct a review of Mahash's decision. Three years later, the AG endorsed Mahash's report and announced the final closure of the case against police over the deaths and injuries, with no indictments filed.⁴ Adalah considers the inability or unwillingness of Israel to properly investigate and prosecute this most serious instance of police brutality and the state-sanctioned impunity granted to the police extremely dangerous and liable to increase the likelihood of similar incidents of state violence.⁵

c. Administration of justice and the rule of law

i. Supreme Court: deviating from accepted principles of international law in OPT cases

3.1 Several recent Israeli Supreme Court dealing with the human rights of Palestinians in the OPT substantially deviate from accepted principles of international law, thereby depriving them of the legal protection to which they are entitled and impeding their access to justice.

³ Sections 1 and 6 of the law. See also the Prevention of Sexual Harassment Law (1998) and the Equal Rights for People with Disabilities Law (1998).

⁴ The AG has filed indictments regarding the October 2000 events 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-EE9D586CFCE/9728/english2.doc>.

⁵ 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."

3.2 The Supreme Court has rejected most of the cases challenging the legality and the route of the Separation Wall, despite the decision of the International Court of Justice delivered in 2004.⁶ Although in some cases the court has ordered the army to alter the route of the Wall, it has never decided to limit it to the Green Line. In its main decisions on the Wall,⁷ the court afforded legal protection to the settlers to remain in the settlements in the occupied West Bank, disguised as protection for their right to life. The court disregarded the illegality of the settlements, a fact which has caused a distortion of legal norms and the laws of war applicable to the OPT, and the *de facto* annexation of Palestinian land to Israel.

3.3 In its decision on the Israeli military's policy of "targeted assassinations" in 2006,⁸ the Supreme Court gave an unreasonably narrow interpretation of who is a "combatant" and very wide interpretation of who is not a "civilian", an approach which has broadened the scope of who can be legitimate target for extra judicial execution. This decision has rendered meaningless the basic principle of protection for civilians to which they are entitled under International Humanitarian Law even if there are doubts about their status.

3.4 In the Road 443 case,⁹ the Supreme Court issued an interim decision in March 2008 in which it approved the creation of "apartheid roads" on Palestinian land in the OPT, which can be accessed only by Israeli settlers. The court banned Palestinians from these roads and ordered the state to provide a plan for alternative roads for them, for which new confiscation orders will also have to be issued. It should be stressed that in the 1980s the court justified its authorization of the land confiscations for the creation of the roads on the basis that they would also serve the local Palestinian community.¹⁰

3.5 In recent cases on Gaza, the Supreme Court has approved punitive measures against the civilian population of 1.5 million people, despite the duties and responsibilities that derive from Israel's control over the Strip. Israel's occupation of Gaza is manifested in its total control over the border crossings, airspace and territorial waters; the Palestinian population registry; tax policy and transfer of tax revenues; the ability of the Palestinian Authority to exercise its functions; and the West Bank, which together with Gaza constitute a single territorial unit. In 2007 and 2008, the Supreme Court approved the closure of border crossings for humanitarian aid and vital commodities and goods;¹¹ denial of passage for seriously ill individuals in need of medical treatment not available in Gaza;¹² and cutbacks in fuel and electricity supplies.¹³ The court views Gaza as an "enemy entity" and views Israel's duty towards its population as minimal and limited to the prevention of a humanitarian crisis, a position which has no basis in law.

ii. The Civil Torts Bill (Liability of the State) (Amendment No. 8) – 2008

3.6 The Civil Torts Bill seeks to prevent residents of the OPT from submitting tort lawsuits against the State of Israel to gain compensation for damages inflicted upon them by the Israeli security forces, *even in cases where damages were caused outside the context of military operations*. In the absence of the possibility of filing lawsuits, no one will be held to account for illegal military operations, instances of torture, theft or property damage carried

⁶ ICJ, "Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory," 9 July 2004 (A/ES-10/723).

⁷ H.C. 2056/04, *Beit Sourik Village Council v. The Government of Israel and Commander of the IDF Forces in the West Bank* (decision delivered 30 June 2004); and H.C. 7957/04, *Maraaba v. The Prime Minister* (decision delivered 15 September 2005).

