

Adalah The Legal Center for Arab Minority Rights in Israel

عدالة المركز القانوني لحقوق الأقليات العربية في إسرائيل
עזאלה המרכז המשפטי לזכויות המיעוט הערבי בישראל



NGO REPORT

Suggested Issues for Consideration Regarding Israel's Combined 10th, 11th, 12th, and 13th Periodic Report to the UN Committee on the Elimination of Racial Discrimination (CERD) 15 December 2005

Adalah: The Legal Center for Arab Minority Rights in Israel welcomes this opportunity to submit information to the UN CERD in advance of its review of Israel's Combined 10th, 11th, 12th, and 13th Periodic Report (CERD/C/471/Add.2) in February/ March 2006. Overall, Adalah considers that, as in its last report to the Committee in 1997 (CERD/C/294/Add.1), Israel's submission fails to report on all the areas under its jurisdiction; gives insufficient detail on the restrictions imposed by law or practice on the enjoyment of the rights specified in the ICERD, and, at times, misrepresents Israeli practice.

This short report represents a summary of issues that Adalah wishes to call to the attention of the Committee as well as suggested questions. It does not reflect the full range of our concerns but seeks to highlight some of the most important issues on which we work. We hope this information assists the Committee members to develop a "list of issues" as well as in its full consideration of Israel's report.

Article 1 – Definition of Racial Discrimination and Laws that Discriminate on the Basis of Race in Israel

Israel's Report does not discuss Article 1 of the ICERD. Adalah considers this be a grave omission given the lack of a constitutionally-guaranteed right to equality in Israel, and the existence of numerous laws and policies which discriminate – both on their face (overt) and as applied (covert) - against Palestinian Arab citizens of Israel. Examples of these laws and policies which show institutionalized discrimination are discussed in this report.

Further, where Israel states in its report (Para. 40) that it is not permitted to discriminate between its citizens, and that, "[i]n Israel, Jews and non-Jews are citizens with equal rights and responsibilities," it derives this imperative from the self-declared *Jewish* nature of the state, and not from the universal principle of equality, upon which international human rights law was founded.

1. No Constitutional Right to Equality in Israel

The State of Israel lacks a written constitution or a Basic Law that constitutionally guarantees the right to equality and prohibits discrimination, either direct or indirect. Israel has not taken any steps to reflect this right in the Basic Laws. Although ordinary statutes do provide protection for the right of equality for women, such as The Women's Equal Rights Law - 1951 (Sections 1 and 6) which declares total gender equality (see also The Prevention of Sexual Harassment Law - 1998, and The Equal Rights for People with Disabilities Law - 1998), no statute relates to the right to equality as a constitutional right. Furthermore, **the Supreme Court of Israel has not delivered any final ruling in which it held that the right to equality is a constitutional right.** The Basic Law: Human Dignity and Liberty, which is considered a mini-bill of rights by Israeli legal scholars, does not enumerate the right to equality. While some justices of the Supreme Court have interpreted *in dicta* the Basic Law: Human Dignity and Liberty as including the principle of equality, this interpretation is not unanimously accepted by the Court's justices or by a final ruling.

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As a result of the above, together with the State of Israel's **self-definition as a Jewish and democratic state**, as explicitly declared in the Basic Laws, including the Basic Law: Human Dignity and Liberty, the Arab minority is afforded no constitutional protection against discrimination.

The absence of an explicit guarantee of the right to equality and freedom from direct or indirect discrimination in the Basic Laws diminishes the power of this right. The fundamental importance of the principle of equality requires that it be explicitly guaranteed in the Basic Laws or a written constitution, in order to ensure that the right to equality will not remain weak in comparison with enumerated rights. By not doing so, Israel is failing to fulfill its obligations under Article 1 of the ICERD.

Article 2(2) – Social, Economic, and Cultural Measures to Ensure Development and Protection of Racial Groups

1. The Multi-Year Plan

Israel devotes 60 paragraphs (Paras. 68-128) of its report to CERD to the **Multi-Year Plan for Arab Development**, presenting it as a comprehensive affirmative action development plan to assist Arab communities. Adalah wishes to raise three points regarding the Plan:

a. The state has used the Multi-Year Plan as an excuse to exclude Arab towns from other development programs and not as an affirmative action program: Two Israeli Supreme Court decisions illustrate this point:

i. In December 2001, the Supreme Court ruled on a petition filed by Adalah and the National Committee for Arab Mayors in 2000, which challenged the discriminatory implementation of the governmental Urban Renewal Program (URP).¹ Despite the stated purpose of the URP, which was to reduce societal inequities in the country, almost all of the poorest Arab municipalities were excluded from the program for 20 years. The Court found that the **Multi-Year Plan**, relied on by the state to justify exclusion, could not stand as an alternative to the URP for two reasons: (1) the state presented no evidence of actual, concrete budget allocations made in 2001 under the Plan; and (2) the Court was not convinced that the Plan offered a parallel program rendering the URP allocations unnecessary.

ii. In June 2004, the Supreme Court accepted a petition filed by Adalah and the Tel Aviv University Law Clinic on behalf of the National Committee for Arab Mayors and Arab local councils, which challenged the government's arbitrary and discriminatory decision to exclude all but one small Arab municipality from the "Ofeq" program, the aim of which was to alleviate high levels of unemployment.² In response to the petition, the Attorney General's (AG) Office claimed in March 2003 that: (i) Arab towns and villages are covered by the Multi-Year Plan, which provides programs similar to Ofeq, if not more assistance, and there is consequently no need to include them; and (ii) it does not know exactly how much money each Arab town has received for which project or projects under the Multi-Year Plan. The Supreme Court held that: the objectives and budgets allotted for the two plans differ; the existence of the Multi-Year Plan does not deny the rights of Arab communities to be included in other economic assistance plans; and Arab communities are entitled in the future, based on egalitarian criteria, to be included in various socio-economic programs if it is not proven that the objective of these plans – as reflected in the budget – is identical to the objective of the Multi-Year Plan.

¹ H.C. 727/00, *The National Committee for Arab Mayors, et. al. v. Minister of Construction and Housing, et. al.* (decision delivered 12 December 2001).

² H.C. 6488/02, *The National Committee of Arab Mayors, et. al. v. The Director's Committee for Fighting Unemployment in Settlements with High Unemployment Rates, et. al.* (decision delivered 2 June 2004).

b. The state's implementation of the Multi-Year Plan lacks transparency: As the above two examples demonstrate, as late as 2003, the state was not aware of how much money had been spent on what projects specifically pursuant the Multi-Year Plan.³ The examples also show that, even without this information, the state attempted to bypass Arab communities in other socio-economic plans using the Multi-Year Plan as a pretext, which indicates a lack of good faith.

Israel now contends that the state has implemented 88% of the Plan (Para. 70). To support this assertion, Israel lists (Para. 128) the funds spent by each ministry under the Plan. However, the chart provided does not identify how the funds were used or on which projects in each Arab town specifically pursuant to the Plan. Further, Arab mayors have reported that they do not know how much money their towns are supposed to receive under the Plan, from which ministry, or for which projects.

c. Researchers have found considerable evidence that the Plan will not close socio-economic gaps or disparities between Palestinian and Jewish citizens in Israel. In fact, studies have shown that governmental budget allocations to Arab communities in Israel have **decreased** from previous years.⁴

2. No Fair Representation in the Judiciary

Israel's report (Para. 132) states that of the 526 judges currently functioning in the Israeli judicial system, **30** are Arab citizens of Israel, most of whom serve in the Magistrate Courts. As the Arab minority makes up just under 20% of the total population, this figure equates to just 5.7% of the total number of judges in Israel. Moreover, while close to 50% of judges practicing in Israel's courts are women, distributed throughout all levels of the judicial system, from Magistrate courts (trial courts) to the Supreme Court, there exists a huge disparity between the numbers of Palestinian and Jewish female judges, with Palestinian women accounting for less than 1% of judges in Israel.⁵ There is also a complete absence of Palestinian women judges above the level of the Magistrate Courts. Furthermore, there is no Palestinian member among the nine members of the Judges' Nominations Committee, (the President and two other Justices of the Supreme Court, the Minister of Justice and one other Minister, two Members of Knesset and two representatives of the Israel Bar Association). The lack of fair representation for Arab citizens of Israel perpetuates the discrimination against the Arab minority within the Israel system of justice.⁶

³ See also H.C. 10886/02, *Mossawa, et. al. v. Ministry of Finance, et. al* (case pending). In this case, the Association for Civil Rights in Israel (ACRI), Mossawa, and the National Committee of Arab Mayors filed a petition against several government ministries demanding the full implementation of the Plan, and that unused budget funds for 2002 – over NIS 94 million (about US \$20.5 million) – be preserved and carried over to the 2003 budget.

⁴ Shalom Dichter and Molly Malekar, "The 'Four Billion Shekel Plan' – A Road to Continued and Intensified Discrimination," in The Sikkuy Report 2001-2002, available at: <http://www.sikkuy.org.il/english/reports.html>.

⁵ Letter of 18 May 2005 to Adalah from the Section of Research, Reporting and Evaluation, Department of Administration, Methodology and Computerization, the Courts' Administration, Ministry of Justice (Hebrew).

⁶ Relevant in this regard is the CERD's *General Recommendation 31 on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System*, in which the Committee identified "The insufficient representation of persons belonging to those groups ... in the system of justice, including judges and jurors ..." as a factual indicator of discrimination in the criminal justice system (Para. I.1 A.1.7), and recognized the promotion of "proper representation of persons belonging to racial and ethnic groups in ... the system of justice" as a strategy to be developed to prevent discrimination in the criminal justice system (Para. I.2 3).

3. No Protection for Non-Jewish Holy Sites

Under the **Protection of Holy Sites Law (1967)**, the Minister of Religious Affairs is authorized to issue regulations for the protection of holy sites in Israel. Thus far, however, the Minister has used his powers in a discriminatory manner, by setting forth regulations which exclusively specify Jewish holy sites: approximately 120 places have been declared as holy sites, *all* of which are Jewish. As mentioned in Israel's report (Para. 50), Adalah petitioned the Supreme Court in November 2004,⁷ demanding that the Minister issue regulations for the protection of Muslim holy sites, as has been done for Jewish holy sites. The petitioners argued that the Minister is failing in his duty under the aforementioned law to safeguard and preserve sacred places from desecration, from anything which could obstruct access to these places by followers of religious traditions or offend their religious sensitivities, stressing that the law is universal in scope and requires the Minister to regulate holy sites in general. The result of this discrimination is the neglect and desecration of Muslim holy sites in Israel: many mosques and holy sites have been converted, for instance, into bars, stores and restaurants. The non-recognition of Muslim holy sites constitutes an unjustifiable disregard for the religious and historical significance of these sites, which mars the dignity and offends the religious sensitivities of Arab Muslim citizens of the state.

Article 3 – Racial Segregation

In its country report (Para. 136), Israel merely states that there are “no restrictions of any kind as to place of residence nor is there any segregation of any kind.” However, the facts on the ground (see also Article 5 – (e)(iii) The Right to Housing), together with the following two examples of government policies refute this claim and show that the government continues to pursue policies aimed at the segregation of Jewish and Arab citizens of the state.⁸

1. Jewish-Only Bids for 13% of “Israel Lands”

Israel's discriminatory land allocation policies overwhelmingly benefit Jewish citizens. Since the establishment of the state in 1948, successive Israeli governments have enacted land laws and pursued land planning policies that have resulted in the confiscation of Arab-owned land, the displacement of Arab citizens from their homes and the unjust and unequal allocation of land resources. Through the vigorous implementation of these policies, **today 93% of all land in Israel is under direct state control.**

In particular, Adalah wishes to draw the Committee's attention to a policy of the Israel Land Administration (ILA), a state agency established by law, which permits and conducts the marketing and allocation of JNF lands through bids open only to Jews. The ILA has managed and administered all JNF-owned land since 1961 and has opened bids for JNF-owned lands to Jews only. **As a result of this policy, non-Jewish (in particular, Palestinian) citizens of Israel have no access to 13% of “Israel Lands.”**⁹ Allowing the perpetuation of this discriminatory policy will result in the

⁷ H.C. 10532/04, *Sheikh Abdullah Nimr Darwish, et. al. v. Minister of Religious Affairs, et. al.* (case pending).

⁸ In its *General Recommendation 29 on Article 1, Paragraph 1 of the Convention (Descent)* (Paras. 15, 17, 39), the CERD recommended that States Parties “Undertake to prevent, prohibit and eliminate practices of segregation directed against members of descent-based communities including in housing, education and employment”, “Take steps to promote mixed communities in which members of affected communities are integrated with other elements of society and ensure that services to such settlements are accessible on an equal basis,” and “Take measures against discriminatory practices of local authorities or private owners with regard to residence and access to adequate housing for members of affected communities.” In practicing the above-described and other policies, the state of Israel is failing to implement Article 3 of the ICERD and acting against the recommendations of the CERD.

⁹ The problem of access to land is in fact much wider. Due to other land laws and state policies, Palestinian citizens of Israel are in practice blocked from purchasing or leasing land in about 80% of the area of the state.

institutionalization of *apartheid*-like settlements in which citizens of Israel are segregated according to racial and ethnic criteria.

In 2004, Adalah submitted a petition to the Supreme Court demanding the cancellation of the ILA's policy.¹⁰ In response to this petition and a further petition filed against the ILA's policy by the Association for Civil Rights in Israel, the JNF stated that to date 500 agricultural settlements - by definition solely Jewish - have been built on its lands.¹¹ The JNF also declared that its loyalty is only to the Jewish people and not the general public in Israel, and that it operates only for the benefit of Jewish citizens. However, although the JNF claims to have purchased the lands within its ownership using money donated by Jews from around the world for the purpose of buying land in Israel and its distribution among Jews, 80% (close to 2 million dunams) of the JNF's lands were transferred to it by the state in 1949 and 1953, giving the JNF a special status under Israeli law. The majority of this land belonged to Palestinians made refugees and displaced persons (also known as "present absentees") during the Israeli-Arab war of 1948–49. Further, the ILA, as a public agency established under law, is not authorized to adopt positions or pursue goals which are contrary to the principles of equality, just distribution and fairness, and is therefore not permitted to be a sub-contractor for discrimination on the basis of nationality. To date, the ILA and the AG have not submitted responses to the petition.

2. State Attempts to Bypass *Qa'dan*

The Qa'dan Judgment: In March 2000, the Supreme Court of Israel held in the *Qa'dan* case that the state is prohibited from allocating "state land" based on national belonging or using "national institutions" such as the Jewish Agency to discriminate on its behalf.¹² This case involved the right of a Palestinian family - citizens of Israel - to live in the Jewish Agency-established community of Katzir, which was built on "state land."¹³ Three years after the Supreme Court ruling, however, the *Qa'dans* are still not living in Katzir. Katzir continued to reject the *Qa'dans'* application to purchase a plot of land in the community, claiming that the *Qa'dans* would have problems adjusting to life in the community. The government and the Israel Land Administration Council (ILAC) have subsequently approved several decisions that run contrary to the spirit of the Supreme Court's ruling in *Qa'dan*. Adalah wishes to call the CERD's attention to some of these attempts to bypass the ruling.

a. ILA Decision No. 1015: The Central Bureau of Statistics in Israel defines approximately 89% of all towns and villages in the state as Jewish.¹⁴ Arabs are excluded from approximately 78% of these towns and villages, owing to the fact that Selection Committees monitor applications for housing units, partly in order to filter out the Arab population.¹⁵

Made on 1 August 2004 under the title, "recommendation procedures for accepting candidates to purchase leasing rights for lands in agricultural and community settlements," this ILA decision consolidates the state's policy of excluding Arab citizens from large areas of state-controlled land through the use of Selection Committees. As referred to in Paras. 44-45 of Israel's report, this decision was made "in cooperation with the Jewish Agency for Israel." The decision directs Selection Committees of small community and agricultural settlements to apply a number of criteria in deciding whether or not to recommend that the ILA accept a candidate's request to live in one of these

See, e.g., Oren Yiftachel, "Land, Planning and Inequality: Space Division Between Jews and Arabs in Israel," ADVA Center, November 2000 (Hebrew).

¹⁰ See H.C. 9205/04, *Adalah, et. al. v. The Israel Lands Administration, et. al.* and H.C. 9010/04, *The Arab Center for Alternative Planning, et. al. v. The Israel Lands Administration, et. al.* (case pending).

¹¹ See, the JNF's response to H.C. 9205/04 and H.C. 9010/04, 9 December 2004 (on file with Adalah).

¹² See, H.C. 6698/95, *Qa'dan v. Israel Lands Administration, et. al.*, P.D. 54(1) 258.

¹³ The Yunes family of 'Ara owns the land on which Katzir was established.

¹⁴ According to the Central Bureau of Statistics' (CBS) Statistical Abstract of Israel, a settlement is defined as Jewish or Arab according to the "decisive majority" of the settlement's population.

¹⁵ Compilation based on data from the CBS's *Statistical Abstract of Israel 2004*, No. 55, Table 2.9.

settlements. Among the criteria that the decision sets forth is that the candidate: (i) “is suited to social life in a small community or agricultural settlement.” The decision also stipulates the composition of the Committees themselves, stating that they should be formed of “a senior official from the settlement agency (The Jewish Agency or The World Zionist Organization), a senior official from the Ministry of Housing and Construction along with representatives of the cooperative association, the regional council and the settlement body ...”

The decision’s criteria raise serious suspicions, *de facto* supported by the practice of the Selection Committees, that the residency applications of Arab Palestinian applicants will be rejected on the grounds of their lack of “social suitability.” Further, under the conditions set out by the ILA, Arab applicants have no chance of purchasing leasing rights in agricultural and community settlements because of the presence of settlement bodies on the Selection Committees and the lack of Arab representation on the Committees. The decision’s language is also vague, providing no definition of “social suitability,” with the result that decisions made by both the ILA and the Committees are open to the influence of personal preferences and prejudices.

Thus, the decision will result in the continued exclusion of Arab citizens of Israel from these settlements, and perpetuate their segregated character. Moreover, the exclusion is especially severe as the decision affects approximately 700 settlements defined as “Jewish community settlements” and “Jewish rural settlements” in Israel, which are organized in regional councils and which jointly control some 80% of territory in Israel. Thus, the decision contravenes the principles of equality, just distribution and fairness, which were set out by the Supreme Court, and the duty of the ILA as a public body to refrain from engaging in discriminatory practices.

b. Government Decision No. 2265: This decision, approved in July 2002, mandates the establishment of 14 new towns in the Naqab (Negev) and in the Galilee, as well as the recognition of an existing Jewish town in the Naqab. According to this decision, ten of the new towns will be jointly planned, developed, built and populated by the Jewish Agency in partnership with various governmental bodies at the regional and national levels. All of the 14 towns are classified as “community settlements,” which are a principal means at the hands of the government for “filtering out” citizens on the basis of national belonging, as they are subject to Selection Committees. In a meeting discussing the plan, Prime Minister Ariel Sharon pressed the “national need” for the plan stating that, “if we will not settle the land, someone else will.”¹⁶ After the decision was issued, then-Deputy Minister in the Prime Minister’s Office Yitzhak Levy commented to *Yedioth Ahronot* that, “the settlements [the new towns] are designated to stop the illegal spreading of Arabs.”¹⁷

c. ILAC Decision No. 930:¹⁸ ILAC Decision No. 433 (1989) set forth the conditions for so-called “authorization contracts” between the ILA and the Jewish Agency and World Zionist Organization (WZO), for the planning, development and population of specific “community settlements” in the Galilee and the Naqab. The decision was made by the ILA at the recommendation of the WZO in order to fulfill the settlement goals of the government. The decision states that authorization contracts for the development of these towns should be renewed every seven years, until either: (1) the planning, development and population of the town in question is complete; (2) 100 housing units are completed and inhabited; or (3) building is completed on all plots in the town, if there are fewer than 100 plots .

ILAC Decision No. 930 was approved by Prime Minister Ariel Sharon, acting as head of the ILAC, in July 2002; it is titled “Decision on Plot Allocations for Housing in Community Towns in the Galilee,

¹⁶ Diana Bakhour, “Jewish Settlements: The Government Approves the Establishment of 14 New Community Towns,” *Ynet*, 21 July 2002 (Hebrew) available at: www.ynet.co.il.

¹⁷ *Ibid.*

¹⁸ See the ILA website available at www.mmi.gov.il for the text of the decision.

Emek A'iron, south of Har Hevron, Ramat HaNegev, the Araba, Ramat HaGolan and in Hebel Adoulam.” The new decision modifies the earlier ILAC Decision No. 433, adding two additional areas for which the Jewish Agency and the World Zionist Organization may sign authorization contracts for development, namely Ramat HaGolan and Hebel Adoulam. It also alters the terms under which authorization contracts will be extended, increasing the 100-unit limit, specified in conditions (2) and (3) above, to 300 units. The new decision clearly expands the role of the Jewish Agency and World Zionist Organization in development activities.

Article 5(a) – The Right to Equal Treatment before Tribunals and other Organs Administering Justice

In its report (Para. 160), Israel states that “The right to equal treatment for all persons regardless of their race or ethnic origin is a basic and fundamental principle in Israel. All governmental bodies and judicial apparatus recognize this right, maintain and uphold equal treatment for all individuals.” However, the cases discussed below demonstrate the untruthfulness of this statement and the urgent need for Israel to eliminate discrimination in its system of justice.

1. The No-Compensation Law

The ability of Palestinians living in the West Bank and Gaza to obtain compensation for damage or injury caused by negligent or unlawful acts of the Israeli security forces was almost blocked completely with the enactment in July 2005 of new amendments to the Civil Wrongs (Liability of the State) Law – 2005. These new amendments, which apply retroactively to September 2000, deny residents of the Occupied Palestinian Territories (OPTs), citizens of “Enemy States,” and activists or members of “a Terrorist Organization,” the right to sue Israel in Israeli courts. It broadens widely the scope **Israel’s exemption from tort action** for activities such as the random or deliberate opening of fire, torture and abuse, and the looting and theft of civilian property. In September 2005, nine human rights organizations in Israel and the OPTs filed a petition and a request for an urgent hearing to the Supreme Court of Israel demanding that the Court declare the law unconstitutional and void.¹⁹ The law is in clear breach of article 5(a) as well as 5(b) of the ICERD.

2. New Detention Bill

A discriminatory new bill “Criminal Law Procedures Bill (Powers of Implementation - Special Directives for Investigating Security Violations Perpetrated by Non-Citizens)” proposed in October 2005 stipulates **new and harsher criminal procedure laws to be applied to individuals suspected of security offenses based solely on their nationality**, and would create a two-track criminal procedure law governing investigation, interrogation and detention – one for Israelis and one for Palestinians. The bill targets Palestinians from the Gaza Strip, where military rule and pursuant procedures and orders were cancelled following the withdrawal of the Israeli military. In response, the General Security Services (GSS) requested that the government introduce a separate criminal procedure law for Palestinians to allow it to carry out investigations and detentions as it did during the military rule of the occupation.

Under the bill, “non-Israeli” nationals suspected of security offenses can be investigated continuously for **96 hours**, for example, without being brought before a judge. Under the Israeli criminal procedure law - which would remain in effect for Israeli citizens – the maximum permitted period is 48 hours. Likewise, in contrast to Israeli detention law, under the bill detentions can be extended without the detained individual appearing before a court. The bill also gives a Supreme Court Justice the authority

¹⁹ See, H.C. 8276/05, *Adalah, et. al. v. The Minister of Defense, et. al.* (case pending). The petition was submitted by HaMoked, Adalah, ACRI, Al-Haq (West Bank), PCHR-Gaza, B'Tselem, PHR-Israel, PCATI, and Rabbis for Human Rights. The first hearing is scheduled for March 2006.

to prevent detainees from meeting with an attorney for **50 days** at the request of the AG. By contrast, under Israeli criminal procedure law, a president of a District Court may deny access to legal counsel for a period of 21 days, and the individual may appeal the decision to the Supreme Court, which is not possible under the bill.

The bill gravely violates the rights of detained Palestinians to equality in legal procedures and to receive a fair trial, is unconstitutional and violates international human rights law, which stipulates that detainees be treated in accordance with the principle of equality and civilian laws regardless of their national belonging or nationality.²⁰ The bill also heightens fears that detained individuals will be tortured and interrogated by force in order to unjustly expedite an indictment.²¹

3. Discrimination in Criminal Convictions and Imprisonment²²

In September 2004, the journal of the Israel Bar Association reported on the main findings of new research conducted by Prof. Aryeh Ratner and Prof. Gideon Fishman of Haifa University concerning disparities in conviction and imprisonment rates between Arab and Jewish citizens of Israel.²³ Using sampled data from penal records of the Israeli Police Force, the research found that between 1980 and 1992:

- The probability of an Arab defendant with no prior convictions being convicted was significantly higher (20%) than that of a Jewish defendant with the same features (12%).
- A 25-year-old Arab individual with no previous criminal record convicted of committing a violent crime is more likely to be given a sentence of imprisonment (19%) than a Jewish individual with the same features (8%).
- The probability that a Jewish judge will impose a sentence of imprisonment on an Arab defendant (74%) is over double the probability for a Jewish defendant with the same features (33%).

The research reveals the discrimination against Palestinian citizens of Israel inherent in the criminal justice system, and that the approach of the courts towards them is tainted by wider prejudices and stereotypes.

²⁰ On 14 October 2005, Adalah sent an urgent letter to the Prime Minister, the Minister of Justice, and the Attorney General (AG) demanding the cancellation of the bill. Numerous Palestinian, Israeli and international human rights organizations are also engaged in local and international advocacy initiatives against the bill. For more information, see Adalah's website: www.adalah.org.

²¹ In its *General Recommendation 31 on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System* (Para. III.1 4), the CERD identified the right of all arrested persons to defense, as enshrined in international human rights law including the UDHR and ICCPR, and in particular "... the right not to be arbitrarily arrested or detained, the right to be informed of the reasons for their arrest, the right to the assistance of an interpreter, the right to the assistance of counsel, the right to be brought promptly before a judge or an authority empowered by the law to perform judicial functions" as rights which States should guarantee in order to prevent discrimination in the criminal justice system.

²² As stated by the CERD in its *General Recommendation 31 on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System* (Para. III.3 2.4.1), in order to guarantee fair punishment "... States should ensure that the courts do not apply harsher punishments solely because of an accused person's membership of a specific racial or ethnic group."

²³ Regev Shimrit, "A New Study Confirms: The Judicial System Discriminates against Arabs," *The Advocate*, September 2004, pp. 48-49 (Hebrew).

Article 5(b) – The Right to Security of Person

This section argues that Israel's failure to hold police officials and commanders responsible for the killing and injury of Palestinian citizens of the state contributes to a **culture of impunity** and indicates a grave disregard for their lives and well-being.²⁴

1. Despite the official Or Commission of Inquiry's recommendations, no indictments have been filed against police or commanders responsible for the killings of 13 Palestinian Citizens of Israel in October 2000.