⁸ H.C. 769/02, *The Public Committee Against Torture in Israel et al. v. The Government of Israel et al.* (decision delivered 14 December 2006).

⁹ H.C. 2150/07, *'Ali Hussein Mahmud Abu Tzfiya et al. v. Minister of Defense et al.* (case pending).

¹⁰ H.C. 393/82, *Jam'iat Elmaoolieh v. Commander of the IDF Forces in the Area of Judea and Samaria*.

¹¹ H.C. 5523/07, *Adalah et al. v. The Prime Minister et al.* (petition withdrawn October 2007).

¹² H.C. 5429/07, *Physicians for Human Rights, et al. v. The Defense Minister* (decision delivered 28 June 2007).

¹³ H.C. 9132/07, *Jaber Al-Basyouni Ahmed v. The Prime Minister* (decision delivered 30 January 2008).

out by Israeli soldiers and other security forces, and a culture of impunity will be fostered. The bill has passed its first reading before the Knesset.

3.7 The bill exempts the state from liability for any damage caused to a resident of a declared "war zone," even if the damage was caused outside of that zone or in Israel. "War zones" can be declared as such by the government; however, no legal criteria for such declarations are enumerated. The bill is designed to overturn a Supreme Court decision delivered in 2006 on petitions challenging a previous amendment to the law, which held that Israel cannot exempt itself entirely from paying compensation to Palestinians in the OPT harmed by the Israeli military.¹⁴ This decision is one of only a handful of Supreme Court decisions containing positive aspects with regard to the rights of Palestinians in the OPT issued since the beginning of the Occupation in 1967.

3.8 This bill will drastically limit the victims' rights to a fair trial, access to justice and a legal remedy, be they orphans, widows or disabled, or those whose property was completely destroyed. The bill also provides for its retroactive application for damages inflicted on Palestinians since September 2000 (and with respect to immunity against claims by residents of Gaza in general, from 2005). The bill is incompatible with the principle of justice and contradicts basic principles of Israeli and international law, and is a cause for great concern.

d. The right to own property/no arbitrary deprivation of property

4.1 *320 home demolitions over the last two years in the "unrecognized" Arab Bedouin villages in the Naqab (Negev).* Adalah wishes to draw attention to Israel's policy of uprooting, displacing and dispossessing Palestinian Bedouin citizens of the state of their traditional, ancestral lands in southern Israel. The Arab Bedouin constitute around 160,000 people or 28% of the total population of the Naqab but reside on less than 2% of the entire region.¹⁵ Approximately half the Arab Bedouin in the Naqab live in unrecognized villages that are denied official recognition and referred to as "illegal clusters."¹⁶

4.2 Over the years, Israel has and continues to apply indirect pressure on the people of the unrecognized villages by providing almost no basic infrastructure and services, including electricity, water, telephone lines, or education or health facilities.¹⁷ However, today the state is also seeking to directly and collectively evacuate them from their land and to concentrate them in a small number of crowded towns planned by the government specifically for them. At the same time it is encouraging intensive Jewish settlement of the remaining land.

4.3 One of the primary means employed to remove the Arab Bedouin from their land is home demolitions. According to the Regional Council for the Unrecognized Villages, Israel carried out 320 home demolitions from 21 February 2006 to 21 February 2008 alone.¹⁸ In addition, the state has begun to resort to the routine filing of *ex parte* "Requests for Demolition Orders without Conviction," which are perfunctorily granted by the courts. In these cases the state claims the identity of the owner of the structure in question to be "unknown" and the hearing takes place in the absence of the affected parties, in violation of their rights to due process.¹⁹

¹⁴ H.C. 8276/05, *Adalah et al. v. The Minister of Defense* (decision delivered 12 December 2006).

¹⁵ Amer Al-Huzayil, "The Unrecognized Villages in the Naqab: Between Institutional Planning and Alternative Planning," unpublished position paper presented to the Arab Center for Alternative Planning, 2004 (in Arabic).

¹⁶ Many residents of these villages were living on these lands—the ancestral lands of the Arab Bedouin—prior 1948, and state attempts to assert land ownership claims are vehemently disputed. Indeed, prior to 1948 the Bedouin were essentially the sole residents of the Naqab, numbering around 90,000 people; in the War of 1948 most fled or were expelled to Jordan, Gaza and Egypt, leaving only around 10,000 on their land.