In November 2000, the Israeli government established the official Or Commission of Inquiry – headed by former Supreme Court Justice Theodor Or – to investigate the tragic circumstances of the October 2000 events, during which police and security forces **killed 13 Palestinian citizens of Israel** and injured hundreds of others.

Israel's report (Paras. 185-197) highlights the positive recommendations made by both the Or Commission and the Lapid Committee, while failing to note the lack of implementation of these recommendations as well as other serious omissions.

Israel's report fails to mention that the Or Commission recommended in September 2003 that the Ministry of Justice's Police Investigation Unit ("**Mahash**") investigate the culpability of police and security officers in the killings. The Or Commission found that there was no justification for opening fire, which led to the killings, and identified several police commanders and officers responsible for the use of excessive force. The Commission also determined that use of **snipers, live ammunition and rubber-coated steel bullets** instead of less violent methods of crowd control violated international and domestic policing standards.²⁵

Israel report further states (Para. 186) that in September 2003, the state "adopted as a whole all aspects of the report relating to the functioning, status, and personal future of all persons mentioned in the report." However, in its final report issued in June 2004, the Lapid Committee, established to review and implement the recommendations of the Or Commission, failed to recommend the prosecution or indictment of the police or security officials responsible for the killings in October 2000.

In September 2005, Mahash released the final report of its investigation in which it failed to determine responsibility for the deaths: **it recommended that no indictments be issued against any police officers or commanders.**

Mahash's report directly contradicts and ignores the Or Commission's central findings. In several instances, Mahash's report privileges the version of events given by suspected police officers and refuses to pursue the investigation where eyewitnesses and police officers gave contradictory testimonies. Additionally, Mahash's report chooses to investigate the killings through the legal framework of military engagement rather than of police engaged in crowd-control operations.

²⁴ A culture of impunity is also pervasive in the Israeli military, where the killing and injury of Palestinians in the 1967 Occupied Palestinian Territories is for the most part not investigated nor are those responsible punished. For more information, please see Human Rights Watch's report *Promoting Impunity-The Israeli Military's Failure to Investigate Wrongdoing*, (2005): <http://hrw.org/reports/2005/iopt0605/>.

²⁵ In this regard, in its *General Recommendations 31: On the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System* (Section B(III)), the Committee recommended that States parties to the ICERD "should ensure that observance of the general principles of proportionality and strict necessity in recourse to force against persons belongs to groups referred to in the last paragraph of the Preamble, in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officers."

Over five years after the events and despite the establishment of several governmental bodies dedicated to reviewing and reporting on circumstances surrounding the 13 deaths in October 2000, the state has not issued a single indictment. The use of excessive force in October 2000 and the failure of Israel to hold those responsible accountable is an example of Israel's failure to provide adequate protection under Article 5(b) of the ICERD.²⁶

2. “Mahash’s” failure properly and effectively to investigate police misconduct is not limited to the October 2000 killings, but is institutional and systematic

Israel's report (Para. 169) describes Mahash's mandate as that of investigating “any complaint against law enforcement officers.” Adalah, together with other human rights organizations, has consistently publicized cases of police brutality towards Palestinian citizens of Israel and the unwillingness or inability of Mahash to conduct proper investigations into police misconduct.²⁷ Furthermore, the State Comptroller's report from 2005 reaffirms this phenomenon and notes the dangerous consequences of state-sanctioned impunity by stating that:

Not investigating such a high number of complaints and shelving them without further treatment by the police on the command level may cause for an institutional lack of awareness as to the magnitude of this phenomenon and be interpreted by police officers as a legitimating improper conduct, and by the general public – as taking lightly the graveness of these complaints of excessive use of force illegally.²⁸

Israel's report also refers to Mahash as an “independent department within the Ministry of Justice” (Para. 169). This statement is highly misleading. The majority of Mahash investigators are police and intelligence personnel from other departments working in the unit on a temporary basis. According to the State Comptroller: “In September 2004, the manpower numbers of Mahash reached 76 employees, 45 of them investigators and intelligence personnel borrowed from the police.”²⁹ Mahash investigators lack the independence to properly investigate complaints and tend to privilege the version of events submitted by the police officers under suspicion.

Further, the Justice Ministry does not publish data disaggregated according to national belonging and as a result, its publications do not show what percentage of police brutality complaints are filed by members of the Arab minority or the rate of disciplinary actions, indictments, or convictions obtained against police officers in cases of misconduct.

3. Israel fails to take adequate measures to promote responsible law enforcement practices.

In its report (Paras. 161-168), Israel discusses how the state has established several training programs to ensure that its police forces are instructed how to act according to domestic and international standards and pay particular attention to sensitivity to minority groups. In practice, however, there is a serious gap between classroom lectures and actions taken by the police in the field. In his 2005 report, the State Comptroller stated that:

²⁶ For more information, see Adalah's Newsletter, Special Edition, Volume 17, September 2005: <http://www.adalah.org/newsletter/eng/sep05-s/sep05-s.html>.

²⁷ See, e.g., H.C. 12000/04, *Labiba Sadi and Adalah v. The Attorney General* (petition withdrawn September 2005), “The Failure to Investigate the Illegal Conduct of Police Towards Arab Citizens of Israel in Beineh, to Date, Constitutes a Serious Breach of Duty” Adalah Press Release (4 May 2004), and Arab Association for Human Rights, *Four Years On: Cases of Police Brutality against Palestinian Arab Citizens of Israel during the Year Following the Or Commission Report on the October 2000 Events*, September 2004, available at: http://www.arabhra.org/publications/reports/PDF/PoliceReport_English.pdf.

²⁸ *The Report of the State Comptroller*, 56(A), 2005, p. 362 (Hebrew).

²⁹ *Ibid.*, p. 360

The public committees and researchers involved in studying the phenomenon of the illegal use of force and improper behavior among police officers stated that the police gives out contradictory messages in all matters related to police violence; this is apparent from the gap between the formal stance presented to police officers during their training, which emphasizes the limits on the use of force, and the stance of commanders in the field, who apply a policy of ‘deliberate ignorance and silent approval.’³⁰

Article 5(c) – Political Rights

1. Political Participation

This section provides case examples highlighting the ways in which Israel has violated its duty to protect and ensure the political participation rights of the Palestinian minority.

a. The Elections Disqualification Cases

Israel’s report briefly discusses attempts to disqualify Arab political candidates and party lists from participating in elections to the Knesset (Paras. 214-215).

In May 2002, the Knesset enacted a new amendment to **Section 7A of the Basic Law: The Knesset**, apparently targeting Arab political leaders. Section 7A provides that: “Any candidate list or *any single candidate* running for the Knesset elections will not participate in the election if the direct or indirect goals or actions of the candidate list or of the candidate is one of the following: (1) *denial of the existence of the State of Israel as a Jewish and democratic state*; (2) incitement to racism; or (3) *support of armed struggle, of an enemy state or of a terrorist organization against the State of Israel.*” [Emphasis added to note amendments]

In an unprecedented move, then-Attorney General (AG) Elyakim Rubenstein (now a Supreme Court Justice) submitted a motion to the Central Elections Committee (CEC) in November 2002 to ban the National Democratic Assembly (NDA) party list, led by Member of Knesset (MK) Dr. Azmi Bishara, from participating in the January 2003 elections to the Knesset. Numerous other disqualification motions were filed by right-wing MKs and political parties against Arab MKs Dr. Azmi Bishara, ‘Abd al-Malek Dahamshe (United Arab List), and Dr. Ahmad Tibi (Arab Movement for Renewal-Ta’al) as individual candidates, and against three political party lists – the NDA, the United Arab List, and the joint Democratic Front for Peace and Equality (Hadash)-Ta’al list. The motions to disqualify the Arab MKs and political party lists were submitted pursuant to Sections 7A (1) and (3), the Basic Law: The Knesset.

Adalah represented all of the Arab political leaders and political party lists before the CEC, and later, based on the CEC’s decisions, represented the NDA party and MK Bishara as well as MK Tibi before the Supreme Court.

Against MK Bishara and the NDA, the AG’s main argument for disqualification was that the NDA’s political agenda, which called on Israel to become “**a state of all of its citizens**,” constituted the “denial of the existence of the State of Israel as a Jewish and democratic state.” Representing the NDA and MK Bishara, Adalah argued that this political platform seeks an all-inclusive, liberal-democratic state, which would include the Arabs in Israel as full citizens and would not discriminate against them. It also sought the prohibition of Israel’s use of national-Zionist institutions, such as the Jewish Agency, to prevent Arab citizens of Israel from enjoying the resources of the state. Further, Adalah argued that this political program exposes the **inherent contradictions in the definition of the state as a Jewish and democratic state: it is not a call for the destruction of the state, but a**

³⁰ Ibid., pp. 358-359.

call for its democratization. No democracy is complete or genuine unless it guarantees equality and dignity for all of its citizens regardless of their national, religious or ethnic affiliations.

The Likud party claimed that MK Tibi should be disqualified as his political speeches showed his **“support of armed struggle”** by Palestinian terror organizations. On behalf of MK Tibi, Adalah argued that **there is no factual basis for these allegations and that his speech was purely political speech.** Specifically, MK Tibi believes that occupied peoples, including the Palestinian people, have the right to resist occupation, while at the same time opposing the killing of innocent people on both sides. A supportive letter from a prominent member of the Israel Democracy Institute (IDI), which was included with the reply brief, stated that MK Tibi is an authentic representative of a political stream supported by Arab citizens of Israel, and that barring him from the Knesset could jeopardize the democratic system, as well as relations between Arab and Jewish citizens of the state.

In challenging Section 7A (a)(1) of the Basic Law: The Knesset, which relates to the “Jewish and democratic nature” of the state, Adalah argued that it should be interpreted broadly and inclusively. **Disqualifying a candidate or a political party list that raises a legitimate and democratic political agenda would harm the values of the state as a democratic state.** It would harm the minority’s rights to equality and freedom of expression, their right to challenge the majority’s political positions, and their basic right to demand change in legitimate ways. Regarding Section 7A (a)(3), Adalah argued that it is unconstitutional as it violates the separation of powers: the executive branch can determine as it sees fit, which groups are terror organizations, as the designations are not made by the Knesset legislation. Further, the term “support” is vague and overbroad and limits freedom of expression rights.

A Supreme Court panel of 11 justices, in a **7-4 split**, overturned the decisions of the CEC and allowed the NDA, MK Bishara and MK Tibi to participate in the elections.³¹ However, the Court did not rule substantively on the issues of whether or not the call for a “state of all its citizens” actually “denied the existence of the state as a Jewish and democratic state, or on Adalah’s arguments relating to the violation of separation of powers or the over-breadth and vagueness of the amendment relating to “supporting terror.” Rather, the Court ruled that the disqualification motions presented no clear evidence upon which to disqualify the political parties or the candidates. Thus, under Section 7A of the Basic Law: The Knesset, the rights to political participation of Arab political parties and candidates remain particularly vulnerable.

b. Use of Emergency Regulations to Contain Arab Political Speech

From 2000-2002, then-AG Rubenstein ordered the police to open investigations against almost every Arab MK in Israel for incitement to violence. The subject of these investigations concerned political statements made by Arab MKs in support of Palestinian resistance to the occupation and in protest against land confiscation and home demolitions in Israel. At the same time, the AG ignored the racist speech of Israeli Jewish public officials. For example, Israeli Jewish MKs such as Avigdor Lieberman (Yisrael Beiteinu) and Michael Kleiner (Herut) were not investigated for their calls to put certain Arab MKs “before a firing squad,” nor was an investigation opened against Rabbi Ovadia Yosef, the spiritual leader of Shas (the third largest party in Knesset), who publicly described Arabs as “rattlesnakes” who should be “targeted by splendid missiles” and destroyed.

i. The Criminal Indictments Filed against MK Dr. Azmi Bishara: Israel’s report discusses the criminal indictments brought against MK Dr. Azmi Bishara (Paras. 216-220). On 7 November 2001, at

³¹ Election Confirmation 11280/02, *Central Elections Committee v. Ahmed Tibi*; Election Confirmation 50/03, *Central Elections Committee v. Azmi Bishara*; Election Appeal 131/03, *Balad - The National Democratic Assembly v. the Central Elections Committee* (decisions delivered 9 January 2003 and 15 May 2003).

the request of the AG, the Knesset voted to lift MK Bishara's parliamentary immunity to permit his indictment under two emergency laws.

The Syria Visits Case: MK Bishara and two of his parliamentary assistants were charged under Article 18(d) of the Emergency Regulations (Foreign Travel) (1948) for organizing a series of visits to Syria for elderly Palestinian citizens of Israel to meet refugee relatives they had not seen since 1948. Adalah represented MK Bishara and his parliamentary aides before a three-judge panel in the Magistrate Court in Natserat Illit. On 1 April 2003, the Court unanimously decided to dismiss the indictment against MK Bishara, accepting Adalah's argument that Article 17(c) of the Emergency Regulations exempts MKs from prosecution for this offense.

The Political Speeches Case: In this case, MK Bishara is charged with two counts of allegedly "supporting a terrorist organization," namely Hezbollah, based on political speeches he made, in violation of the Prevention of Terrorism Ordinance (1948). In these public speeches, made in Umm al-Fahem (2000) and in Syria (2001), MK Bishara analyzed the factors that led to the end of the Israeli occupation of South Lebanon and spoke of the realities of the continued Israeli occupation of the Palestinian territories.

According to the Attorney General, MK Bishara's speeches were not legitimate expressions of political opinions, but a call to adopt terrorist methods against Israeli citizens and the Israeli government, in order to change government policies: parliamentary immunity was not intended to protect MKs who make such speeches, and therefore it was correct for MK Bishara's immunity to be lifted. After numerous hearings and written submissions, the Magistrate Court issued a half-page decision in November 2003 not to dismiss the indictment against MK Bishara. The Court ruled that there is no need to decide on MK Bishara's preliminary arguments at this stage, stating that they relate to "factual questions, which belong in the main part of the case and not within the framework of preliminary arguments."

On behalf of MK Bishara, Adalah filed a petition to the Supreme Court against this ruling.³² Adalah argued that the two speeches delivered by MK Bishara, fall within the scope of his parliamentary immunity and are classic cases of political speech, which enjoy full legal protection. Further, MK Bishara's political speeches were made in fulfillment of his role as an elected political representative, and as such, he cannot be criminally prosecuted for expressing opinions in accordance with the political party agenda for which he was elected. Adalah also contended that MK Bishara also made identical speeches in the Knesset, for which no indictments were sought.

At a session of the Inter-Parliamentary Union (an international organization of 130 national parliaments worldwide, including Israel's Knesset) held on 14-17 January 2002, the Committee on the Human Rights of Parliamentarians, found that: "Mr. Bishara represents a party, recognized under Israeli law, which defends the right to self-determination of the Palestinian people, and that he has been elected on this platform ... [the Committee] cannot share the view of the authorities that the two speeches under consideration, read in their entirety, express praise and support for a terrorist organization; considers rather that they reflect the political programme of Mr. Bishara's party."

ii. The Criminal Indictment of Sheikh Ra'ed Salah, the Head of the Islamic Movement in Israel: Approximately 1,000 police and security forces raided the homes of Islamic Movement members in Umm al-Fahem on 13 May 2003, and placed 15 members under arrest including Sheikh Ra'ed Salah. Scores of documents and computers were also confiscated from the offices of various charity organizations associated with the Islamic Movement. The arrests were undertaken like a military operation.

³² H.C. 11225/03, *MK Azmi Bishara, et. al. v. The Attorney General, et. al.* (case pending).

The State Prosecutor submitted an indictment against Sheikh Ra'ed Salah and four other members of the Islamic Movement – Dr. Suliman Agbariya (the former mayor of Umm al-Fahem), Mahmoud Mahajni, Tawfiq Mahajni, and Nasser Agbariya – as well as two Arab humanitarian organizations on 24 June 2003. The indictment alleged that the Islamic Movement members are “**supporting terror**” **by transferring funds to charity organizations** associated with Hamas in the 1967 Occupied Palestinian Territories (OPTs). Sheikh Ra'ed Salah faced charges under the Prevention of Terrorism Ordinance, Article 3 (membership in a terrorist organization), as well as numerous charges under the Defense (Emergency) Regulations - 1945, in particular Regulation 85.1.a (membership in an illegal association), 85.1.b (holding a position in an unauthorized association), and 85.1.g (holding funds belonging to an illegal organization); as well as Regulation 73 (providing a service to an illegal association).³³

The “supporting terror” emergency law invoked against Sheikh Raed Salah, does not require proof that the support was intended to further “terrorist actions,” or in fact furthered any terrorist action. Indeed, in Sheikh Raed Salah’s case, the police and the State Prosecutor publicly stated on several occasions that there is no evidence that the Islamic Movement transferred funds for terrorist acts against Israeli civilians. The vagueness of the term “supporting terror” under Israeli law, however, could turn any act of charity into a security threat, including, for example, contributions of thousands of individuals to different orphanages in the OPTs associated with any “politically-selected” terror organizations.

Sheikh Raed Salah was remanded and held without bond in prison for two years during the criminal proceedings against him. On 12 January 2005, the Haifa District Court accepted the plea bargain, whereby the prosecution dismissed the most serious charges of “supporting terrorism” against the defendants. The plea bargain confirms that these allegations could not be proven by the prosecution.

c. Other Speech Restrictions Imposed on Arab MKs

In December 2004, the Knesset decided to ban MK Issam Mahkoul (Democratic Front for Peace and Equality) from exercising his right to speak in the Knesset for ten Knesset sessions. The Knesset’s decision was issued after Minister of Education Limor Livnat filed a complaint to the Knesset’s Ethics Committee, claiming that MK Makhoul had spoken in a pejorative manner against the government of Israel, when he described it as “a government of death,” “a government of blood,” and “a ‘pork’ (immoral) government,” in protest against orders being debated to force lifeguards to return to work from a strike. In his speech, MK Makhoul also cited MK Shimon Peres, who had previously described the Israeli government as a “pork government.” No complaint was submitted against MK Peres for this comment. The Knesset’s Ethics Committee decided that MK Makhoul had breached the Knesset’s Ethical Code, which stipulates that an MK is duty-bound to respect the Knesset and its members.

In a petition filed to the Supreme Court on behalf of MK Makhoul to cancel the Knesset’s decision,³⁴ Adalah argued that the statements made fall within the immunity granted to him as an MK in order to carry out his parliamentary work under the Law of Immunity of the Knesset – 1951. Under this law MK Mahkoul is exempt from any legal actions – including those taken in this case by the Knesset’s Ethics Committee – deriving from political expressions made in the course of carrying out his parliamentary work. Furthermore, punishing MK Makhoul for his political statements violates his right of freedom of expression, and might lead to a situation where MKs will limit their political speech for fear of being punished. Moreover, MK Makhoul did not violate the ethical rules of the Knesset, since his speech was not directed against the Knesset or its members, but against the policy of the executive branch, and therefore cannot be considered in breach of the Knesset’s Ethical Code.

³³ For more information, see the Arab Association for Human Rights, *The Right for Muslims to Take Part in Politics: A Report on Israel’s Arrests and the Trial of the Northern Islamic Movement*, July 2003.

³⁴ H.C. 12002/04, *MK Issam Makhoul v. The Knesset*. (case dismissed).

In September 2005, the Supreme Court of Israel rejected the petition ruling that the Knesset's Ethics Committee is authorized to take disciplinary measures against MKs for speech voiced in the Knesset, even speech protected by the parliamentary immunity granted to them in the course of carrying out their parliamentary work. In Adalah's view, this decision entails harsh repercussions, particularly for Arab MKs. The political statements of Arab MKs vehemently challenge governmental policy and the prevailing consensus in the Knesset, and on most occasions are harshly contested by the majority of MKs. It is probable that MKs opposed to the viewpoints of Arab MKs for purely political reasons will exploit the Supreme Court's decision and demand the punishment of Arab MKs for their political statements.

2. Lack of Fair Representation in the Civil Service – Failure to Implement the Law

Despite the **2000 Amendment to the Civil Service Law (Appointments) (1959)** - which stipulates fair representation throughout the civil service, and all ministries and affiliated institutions "to both sexes ... and ... the Arab population including Druze and Circassian" - Palestinian citizens of Israel in general remain sorely under-represented in civil service positions. Over the decade between 1992 and 2002, the percentage of Palestinian citizens of Israel working in the civil service increased from 2.1% to just 6.1% of the total employees.³⁵ At this rate, it will take 30 years for the percentage of Palestinians in the civil service to reflect their percentage of the population.³⁶ However, in 2003, the percentage of Palestinian citizens in the civil service actually *fell* to 5.5%, below its 2001 and 2002 levels.³⁷ These figures seriously call into question the efficacy of the new law and/or its implementation.³⁸

In its report (Paras. 230-231), Israel acknowledges that Palestinian citizens of Israel remain under-represented in the civil service, stating, however, that "The rate of hiring minorities increased from 8.4% of the hired workers representing a minority group in 2001, to 10.3% minority workers hired in 2002." Israel also refers (Para. 229) to a **decision made by the "Ministerial Committee for the Non-Jewish Sector"** in February 2004, which requires that "within 3 years, 8% of the governmental workforce is to come from the minority population (defined as Arab, Bedouin, Druze, and Circassian), with the figure rising to 10% within 5 years." According to the decision, the government is required to hire new personnel from the minority population at a rate of at least 8% during the coming year, with the figure rising to 15% of all new staff during the following year."

However, according to an article published in Israeli daily newspaper *Ha'aretz* on 30 November 2005, the Deputy Civil Service Commissioner informed the Knesset's Constitution, Law and Justice Committee that the percentage of Arabs in the Israeli civil service has not increased and they Arabs still comprise only around **3%** of the total employees in the civil service. The Deputy Civil Service Commissioner further stated that in 2004 4,468 new employees were appointed to the civil service, only 249 of whom were Arab citizens of Israel, or **5.6%** of the total. These figures indicate that the

³⁵ Civil Service Commission, "Summary Report-The Integration of Arab and Druze in the Civil Service in 2002," as cited in Ali Hedar, "Representation of Arab Citizens in Civil Service, Government Companies and the Court System," Sikkuy Report, 2003, p. 37 (Hebrew).

³⁶ Civil Service Commission, "Summary Report – The Integration of Arab and Druze in the Civil Service in 2002," as cited in Ali Hedar, "Representation of Arab Citizens in Civil Service, Government Companies and the Court System," Sikkuy Report, 2003, p. 37 (Hebrew).

³⁷ Yackov Berger, Report of the Knesset Constitution, Law and Justice Committee, "Fair Representation among State Service Workers," May 2004 (Hebrew).

³⁸ In its *General Recommendation 21: Right to Self-Determination* (Paras. 4, 5), the CERD further stated that "The right to self-determination of peoples has an internal aspect ... In that respect there exists a link with the right to every citizen to take part in the conduct of public affairs at any level, as referred to in article 5 (c) of the [ICERD]," and that "In accordance with article 2 of the [ICERD] and other relevant international documents, Governments should be sensitive towards the rights of persons belonging to ethnic groups, particularly their right to ... play their part in the Government of the country in which they are citizens."

state has failed to fulfill its obligations under the new decision, and that the measures currently in place are inadequate for ensuring fair representation for Arab citizens in the civil service.

The representation of **Palestinian women in the civil service** is even lower than that of the Palestinian minority as a whole and follows the same downward trend: between May 2001 and November 2002, the number of Palestinian women in the civil service remained unchanged at 2% of the total.³⁹ In 2003, the figure **fell** to 1.7%.⁴⁰ By contrast, Jewish women made up 62% of the civil service workforce in 2001-2002,⁴¹ climbing to 64.4% in 2003.⁴²

In its report to CEDAW, Israel stated that the 2000 amendment to the Equal Rights for Women Law-1951 and the 1988 Supreme Court decision in *The Israel Women's Network v. The Minister of Labor and Welfare* "established an all-encompassing basic principle in the Israeli legal system, of the legitimacy of affirmative action as an integral part of the principle of equality. They also established a requirement of adequate representation of women in public bodies, as part of the principle of equality."⁴³ However, Israel has not undertaken any effective measures for increasing the representation of Palestinian women citizens of Israel, who face compound discrimination regarding representation within the civil service. It is clear that the Division for the Advancement of Women within the Civil Service, which was established in 1996, has insufficiently promoted the representation of Palestinian women citizens of Israel.

The UN Human Rights Committee stated in its Concluding Observations on Israel, 2003, that, "... the Committee notes with concern that the percentage of Arab Israelis in the civil service and public sector remains very low and that progress towards improving their participation, *especially that of Arab women*, has been slow" [emphasis added]. The Committee went on to recommend that Israel should, "[a]dopt targeted measures with a view to improving the participation of Arab Israeli women in particular in the public sector and accelerating progress towards equality." Similarly the Committee on the Elimination of Discrimination against Women issued its Concluding Observations on Israel in July 2005, voicing its concern about the low level of representation of Palestinian women citizens of Israel in decision-making positions in all areas of public life, and encouraging Israel to "take sustained measures, including temporary special measures...and to establish concrete goals and timetables so as to accelerate the increase in the representation of women, including 'Israeli Arab women'" in these areas.

3. Lack of Fair Representation on the Boards of Directors of Government Corporations – Failure to Implement the Law

Israel's report cites (Para. 55) the 2000 amendment to the Government Corporations Law as an example of attempts to boost minority representation within government corporations. According to information received by Adalah from the government of Israel, the data presented in Israel's report (Para. 246) to demonstrate the successful implementation of the **2000 Amendment to the Government Corporations Law (1975)** - which stipulates fair representation to the Arab population

³⁹ Ali Hedar, "The Arab Citizens in the Civil Service," Sikkuy Report, Equality and the Integration of the Arab Citizens of Israel 2000-2001, June 2001, citing an April 2001 report of the Governmental Companies Authority, p. 21; Ali Hedar, Sikkuy Report, 2003, p. 41.

⁴⁰ Yackov Berger, Report of the Knesset Constitution, Law and Justice Committee, "Fair Representation among State Service Workers," May 2004 (Hebrew).

⁴¹ Ali Hedar, "The Arab Citizens in the Civil Service," Sikkuy Report, Equality and the Integration of the Arab Citizens of Israel 2000-2001, June 2001, citing an April 2001 report of the Governmental Companies Authority, p. 21; Ali Hedar, Sikkuy Report, 2003, p. 41.

⁴² Yackov Berger, Report of the Knesset Constitution, Law and Justice Committee, "Fair Representation among State Service Workers," May 2004 (Hebrew).

⁴³ The State of Israel's Third Periodic Report to the Committee on the Elimination of Discrimination against Women, 2001, p. 24.

on the boards of directors of government corporations - that Arab citizens made up only 1% of the board members of government corporations in June 2001, which increased to 5.7% in January 2003, is **incorrect**. In a letter dated 18 November 2001 received by Adalah from the Secretary of the Public Committee for Reviewing Appointments, *inter alia*, to Government Corporations, it is clearly stated that the percentage of Arab board members of government corporations at the time was 4.28%, representing a far smaller increase than that claimed in Israel's report. Further, 83 of 116 government companies had no Palestinian citizens on their boards in 2003.⁴⁴ These figures reveal the inadequacy of Israel's implementation of the law.