¹⁷ For detailed information see, "Off the Map: Land and Housing Rights Violations in Israel's Unrecognized Bedouin Villages," report by Human Rights Watch, 2008.

¹⁸ See: <http://www.rcuv.net>.

¹⁹ For more information, see: http://www.adalah.org/eng/pressreleases/pr.php?file=07_08_16.

It should be emphasized that Israel provides *no form of compensation or alternative accommodation* to these families following a demolition. The extreme measure of home demolitions is a sweeping violation of the basic rights to life, housing, dignity and equality.

e. The right to privacy, marriage and family life

5.1 *The Citizenship and Entry into Israel Law: Ban on family unification between Palestinian families.* Adalah wishes to draw attention to new amendments to the Citizenship and Entry into Israel Law (Temporary Order) (2003) approved by the Knesset in March 2007. The law, first enacted in July 2003, denies Palestinian citizens the right to acquire residency or citizenship status in Israel for their Palestinian spouses from the OPT solely on the basis of their nationality. The law is sweeping in its application and totally disproportionate to the alleged security reasons cited by Israel to justify its enactment.²⁰ Amendments to the law introduced in July 2005 allow family unification in very restricted and limited circumstances and in fact inflict further violations of rights protected by international law, primarily the rights to family life and equality.²¹ The Israeli Supreme Court upheld the constitutionality of the law in a split 6-5 decision in May 2006.²²

5.2 The new amendments, which took effect in 2007, expand the law to also exclude spouses from “enemy states”, defined as Syria, Lebanon, Iraq and Iran, and extend the ban to “anyone living in an area in which operations that constitute a threat to the State of Israel are being carried out,” according to the security services. In June 2008, the Gaza Strip was added to this list, thereby nullifying the limited possibilities for any family unification between citizens of Israel and residents of Gaza. Further, the law disconnects the Palestinian minority in Israel from the other members of their people and the wider Muslims and Arab nations in violation of international law.²³ Adalah and other human rights organizations are challenging the new law before the Supreme Court.²⁴

5.3 With no parallel in any democratic nation, the law is valid until July 2009, following a further extension by the Knesset on 1 July 2008. Although the law is defined as a “temporary order”, it has now been extended eight times since its enactment. While any state in the world can prevent specific persons from living within its borders, according to the principle of non-discrimination, it cannot deprive a person of his or her rights due solely to his or her national belonging, particularly if that person has a direct family link to citizens of that state. Therefore Israel should determine family unification status through processes that are free of discrimination on the basis of nationality.²⁵

²⁰ The state has only been able to point to 25 individuals from a group of thousands of status-receivers from the OPT whom it interrogated for alleged involvement in terrorist activities. The state has never presented evidence in court of indictments, prosecutions or sentences imposed. Even if reliable, the numbers constitute a minute number of people, and thus the law is completely disproportionate.

²¹ The amendments from 2005 allow Palestinian men over 35 years and Palestinian women over 25 to apply for temporary residency permits at most, and do not qualify them for work permits, social benefits, driving licenses, etc. The amendments deny status to Palestinians from the OPT who are related to individuals whom *security officials suggest might constitute a security threat to Israel*. Such presumptuous conclusions cannot be challenged and would hold even where an applicant has no personal contact with such a relative.

²² H.C. 7052/03, *Adalah, et al., v. Minister of Interior, et al.* (decision delivered 14 May 2006).

²³ See The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Art. 2(5).

²⁴ Adalah (H.C. 830/07, *Adalah v. The Minister of the Interior, et al.*) and other organizations are challenging the law before the Israeli Supreme Court. For more information, see: <http://www.adalah.org/eng/famunif.php>.

²⁵ On 12 March 2008, UN Independent Expert on Minority Issues Ms. Gay McDougall added her voice to the many international figures and bodies that have condemned the law, stating that, “the effect of this discriminatory law is that thousands of Palestinian families must separate, emigrate or live illegally in Israel under constant risk of arrest and deportation” in her report to the 7th session of the Human Rights Council.