Moreover, the state's legal obligation in this regard actually began with the **1993 Amendment to the Government Corporations Law**, which stipulated fair representation to both sexes on the boards of government corporations. However, in spite of this legislative amendment and related Supreme Court litigation by the Israel Women's Network in 1994⁴⁵, there was no increase in the representation of Palestinian women citizens of Israel between 1994 and 2002: their numbers remained static at just 1%.⁴⁶ By contrast, during this period the representation of Jewish women increased from 7% to almost 37%.⁴⁷ In 2004, Jewish women citizens of Israel counted for almost 36% of the sitting board members of government companies.⁴⁸ At the same time, just 1.3% of sitting board members were Palestinian women citizens of Israel.⁴⁹ The gap between the number of Palestinian and Jewish women and the lack of an upward trend in the number of Palestinian women on government company boards demonstrates that the implementation of the law has been discriminatory and exclusive of Arab women.⁵⁰

In April 2003, the Supreme Court dismissed a petition filed by Adalah⁵¹ demanding equal representation for Palestinian citizens of Israel on the boards of government corporations, in accordance with the 1993 and 2000 amendments to the Government Corporations Law. The petition was filed in response to the lack of progress made in increasing the level of Palestinian participation on the boards following the passage of the amendments. Unless Israel acts to fully implement the legislation regarding fair representation in the civil service and on the boards of directors of government corporations, in fulfillment of its obligations under the ICERD, Palestinian citizens, men and women, will remain under-represented in these fields, and their ability to participate in the public life of the country will remain greatly restricted. Israel's report does not mention this petition.

⁴⁴ Statistical Report of the Government Company Authorities about Government Companies, Daughter Companies and Joint Companies, 9 March 2003, as cited in Ali Hedar, Sikkuy Report, 2003, p.42.

⁴⁵ H.C. 453/94, *Israel Women's Network v. The Government of Israel*.

⁴⁶ The Office of the Prime Minister, "Report on Government Companies Activities in 2000," 2001, p. 16.

⁴⁷ Ali Hedar, "The Arab Citizens in the Civil Service," Sikkuy Report, Equality and the Integration of the Arab Citizens of Israel 2000-2001, June 2001, citing an April 2001 report of the Governmental Companies Authority, p. 21; Ali Hedar, Sikkuy Report, 2003, p. 41.

⁴⁸ Telephone interview by Adalah with Mr. Zohar Sher, Deputy Director of the Government Companies Authority on 12 October 2004. According to Mr. Sher, the figures noted are based on a check/report dated 22 September 2004.

⁴⁹ Telephone interview by Adalah with Mr. Zohar Sher, Deputy Director of the Government Companies Authority on 12 October 2004. According to Mr. Sher, the figures noted are based on a check/report dated 22 September 2004.

⁵⁰ Noteworthy in this regard is the CERD's *General Recommendation 29 on Article 1, Paragraph 1 of the Convention (Descent)* (Para.s 11, 23, 38), in which the Committee recommended that States Parties "Take into account, in all programmes and projects planned and implemented and in measures adopted, the situation of women members of the communities, as victims of multiple discrimination ...", "Take all measures necessary in order to eliminate multiple discrimination including descent-based discrimination against women, particularly in the areas of personal security, employment and education" and "Take special measures against public bodies ... that investigate the descent background of applicants for employment."

⁵¹ H.C. 10026/01, *Adalah v. Prime Minister, et. al.* (decision delivered 2 April 2003).

Article 5(d)(iii) – The Right to Nationality

Israel's report (Para. 258) describes Israel as “the designated homeland of the Jewish people,” and the discussion of the history of the area is limited to the Jewish Diaspora and the establishment of the State of Israel in 1948. In this context, **the Law of Return (1950)** is described as a tool for the realization of a homeland for Jews throughout the world, as “a linchpin of the State”, and “a foundational principle towards the effectuation of a viable and thriving Jewish state.” The report goes on to emphasize (Para. 265) that Jewish citizens of the state have “certain social, cultural or ethnic links” to the state, which justify the state's granting preference to them over issues of nationality and citizenship “for the purpose of developing the national identity” of the state.

This account of history, together with the State of Israel's self-declaration as a *Jewish and democratic* state ignores the historical presence of Palestinians in the area and their right to self-determination. It is symptomatic of the state's privileging of the Jewish people, to the detriment of its Palestinian indigenous population. The Law of Return allows every Jew to immigrate to Israel and to automatically become a citizen of the state pursuant to Section 2 of the Citizenship Law (1952), which provides that, “Every person who immigrated according to the Law of Return will be a citizen of Israel.” This right is granted to Jews only.⁵²

In order to gain citizenship, non-Jewish residents of the state must pass through the “graduated procedure” for naturalization. The chances of success are negligible in general, and for Palestinian residents of OPTs virtually impossible following the passage of the *Nationality and Entry into Israel Law (Temporary Order)* (2003). (See Article 5 – (d)(iii) The Right to Marriage and Choice of Spouse, below for more information.)

Further, whilst, as stated in Israel's report (Para. 278) following the Supreme Court's decision in *Stamka*, there is no longer discrimination under the Law of Return between the non-Jewish spouses of Jewish and non-Jewish Israeli citizens, discrimination continues regarding other family members, as the children and grand-children of Jewish citizens will automatically be granted Israeli citizenship under the Law of Return, to which the children and grand-children of non-Jewish citizens are not automatically entitled.

Article 5(d)(iv) – The Right to Marriage and Choice of Spouse

In 2003 and 2004, the UN CERD issued Decisions 63 and 65 calling upon Israel to revoke the **Nationality and Entry into Israel Law (Temporary Order) – 2003** (as amended 2004 and 2005), which prohibits Palestinians from the OPTs from obtaining any residency or citizenship status in Israel even through marriage to an Israeli citizen (overwhelming Palestinian citizens of Israel), or from upgrading any previously-granted status.

The Law exclusively targets Palestinian residents of the OPTs, leaving the general policy for residency and citizenship status in Israel for all other foreign spouses unchanged, including Israeli settlers living in the OPTs. The Law amounts to **discrimination on the basis of race, national and ethnic origin**, and therefore violates the ICERD in general, and articles 5(d)(iv) and 5(d)(iii) in particular.⁵³

⁵² Article 1: “Every Jew has the right to immigrate to Israel.” Article 4A(a): The rights of a Jew under this law ... shall apply to the child and grandchild of a Jew, to the spouse of a Jew, the spouse of the child and the grandchild of a Jew, except for a person who has been a Jew and has converted his religion voluntarily.”

⁵³ In this regard, in its *General Recommendation 30: Discrimination Against Non Citizens* (Paras. 13 and 14), the Committee recommended that States parties to the ICERD, “Ensure that particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalization, and to pay due attention to possible barriers to naturalization that may exist for long-term or permanent residents”, and “Recognize that

The Law **severely violates the rights to equality, family life and privacy**. The UN Human Rights Committee (CO 2003) and CEDAW (CO 2005) issued concluding observations regarding the Law, and called upon Israel to reconsider its policies with a view to facilitating family unification on a non-discriminatory basis and to revoke the Law. These UN human rights bodies also voiced their concern that the Law has already adversely affected thousands of families and marriages. The practical effect of the Law is that thousands of families must separate, emigrate or live illegally in Israel under constant risk of arrest and deportation.

New amendments to the Law, enacted in July 2005 (which are not discussed in Israel's report), added new age and gender-related stipulations, imposing a sweeping ban on applications for temporary visit permits (the highest grade of status which can be applied for) from all Palestinian men under 35 years of age, and all Palestinian women under 25 years of age. Further security-related stipulations grant the authorities the power to refuse status to individuals and revoke the status of **individuals who are related to individuals whom security officials suggest might constitute a security threat to the State of Israel**. Under such circumstances, the most basic of human rights could be revoked purely on the basis of family relations. Furthermore, this presumptuous conclusion cannot be effectively challenged and would hold even where no information exists linking an applicant to any alleged security threat posed by a relative and even where an applicant has no personal contact with such a relative.

Thus, the new amendments provide very limited exceptions to the Law's sweeping applicability, inflict further violations of constitutional rights, and fail to remedy its severe infringements upon rights. Eight petitions remain pending before the Israeli Supreme Court challenging the constitutionality of the Law since its enactment 30 months ago. Further, the Law incorporated the principles of Government Decision No. 1813, in effect since 12 May 2002. Legal challenges against the decision, which the Court has frozen until the delivery of a decision in the cases filed against the Law, have therefore been pending before the Supreme Court since it came into force 44 months ago, leaving these thousands of families without a domestic legal remedy.⁵⁴

Israel's report provides inaccurate, incomplete and misleading information regarding Government Decision No. 1813 and the Nationality and Entry into Law:

1. Israel cites (Para. 279) "a growing involvement in assisting terror organizations" among Palestinians granted status in Israel through family unification as justification for Government Decision No. 1813, and further claims (Para. 284) that the Law is "the direct result of 23 murderous terrorist attacks." This information is **incorrect**. Before the Supreme Court, the state referred to 23 individuals (out of thousands of status-receivers) allegedly involved in terror - not necessarily actual attacks - and not to 23 attacks. As noted above, the state did not provide details of these cases to the Court. Moreover, even if reliable, this figure constitutes a minute number of people, and the Government Decision and the Nationality and Entry into Israel Law which is based on it are completely disproportionate.⁵⁵

deprivation of citizenship on the basis of race, colour, descent, or national or ethnic origin is a breach of States parties' obligations to ensure non-discriminatory enjoyment of the right to nationality."

⁵⁴ See, e.g., H.C. 7052/03, *Adalah, et. al., v. Minister of Interior, et. al.* and H.C. 4608/02, *Abu Assad, et. al. v. The Prime Minister of Israel, et. al.* (cases pending).

⁵⁵ Noteworthy in this context are the CERD's *General Recommendation 31 on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System* (Para. 1.1 B.2), in which the Committee identified "The potential indirect discriminatory effects of certain domestic legislation, particularly legislation on terrorism, immigration, nationality, banning or deportation of non-citizens from a country, as well as legislation that has the effect of penalizing without legitimate grounds certain groups or membership of certain communities. States should seek to eliminate the discriminatory effects of such legislation and in any case to respect the principle of proportionality of its application to persons belonging to [racial or ethnic groups]" as a factual indicator of discrimination in the criminal justice system"; and *General Recommendation 30*:

2. Israel falsely claims in the report (Para. 279) that there is “free movement between the West Bank and/or Gaza and Israel,” in an attempt to conceal the full impact of the Government Decision and the subsequent Nationality and Entry into Israel Law. As is well known, there is **not** free movement between the OPTs and Israel. Israeli citizens and residents need to get a permit from the army in order to enter Gaza and Area A of the West Bank, and frequent checkpoint closures have disruptive effects on the lives of thousands of split families. A further example of Israel’s restrictions on free movement between the OPTs and Israel is **a military order which forced Israeli citizens visiting the Gaza Strip to remain there for three consecutive months**. The unconstitutional order was issued with the intention of limiting use of the Erez checkpoint, and forced families to make inhumane choices between visiting their families and work-related and other obligations in Israel. Moreover, the order specifically affected and targeted Arab citizens and residents of Israel, since it is overwhelmingly they who marry Palestinian residents of the Gaza Strip. It did not affect Israeli citizens and residents requesting entry to the Gaza Strip to visit settlers, therefore constituting discrimination on the basis of national belonging.⁵⁶

3. The attack referred to by Israel as part of its justification from the Government Decision (Para. 280) was **not** perpetrated by an individual who had received Israeli ID following family unification, but by an individual who was born an Israeli citizen as the son of an Israeli citizen mother. This example, therefore, is irrelevant.

4. The information in Para. 281 of Israel’s report is false. The Government Decision **does** apply to persons already granted legal status in Israel. It prevents the upgrading of their status and retroactively cancels pending applications for residency or citizenship status from Palestinian spouses of Israeli citizens, and provides for the deportation of the Palestinian spouse.

5. As discussed above, in contradiction to what is stated in Para. 282 of Israel’s report, the Government Decision and the Law **do** discriminate between Israeli citizens and residents under Article 1(1) of the ICERD, as it is overwhelmingly Palestinian Arab citizens and residents of Israel who marry Palestinians (see also 6., below).

6. Israel correctly notes (Para. 282) that the Nationality and Entry into Israel Law does not affect Israeli citizens from achieving family unification with spouses of Arab or Palestinian origin who do not reside in the West Bank or Gaza Strip. However, Government Decision No. 1813 **does** prohibit family unification for non-citizen spouses of Israeli citizens “who are residents of the Palestinian Authority and/or are **of Palestinian origin or descent**.”⁵⁷

7. Contrary to what is stated in Para. 283 of Israel’s report, the Nationality and Entry into Israel Law not only severely limits the ability of Palestinians to gain Israeli citizenship through family unification, but also from gaining **any status** in Israel. Even the issuance of temporary visit permits is limited to certain circumstances, including their receipt for medical treatment. Further, amendments to the law enacted in July 2005 allowing Palestinian women aged 25 and over and Palestinian men aged 35 and over to submit applications for temporary visit permits for purposes of family unification, also subject these and all other applications to the condition that the applicant is not related to individuals whom security officials suggest might constitute a threat to the State of Israel.

Discrimination Against Non Citizens (Para. 10), in which the Committee recommended that the States parties, “Ensure that any measures taken in the fight against terrorism do not discriminate, in purpose or effect, on the grounds of race, colour, descent, or national or ethnic origin and that non-citizens are not subjected to racial or ethnic profiling or stereotyping.”

⁵⁶ During a hearing held in July 2004 on a petition challenging the order filed to the Supreme Court by Adalah and HaMoked in May 2004, the Military Southern Command declared the freezing of the order. See H.C. 5076/04, *Z. Housaini et. al., v. IDF Major General, Southern Command*. (decision delivered 7 July 2004).

⁵⁷ See, H.C. 4608/02, *Abu Assad, et. al. v. The Prime Minister of Israel, et. al.* (case pending).

8. Contrary to what Israel claims in its report (Para. 285), the Law does affect those who received status prior to the day it came into effect, as well as those who had begun the process of applying for family unification. Further, as noted, the process was further altered in July 2005, now subjecting existing status-holders to the condition of not being related to individuals alleged as a posing a security threat to Israel by security officers.

9. The Supreme Court decisions referred to in Para. 286 of Israel's report do **not** amount to scrutiny of or judgments on the constitutionality of the Law. This issue is still pending. The decisions relate only to motions for injunction orders and motions for decisions.

Article 5(e)(iii) – The Right to Housing

Discrimination in land planning, allocation and settlement through the laws and policies of successive Israeli governments since 1948 have brought **93% of all land in Israel under direct state control** today. The ILA, a governmental body, administers all "Israel lands," as categorized by Israel's Basic Law: Israel Lands (1960). "Israel Lands" are comprised of lands controlled by the state, the Development Authority and the Jewish National Fund,⁵⁸ and amount to 19.5 million dunams of land (around 78 million acres).

State control of land makes state land policies extremely significant to the development of the Arab minority in Israel. There is **clear inequality** between Jewish and Arab citizens of Israel regarding their access to land resources, their land rights, and their abilities to use the resource of land to develop their communities. This section highlights cases of state violations of land and planning rights through illegal and discriminatory decisions, plans, and policies.

1. Discrimination in Land Allocation

The two case examples highlighted here shows various means and mechanisms by which the state is attempting to allocate state-controlled land exclusively for the benefit of Jewish citizens in violation of the principle of equality.

a. Use of Military Service Criterion to Discriminate in Housing: In March 2003, the government approved Israel Land Administration Council (ILAC) Decision No. 952, entitled, "Land Discounts in the Negev and the Galilee for Discharged Soldiers." According to the decision, discharged Israeli soldiers are given a **90% discount** on the price of leasing lands controlled by the ILAC. The discount applies only to land in municipalities designated as national priority areas "A" or "B" and only to towns with less than 500 housing units. Adalah challenged this decision before the Supreme Court on the grounds that it discriminates against the majority of Palestinian citizens of Israel on the basis of their national belonging.⁵⁹ As the vast majority of Arab citizens of Israel are exempt from and do not perform military service, this decision discriminates against the majority of Palestinian citizens of Israel on the basis of their national belonging, violating their right to equal enjoyment of housing, socio-economic and other rights. Those who have served in the Israeli military receive substantial benefits under the Absorption of Discharged Soldiers Law (1994), which enumerates all the social and economic benefits to which discharged soldiers are entitled, providing them with a wide scope of compensation, including housing and educational grants and awards. This law should preclude the granting of any additional benefits, according to the criterion of military service.

⁵⁸ ILA Annual Report 2003 (Hebrew), available at www.mmi.gov.il/static/p236.html.

⁵⁹ H.C. 9289/03, *Adalah, et. al. v. Israel Lands Administration, et. al.* (case pending).

Further, there are almost no Arab municipalities classified as “A” or “B” priority areas on the National Priority List,⁶⁰ and due to the higher-than-average population density in Arab municipalities, almost no Arab towns contain fewer than 500 housing units. The consequent exclusion of Arab municipalities from the list of towns eligible for the proposed benefits seriously harms the rights of their inhabitants to equality and housing. Further, the decision does nothing to alleviate the unacceptable housing situation of Palestinian citizens of Israel, which is characterized by overcrowding and a deficit of available land for building.

b. Plan to Establish 30 New “Individual Settlements” in the Naqab: In November 2002, the government approved a policy of “individual settlement” for the purpose of “protecting state lands.” One of the manifestations of this policy is the “**Wine Path Plan**” for the establishment of 30 “individual settlements” in the center of the Naqab. “Individual settlements” are inhabited, in general, by a single family provided with hundreds and sometimes thousands of dunams of land for their exclusive use. In 2003, there were 59 individual settlements in the Naqab in 2003, stretching over 81,000 dunams of land.⁶¹ The plan involves the distribution of vast and lucrative portions of land in the Naqab in an inequitable manner, with no clear, objective criteria. It is discriminatory as it prevents equal access to the land for the entire population of the region, and is not based on any relevant factual data about the local Arab Bedouin population. Further, by retroactively legalizing the seizure of “state lands,” it is unconstitutional.

In February 2005, Adalah filed an objection to the plan to the National Council for Planning and Building (NCPB). Adalah argued, *inter alia*, that although the plan has been presented as a tourism project, its real and primary objective is to “preserve state land” from use by “foreign entities,” i.e. Arab Bedouin citizens of Israel, through retroactively legalizing existing and allowing for the establishment of new “individual settlements.” The NCPB rejected the objection in September 2005.

2. Discrimination and Injustice in Land Planning

The state’s discriminatory land plans will severely and negatively impact the future development and growth of Arab towns, villages and neighborhoods. For the most part, **these plans view the Arab minority as a “demographic problem.”** These plans seek to: restrict or prevent the expansion of industrial, commercial, and development areas in Arab towns and villages; limit the growth of Arab towns by surrounding them by protected lands, which cannot be developed; increase the housing and population density in Arab towns and villages; require the demolition of Arab-owned homes; and assert the claimed state’s right to land.

In its report, Israel claims that the government has “placed an emphasis on improving Arab villages and towns” over the last few years (Para. 368) and details several plans initiated to this end, including a national project to promote outline and zone plans in Arab towns and villages and a forthcoming District Outline Plan for the northern district of Israel (Paras. 368-373) – known as “**Tamam 2-9.**” Tamam 2-9 was submitted by the Northern District Committee for Planning and Building in September 2001 and has yet to receive final approval, discriminates against Palestinian citizens of Israel.⁶²

⁶⁰ For more information on the discriminatory demarcation of National Priority Areas, See H.C. 2773/98 and H.C. 11163/03, *The High Follow-up Committee for the Arab Citizens in Israel, et. al. v. the Prime Minister of Israel* (case pending).

⁶¹ Hamdan, H., “The Policy of Settlement and “Spatial Judaization in the Naqab,” Adalah’s Newsletter, Volume 11, March 2005, p. 6. Available at: <http://www.adalah.org/newsletter/eng/mar05/ar2.pdf>.

⁶² On behalf of 26 Arab municipalities and local councils, Adalah and the Alternative Center for Planning submitted an objection to Tamam 2-9 to the National Council for Planning and Building on 31 December 2001. The objectors demanded the cancellation of the existing plan and the development of a new document in accordance with modern planning norms, based on principles of equality, public participation, transparency, and the fair representation of Palestinian citizens of Israel in the planning process. A hearing on the objection was held in March 2003. No decision has yet been given.

Planners raised concerns that: **“The taking control of [the Northern District] by Arab elements is a fact that the State of Israel is not dealing with as it should and this will cause distress for future generations.”**⁶³

Tamam 2-9 treats the Arab population in the north of Israel as a demographic problem and proposes to find solutions to several specific problem areas including that: (i) “Jews constitute a minority in the north”; (ii) the “Arab towns and villages are geographically contiguous”; and (iii) “the taking control of land and illegal building,” referring unquestionably to the Arab population in the district.⁶⁴

Under the plan, all industrial and commercial areas are placed in or close to Jewish towns, and the development of tourism is promoted only in these towns. Restrictions set forth in the plan prevent the expansion of industrial, commercial and development areas in the Arab towns and villages. Further, many of the Arab towns and villages are surrounded by protected lands, which cannot be developed. The plan neglects the poor living conditions in Arab towns and villages, failing to address the housing problems, overcrowding, lack of land available for building and lack of public services that exist in these localities. There were no Palestinian citizens of Israel on the editors’ committee for the plan, responsible for finalizing the plan, and the steering committee had only two Palestinian members out a total of 30. Adalah, together with the Arab Center for Alternative Planning (ACAP), filed an objection to TAMAM 2-9 on behalf of 26 Arab municipalities and local councils in the north before the National Council for Planning and Building (NCPB) on 30 December 2001. The objection remains pending.

3. Dispossession and Displacement

In its *Concluding Observations* dated 19 March 1998 (Para. 18) (CERD/C/294/Add.1), the Committee expressed concern about **“ethnic inequalities, particularly those centering upon what are known as unrecognized Arab villages.”** [Emphasis added]

Palestinian Arab Bedouin in the Naqab number close to 143,700 people, or **14%** of the total population of the Naqab, projected to rise to approximately 320,000 by 2020.⁶⁵ Of the 14,185,000 dunams of land which comprises the Southern District as a whole, the total number of dunams currently under the jurisdiction of the seven recognized Palestinian Bedouin towns in the Naqab (Rahat, Laggiyya, Kessife, Tel el-Sebe, Hura, 'Arora, and Segev Shalom) is around 60,000 dunams, and the further seven newly-recognized towns have jurisdiction over a further 34,000 dunams, which when combined account for a mere **0.8%** of land in the District.

The **government-planned towns for Arab Bedouin in the Naqab**, contrary to the state’s claims (Para. 379), are not suited to the needs of and not designed for “the common good of the Bedouin population.” Rather, the aim of the planning is the concentration of the Arab Bedouin in the Naqab on the smallest possible area of land. Thus, the areas planned for Arab Bedouin citizens in the Naqab are almost all urban in nature, whereas various options, including community, agricultural and spacious “individual” settlements are open to Jewish citizens. It is significant that none of the members of the Southern Regional Planning Committee, which implements planning guidelines in the Naqab, is an Arab citizen of Israel. The negative affect of the government planning, which was undertaken with no community participation, is particularly acute for Arab Bedouin women, as it is insensitive to the customs and traditions of Arab Bedouin society, which restrict women’s movement. The area of land allotted to houses in the government-planned towns, for instance, is generally far smaller than in traditional Bedouin villages, and the houses often have only one external entrance,

⁶³ Protocol of the National Council for Planning and Building Meeting #224, 1 April 1986 at 7 (Hebrew). Comment attributed to Mr. Alef Mintz, a member of the Council.

⁶⁴ Development and Master Plan, Northern District: Provision 9 to Tamam 2, Part 1: Goals, Policy and Development Alternatives (July 1992) at 4 (Hebrew).

⁶⁵ Mustafa, M. and M. Subhi, *Unlicensed: The Policy of Demolishing Arab Homes in Israel*, Center for Contemporary Studies, 2005, p. 48 (Arabic).

thus reducing women's space. Moreover, the lack of private space is not compensated for by the provision of public areas in the case of Bedouin women, for whom access to such areas is limited. The inadequate provision or total lack of public transport between the towns serves to further isolate women. The lack of land also restricts economic activity the towns, as Arab Bedouin traditionally engage in agriculture and the rearing of livestock. As a result, the levels of employment in the planned towns are the highest in Israel, and all are classified by the state in cluster one, the lowest socio-economic ranking.⁶⁶

Around half of the Arab Bedouin in the Naqab live in around **40 unrecognized Arab villages throughout the Naqab**, referred to by the state as "illegal clusters." With no official status, these villages are excluded from state planning and government maps, have neither local councils or belong to other local governing bodies, and receive little-to-no basic services, including electricity, water, telephone lines, or education or health facilities. The Israeli government views the inhabitants of these villages as "trespassers on state land," although many have been living on these lands - the ancestral lands of the Arab Bedouin - prior to the establishment of the state in 1948, and although state attempts to assert ownership claims on the land are vehemently disputed. Others, expelled from their ancestral lands by the state, were forced to move to their current locations by the military government imposed on the Palestinians in Israel between 1948 and 1966, and thus face the threat of expulsion for a second time.

Over the last three years, the Sharon-led government has promoted a new generation of policies to alter the demographic reality on the ground in the Naqab and minimize the limited amount of land held by Palestinian citizens of Israel. Whereas over the years the state applied indirect pressure on the community by simply failing to provide basic infrastructure and services to the unrecognized villages (and continues to do so), today, the government also seeks their **direct, collective re-location**. As the Deputy Prime Minister and Minister of Trade and Industry Ehud Olmert noted in February 2004: **"[the state] will evacuate the unrecognized Bedouin villages in the Naqab in order to settle hundreds of thousands of Jewish people there."** The three following examples focus on the government's "new generation" of policies which aim to dispossess and displace the Arab Bedouin from the unrecognized villages in the Naqab and relocate them to the overcrowded and impoverished government-planned towns.

a. The Aerial Spraying of Toxic Chemicals on Agricultural Crops: One way in which the state attempted to implement its evacuation policy is through the ILA's **aerial spraying of toxic chemicals** over 24,000 dunams of agricultural crops belonging to Arab Bedouin living in the unrecognized villages since the beginning of 2002. The ILA issued no warnings, either before or after the spraying. In March 2004, Adalah, in its own name and on behalf of eight other human rights organizations and four Arab Bedouin citizens of Israel, one of whom was injured from the spraying and three of whom had crops destroyed by the ILA, petitioned the Supreme Court against the ILA's operations.⁶⁷ Adalah argued that these practices constitute a danger to the life and health of human beings, animals and the environment. The ILA admitted to spraying the crops with chemical agents unauthorized by the Ministry of Agriculture, but claimed nonetheless that the crop spraying is legal and a useful, cost-effective and efficient means of solving the problem of Arab Bedouin "trespassers" allegedly "encroaching" on "huge swathes of land belonging to the state." The Supreme Court issued an injunction immediately after the filing of the petition preventing the ILA from continuing its spraying operations. The case remains pending.

⁶⁶ CBS, "Characterization and Ranking of Local Authorities: Local Councils and Municipalities –index, rank, cluster membership, populations, the values and ranking for the variables used for the classification," February 2002.

⁶⁷ H.C. 2887/04, *Saleem Abu Medeghem, et. al. v. Israel Lands Administration, et. al.* (Supreme Court) (case pending). See also, Report by the Arab Association for Human Rights, *By All Means Possible: A report on the Destruction by the State of Crops of Bedouin Citizens in the Naqab (Negev) by Means of Aerial Spraying with Chemicals*, July 2005.

b. “The Governmental Decision Regarding the Bedouin Sector in the Negev”: This decision was approved in April 2003. In remarks about the plan, Minister of Industry and Trade Ehud Olmert, also responsible for implementing the plan, was quoted as saying that: “We are talking about evacuating [the Bedouin] to the new seven towns that we are building for them. We will conduct contacts with them [the Bedouin], however, I assume that they will absolutely oppose [the plan] ...If it [this issue] was up to an agreement, it will never be given ...”⁶⁸

The main aspects of the plan (also known as the “Sharon Plan”) include the setting forth of policy guidelines and government spending for: (i) contesting and settling ownership claims and land arrangements; (ii) “enforcing the state’s rights to land and enforcing the planning and building laws;” (iii) completing the development and infrastructure of the existing seven Arab Bedouin towns; and (iv) the planning of the seven new such towns.

Although the plan declares that its goal is “to alter and improve the situation of the Bedouin population in the Negev”, its *de facto* aim is to seize control of what is left of the Arab land in the Naqab. By relocating the Arab Bedouin and building new Jewish settlements in the region, the state seeks to increase the percentage of Jewish residents of the region (which currently stands at about 75%), and enlarge the percentage of land used by them. As discussed above, the Arab Bedouin’s historical experience of forced displacement as well as their lifestyle needs make them particularly resistant to the government’s territorial concentration project. The government’s plan is not a development plan, and does not fit the needs, suit the priorities or uphold the rights of the Palestinian Bedouin citizens of Israel living in the Naqab; rather, it is a plan to concentrate the Palestinian Bedouin living in the Naqab on a minimum amount of land.

An overview of the NIS 1.175 billion (about US \$265 million) plan reveals that there is no budget allocation of funds for the planning and infrastructure of the new Arab towns. Rather, about 40% of the budget is allocated for **house demolitions** and towards strengthening the various bodies required to implement demolition policies; for the **evacuation of the Arab Bedouin from the lands**; and for the provision of compensation for those who relinquish their land ownership claims.

c. Home Demolition and Evacuation Orders Issued to Arab Bedouin Living in the Unrecognized Villages: The second article of the “Sharon Plan” aims at “the full implementation of Government Decision No. 2425 of 4 August 2002, in regard to stepping up the enforcement of planning and building laws and property ownership,” that is, intensifying government efforts to implement the expulsion and transfer of the Arab Bedouin from their villages by demolishing houses and carrying out evacuations. The budget allocated for article (ii) is NIS 61,500,000. Following the approval of the “Sharon Plan,” the state has stepped up its efforts to demolish homes in the Naqab. The ILA estimates the number of unlicensed structures (therefore subject to demolition) in the unrecognized villages in the Naqab at approximately 60,000, including 25,000 homes.⁶⁹ The Ministry of the Interior puts this figure at 30,000 homes.⁷⁰

Adalah is currently representing Arab Bedouin citizens of Israel in 27 lawsuits filed by the state in 2004 to demolish homes and evacuate the 1,500 residents of the unrecognized village of Atir-Umm Al-Hieran in the Naqab.⁷¹ In these cases, the state is requesting that **evacuation orders** be issued against the inhabitants of the village, based primarily on the claim that the villagers’ are using state land without permission and need to be prevented from using it in the future. A new Jewish town – Hiran – is planned for this site. The villages’ inhabitants are seeking the recognition of the village in

⁶⁸ Koren Orah, “The Minister that Deals with the Sabbath, the Bedouins, and Recruiting Investment from Pension Funds from New York,” *Ha’aretz*, 11 April 2003 (Hebrew).

⁶⁹ *State Comptroller Report 52B*, 2000, p. 111. (Hebrew)

⁷⁰ *Ibid.*

⁷¹ See e.g., Civil File 3326/04, *The State of Israel and the Israel Lands Administration v. Ibrahim Farhood Abu el-Qian, et. al.* (Beer el-Sabe Magistrate Court) (cases pending).

the regional planning for the area. The cases are pending before the Magistrate Court in Beer el-Sabe (Beer Sheva).

Article 5(e)(v) – The Right to Education and Training

1. The Educational System for the Palestinian Minority in Israel

Palestinian pupils, citizens of Israel comprise approximately 25% of the country's school students. From elementary to high school, Palestinian and Jewish students learn in separate schools.

Discriminatory Allocation of Resources for Palestinian Education: The Ministry of Education (MOE) severely under-funds schools for the Palestinian minority in Israel. Israel does not regularly release official data detailing how much it spends in total on each Palestinian child relative to each Jewish child, which "... indicates the weakness of its commitment to real improvements in the Palestinian educational system in Israel."⁷² However, statistics published in 2004 reveal that combined public and private investment in Palestinian school students stood at an average of **New Israeli Shekels (NIS) 852** per student, compared with **NIS 3,501** per Jewish student for the academic year 2000-2001. Over the same period, public investment totaled on average **NIS 534** per student for Palestinians, compared with **NIS 1,779** per Jewish student.⁷³ Thus, while these figures show that private investment in Jewish students greatly surpassed that in Palestinian students, the government spent over three times as much on each Jewish student as on each Palestinian student. This under-funding is manifested in many areas, including the poor infrastructure and facilities characteristic of Palestinian schools,⁷⁴ crowded classrooms,⁷⁵ few teaching hours relative to Jewish students, the lack of support and management professionals in the Palestinian educational system in Israel, and poor Arabic textbooks.⁷⁶ This environment creates a negative experience for students, academically, emotionally and socially, and leads to phenomena such as academic under-achievement and high drop-out rates.

Despite its acknowledgement of past disparities in its periodic report, Israel's presentation of data under these articles is incomplete. This gap reflects the inadequacies of Israel's own statistics, as exemplified by the lack of official data on the total amount it spends per Arab and Jewish child and the fact that there are no separate lines in the budget for Arab education.⁷⁷ The government's continued

⁷² Human Rights Watch, *Second Class: Discrimination against Palestinian Children in Israel's Schools*, 2001, p. 49.

⁷³ CBS, *New Survey: Investment in Education 2000/1*, Press Release 3, August 2004 (Hebrew).

⁷⁴ In addition, the physical facilities themselves are also laden with health risks, such as asbestos and other hazardous substances. See, e.g., Human Rights Watch, *Second Class: Discrimination against Palestinian Children in Israel's Schools*, 2001, pp. 82-94.

⁷⁵ From primary to secondary school levels, average class sizes are larger in Palestinian schools than in Jewish schools, with an average class size of 26 pupils per class in Jewish schools compared with 30 pupils in Palestinian schools. Source: CBS, *Statistical Abstract of Israel 2004*, No. 55, Table 8.11. According to the Follow-Up Committee on Arab Education in Israel, the estimated deficit in classrooms in the Arab education system is currently 4,900 classrooms (2,000 in schools, 2,000 in preschools, and 900 in the unrecognized villages in the Naqab). See, The Follow-Up Committee on Arab Education in Israel, "A Snapshot of the Arab Education System in Israel," *Adalah's Newsletter*, Vol. 18, September 2005. Available at: <http://www.adalah.org/newsletter/eng/sep05/come2.pdf>.

⁷⁶ For example, a committee set up by the MOE to examine gender stereotypes in school textbooks concluded that 60% or more of the textbooks examined in the Palestinian educational system include the wide use of gender stereotypes. See, Report of Committee to Examine Gender Stereotypes in School Textbooks in the Educational System in Israel, March 2002, pp.27-28 (Hebrew).

⁷⁷ See, e.g., Ministry of Education, *Budget Instructions for 2000*, no. 11, January 2000; and Ministry of Education, *Proposed Budget for the Ministry of Education 2001 and Explanations as Presented to the Fifteenth Knesset*, no. 11, October 2000 (Hebrew).

failure to make public such basic data indicates the weakness of its commitment to real improvements in the Arab education system.

One example of the pernicious impact of this lack of data is the Ministry of Education's use of an "index of educational disadvantage" in order to allocate resources to primary and intermediate schools to improve performance and decrease dropping out.⁷⁸ The ministry applies two different standards to Arab and Jewish schools and ranks them separately. Rather than comparing all schools against a common standard, the ministry compares Arab schools with other Arab schools and Jewish schools with other Jewish schools. Given that the Arab schools by every measurement are more disadvantaged than Jewish schools, comparing the two sectors separately is a highly misleading indicator and leads to further distortion in resource allocation to Arab schools.⁷⁹

Lack of Palestinian Control over the Curriculum: The State Education Law - 1953 establishes separate, independent educational systems - state secular and state religious schools - to meet the distinct needs of the Jewish community. There are no state religious schools for Palestinian children in Israel. The MOE retains centralized control over the curricula for Palestinian schools and Jewish secular schools. Jewish religious schools enjoy wide autonomy over their curricula, whereas Palestinian educators, excluded from significant decision-making positions in the MOE, have no autonomy to set curricula. In contrast to the independence granted to Jewish religious schools, no autonomous educational system has ever existed to satisfy the needs of the Palestinian community as a distinct group with a common language, history, culture and national identity. The State Education Law sets the educational goals of the state educational system, which emphasize only Jewish history and culture; mandatory subjects for all students who take the matriculation examinations at the end of high school include, for example, Jewish religious texts. Palestinian students are thus denied the opportunity to develop a positive cultural and national identity.

2. Israel's Discrimination against Arab Children in Guaranteeing the Right to Education: Israel's Basic Laws do not explicitly enumerate the right to education as a constitutional right. However, Adalah argues that this right is protected through the right to dignity and by ordinary statutes, such as the Compulsory Education Law – 1949 and the Rights of Students Law - 2000.

a. Failure to Implement the Compulsory Education Law (1949): Two examples are illustrative:

- i. An **amendment to the Compulsory Education Law (1949) enacted in 1984** lowered the age of compulsory education from five to three years old, and required that implementation of the new amendment be fully achieved by the end of 2000, subsequently delayed until 2008. Due to the MOE's discriminatory allocation of budgets, state funding for preschool education for three- to four-year-old Palestinian children remains minimal: although over 25% of children in Israel aged three and four are Arab, only 66.5% of three-year-old Arab children were enrolled in kindergartens in 2002-2003, compared with 100% of Jewish children.⁸⁰ In 2004, the Supreme Court rejected a petition which demanded that the MOE establish on-site preschools for approximately 300 Palestinian Bedouin children living in unrecognized villages in the Naqab to ensure their right to free education, in accordance with the Compulsory Education Law.⁸¹ These villages lack any educational framework for children of this age.

⁷⁸ Ministry of Justice, *Initial Periodic Report*, p. 272 (Hebrew).

⁷⁹ For more information on how the index is applied, see, Human Rights Watch, *Second Class*, pp. 60-64.

⁸⁰ CBS, "Children in Kindergartens and Day Care Centers – 2001/02," Press Release, 4 August 2004 (Hebrew).

⁸¹ H.C. 5108/04, *Ismail Mohammed Abu Guda, et. al. v. Limor Livnat, Minister of Education, et. al.* submitted by Adalah (petition dismissed 9 September 2004). In October 2005, Adalah filed a further petition to the Supreme Court demanding transportation for preschool-aged children from an unrecognized Arab Bedouin village in the Naqab to preschools in neighboring villages, or the construction of preschools in the village. See, H.C. 100030/05, *A'aref Ala'moor v. The Ministry of Education, et. al.* (case pending).

- ii. There are **no high schools in any of the unrecognized Arab Bedouin villages**, and only a limited numbers of elementary schools. According to Israel's report (Para. 501), the solution lies in pupils' enrollment in regional schools serving rural localities. However, this is blind to the cultural realities of Arab Bedouin children, and girls in particular. In a petition filed to the Supreme Court by Adalah in March 2005,⁸² it was demanded that the state open a high school in the region of Abu-Tulul – El-Shihabi, in which lie seven unrecognized villages inhabited by approximately 12,000 Arab Bedouin citizens of Israel. In order to receive a high school education, students from the villages must travel 12 km to attend school in state-planned Arab Bedouin towns. The main argument advanced was that the lack of a local high school violates the right of Arab Bedouin girls from the area to an education under the Compulsory Education Law, as Arab Bedouin tradition and customs forbid female students from traveling outside of their villages without the accompaniment of a relative, from studying with students who belong to other tribes, or from being in the company of unfamiliar boys. The result of the lack of a local high school is an extremely high drop-out rate in the villages of 77%, which is even higher among girls. Further, the MOE has established high schools for Jewish children in many areas in the Naqab with populations smaller than those of the seven unrecognized villages, including the neighboring settlement of Kibbutz Shuval, which has a population of just 350. Thus, the lack of a local high school constitutes compound discrimination against girls from the villages on the basis of gender *and* nationality: both as women in a traditional society and as members of the Palestinian minority in Israel.

b. Failure to Implement the 2004 Amendment to the Long School Day Law (1997): The Long School Day Law-1997 (amended 2004) was passed to increase school hours for students in towns and villages with low socio-economic status, and to encourage mothers in these areas to work outside of their homes. The long school day is available for only 10% of the school children in Israel, or 140,000 children. The generally poor state of school infrastructure, buildings and facilities in Palestinian towns and villages further hinders the implementation of this law in Arab schools. Budgetary constraints, to which Israel attributes the partial/delayed implementation of these laws, cannot continue to relieve the MOE of its obligations under them. The implementation of the laws should prioritize the economically and educationally disadvantaged Palestinian minority in Israel, to help close the educational gaps between Jewish and Palestinian students.

Impact on Women of the Failure to Implement these Laws: The failure to fairly and effectively implement both laws also has a specific, negative impact on Palestinian women, by reducing their opportunity to enter the labor force. In 2003, just 24% of Palestinian women aged 25-54 worked outside the home, compared with 78.9% of Jewish women, 78.7% of Palestinian men and 84% of Jewish men.⁸³ The shortage of kindergartens and the non-implementation of the long school day in most Palestinian towns and villages, reduce the engagement of the Palestinian women, traditionally the primary care-providers for children, in the labor force. Their low rate of engagement in the labor force impacts negatively on Palestinian women's standard of living and degree of independence.

3. The Educational Under-Performance of Palestinian Pupils and its Impact on University Admission

The overall result of the State of Israel's discriminatory policies in the education system is **the under-performance of Palestinian pupils**. The following sections demonstrate this under-performance by comparing Jewish and Palestinian citizens of Israel according to the following indicators.

a. Illiteracy Rates: Palestinians citizens of Israel in general and Palestinian women citizens in particular suffer from the highest rate of illiteracy of any group within Israeli society: in 2003, 14.7% of

⁸² H.C. 2848/05, *Fatimah Abu Sabila (Ali), et. al. v. The Ministry of Education, et. al.* (case pending).

⁸³ CBS, *Statistical Abstract of Israel 2004*, No. 55, Table 12.1.

Palestinian women and 6.2% of Palestinian men citizens of Israel were illiterate, compared with 4.5% of Jewish women and 2.5% of Jewish men according to government statistics.⁸⁴ Moreover, the level of illiteracy amongst Palestinian women citizens of Israel, for example, fell by just 1.5% - from 16.2% to 14.7% - over the four-year period between 1999 and 2003.⁸⁵ Despite the particularly high rate of illiteracy among Palestinian citizens of Israel, Israel's report fails to detail any measures which the state has put in place in order to reduce illiteracy among Palestinian citizens of Israel.

b. Drop-Out Rates: The drop-out rate among high school Palestinian pupils is approximately double that of Jewish pupils, with 10% of Palestinian students, compared with 4.9% of Jewish students dropping out of school, according to Israel's report (Para. 446). The situation in the Naqab is worse: the rate of dropping out of Jewish pupils in the Naqab is around 4.8%, compared with around 12.6% among Arab Bedouin pupils in the area. At the same time, the MOE's discriminatory policies mean that Palestinian high school pupils are disadvantaged regarding access to educational service programs to address the problem of dropping out, as well as other educational problems such as low academic performance. For example, despite the figures detailed above, only 15.3% of the number of counselors specialized in preventing dropping out recommended according to the MOE's own criteria were actually operating in Palestinian schools in 2000; the corresponding figure for Jewish schools is 43.4%.⁸⁶

In January 2005, the Supreme Court issued a judgment in which it determined that the educational gap between Jewish and Arab Bedouin students in the Naqab requires **a policy of affirmative action** to bring Arab Bedouin students to a similar starting point to that of the Jewish students, in order to achieve equal opportunities for all social groups. The judgment was delivered in response to a petition filed to the Court by Adalah in July 2003⁸⁷ demanding that the MOE appoint the required number of counselors for Arab Bedouin students in the Naqab, who are at risk of dropping out of school, in accordance with the MOE's own set criteria.

c. University Attendance Rates: Palestinian students are dramatically under-represented in Israel's higher education system: while Palestinians citizens make up around 20% of the population, the percentages of Palestinians among university students in Israel 2002-2003 was 9.5% at first degree level, 4.8% at second degree level, and just 3.2% at third degree level.⁸⁸ Despite these figures, no steps are being taken by Israel to increase the numbers of Palestinians in higher education.

One obstacle to Palestinian students' admissions to universities is their relatively poor performance on **matriculation exams**. In 2002, for example, according to figures cited in Israel's report (Para. 447) while a higher percentage of pupils in the 12th grade of the Arab education system (88.2%) than their counterparts in the Jewish education system (79.8%) took matriculation examinations, a lower percentage of pupils in the Arab education system were entitled to a matriculation certificate (51.1%) than Jewish pupils who took the examination (56.3%). The gap was particularly wide within the Arab Druze community, with 48.3% of students passing the matriculation examination out of 94.7% who took the examination, or around only half of all applicants.

A second obstacle is the reinstatement in 2003 of the **psychometric examination** as a criterion for admission into university after its cancellation, which resulted in a rise in the numbers of Arab students in higher educational establishments. In 2003, although only 6.7% fewer Palestinian than

⁸⁴ CBS, *Statistical Abstract of Israel 2004*, No. 55, Table 8.3.

⁸⁵ The State of Israel's Third Periodic Report to the Committee on the Elimination of Discrimination against Women, 2001, pp. 80-81.

⁸⁶ Annual Report 51B of the State Comptroller, 2000, p.10.

⁸⁷ H.C. 6671/03, *Munjid Abu Ghanem, et. al. v. Ministry of Education, et. al.* (decision delivered 24 January 2005).

⁸⁸ CBS, *Statistical Abstract of Israel 2004*, No. 55, Table 8.42.

Jewish pupils gained a matriculation certificate (50.7% versus 57.4%), in terms of meeting university entrance requirements the gap rose to 17% (31% versus 48%), because of their relatively poor performance on the psychometric examination.⁸⁹ A “Committee on the Advancement of Higher Education among the Arab Population in Israel” established by the Council for Higher Education to examine the problem of Palestinian students' low scores in the psychometric examination, concluded that the examination, a translation of the Hebrew version of the test, is not sensitive to Palestinian culture or the Arabic language, and therefore Palestinian students are at a disadvantage when taking it. The Committee recommended, *inter alia*: the revision of the examination to make it more culturally and cognitively sensitive to Arab students and the Arabic language; that the grade weight awarded to the psychometric examination for acceptance to universities is not more than 50% of the total; and that compensatory mechanisms should be established to help “weaker populations” in accessing higher education. (See Annex 8 of Israel’s Report.)

A third obstacle is the **imposition of age limits** for studying in many university faculties. Many courses stipulate a lower age-limit of 20 years. This discriminates against Palestinian candidates, since they, unlike Jewish candidates, do not serve in the army, and generally seek to enter university at the age of 18.

d. Representation of Arab Members of Faculty in Universities in Israel: As Israel’s report notes (Annex 8), only 1% of academic staff members are Palestinian. This figure reveals that there has been no improvement in this situation since at least 1999, when Palestinians made up the same proportion of faculty members in Israeli universities.⁹⁰ These figures are evidence that the measures adopted by Israel, including the Maof Fund, to increase the representation of Palestinian citizens of Israel in academic positions are limited and inadequate.

⁸⁹ CBS, *Statistical Abstract of Israel 2004*, No. 55, Table 8.21.

⁹⁰ The State of Israel’s Third Periodic Report to the Committee on the Elimination of Discrimination against Women, 2001, p. 102.

PROPOSED QUESTIONS

Article 1 – Definition of Racial Discrimination and Laws that Discriminate on the Basis of Race in Israel

1. Please explain how the State of Israel is in compliance with its obligations under ICERD although a constitutional right to equality for all of its citizens is not guaranteed?
2. Many Israeli laws include the term “Jewish State”, “the values of the State as a Jewish State”, and/or refer to “Israel’s heritage” as a source of law. Why does this not constitute discrimination against non-Jews, in particular the Arab minority?

Article 2(2) – Social, Economic, and Cultural Measures to Ensure Development and Protection of Racial Groups

3. Please provide information, by project and by Arab town, as to exactly how state funds were spent under the Multi-Year Plan for infrastructural improvements in Arab communities. What public services have been improved and what facilities have been built or renovated pursuant to the implementation of the Multi-Year Plan?
4. The Committee has received information that Arab municipal leaders may lack information as to the amount of funding their towns are entitled to under the Multi-Year Plan. How does the state intend to create more transparency in the Plan’s implementation, and, specifically, how does it intend to improve communication with the Arab leaders to increase the awareness and involvement of the Arab community?
5. The Committee received information that the State Party has attempted to use the Multi-Plan Year Plan to justify the exclusion of Arab towns from various socio-economic plans such as the Urban Renewal Program and the Ofeq Program aimed at assisting towns with poor socio-economic conditions. Please provide details as to all existing socio-economic plans, the purposes of each, and how the state intends to structure the programs to include the needs of Arab communities and not to discriminate against Arab communities.
6. What specific measures are being taken to address the under-representation of Palestinian citizens in general and Palestinian women in particular in the judiciary?
7. Given that the Minister of Religious Affairs has used his power under the Protection of Holy Sites Law (1967) to solely designate Jewish holy sites, how is Israel guaranteeing the preservation and protection of “non-Jewish” holy sites and access to them for their respective local and international religious communities?

Article 3 – Racial Segregation

8. By adopting land allocation and land use policies which are based on demographic considerations and result in Jewish-only, segregated areas, how does Israel comply with the principles of non-discrimination on the basis of race, religion and national origin? What action will Israel take to ensure that all lands managed by the Israel Land Administration (ILA), as a state agency established by law, are marketed and allocated according to the principles of equality, just distribution and fairness to all of Israel’s citizens?
9. What measures are being / will be taken by Israel to ensure that land is and will in the future be allocated in accordance with the principle of equality to Palestinian and Jewish citizens of the state?

10. How will Israel guarantee that the Selection Committees for “community and agricultural settlements” comply with the obligation not to discriminate on the basis of race, religion and national origin?

Article 5(a) – The Right to Equal Treatment before the Tribunals and other Organs Administering Justice

11. Israel's report does not address the question under article 5(a) of ICERD: guaranteeing equal treatment before tribunals and all organs of justice. Please provide the Committee with information on action taken by the state to ensure that Arab citizens, non-citizens and those under state control are afforded equal treatment before administrative and judicial bodies in order to seek equal protection under the law and compensation.
12. The Commission has learned of proposed legislation initiated by the government to create a separate and harsher criminal procedure law for “non-citizens” suspected of security offenses. How does the state reconcile this proposed law with its obligations under article 5(a) of ICERD.
13. What steps, if any, is the government taking in order to correct disparities in criminal conviction rates and sentencing between Arab and Jewish citizens of Israel?

Article 5(b) – The Right to Security of Person

14. While taking note of Israel's establishment of the Or Commission of Inquiry and the Lapid Committee in response to the tragic circumstances, including the killings and injuries of Arab citizens of the state in October 2000, the Committee requests details on how the state is implementing *all* of the recommendations made by the Commission of Inquiry. Specifically, please provide information on all actions taken by the state to investigate, discipline, indict and prosecute police officers and commanders that the Or Commission found responsible for the 13 deaths in October 2000.
15. What steps, if any, is Israel taking concerning the findings of the State Comptroller in 2005 regarding the lack of independence of Ministry of Justice's Police Investigations Unit (Mahash) and high number of complaints against police officers that go uninvestigated. What steps are being taken to address the failure of police officers and commanders to apply lessons and directives from training in the field, also noted in the 2005 State Comptroller's report?
16. Please provide the Committee with disaggregated data on how many complaints are filed against police officers by members of the Arab minority over the last five years. What percentage of these cases, compared to those brought forth by members of the majority, result in judicial or administrative action? What percentage are dismissed and for what reasons?

Article 5(c) – Political Rights

17. Article 7A (1) of Basic Law: The Knesset sets forth specific criteria that every parliamentary candidate and political party must meet in order to participate in parliamentary elections. How does Israel protect the ability of representatives of the Arab minority to run for political office and advocate against discrimination and for full equality for Palestinian citizens of Israel through the democratic process?
18. Please provide data on the frequency of the state's use of emergency laws and a breakdown, by law, on their use against Jewish and Palestinian citizens of Israel?
19. Given the extensive use of emergency regulations against Arab political leaders and activists in Israel, what measures, if any, are being taken to ensure that emergency legislation is not used to silence valid criticism and dissent in a “democratic state”?

20. Given the relatively low representation of Palestinian citizens of Israel in the civil service and the boards of directors of government companies, please detail what measures are being / will be taken in order to ensure the implementation of the amendments to the Civil Service Law (Appointments) (1959) and the Government Corporations Law (1975).
21. What specific measures are being taken to address the severe under-representation of Palestinian women in public posts, including the civil service and the boards of directors of government companies?

Article 5(d)(iii) – The Right to Nationality

22. As the Law of Return allows Jews from all over their world, and their children and grandchildren, and all of their spouses to immediately become Israeli citizens, but does not allow similar rights to non-citizen relatives of an Arab citizen in Israel, why is it not a discriminatory law?

Article 5(d)(iv) – The Right to Marriage and Choice of Spouse

23. Considering that the Ministry of the Interior's "graduated procedure" for naturalization provides for multiple security and criminal checks, and grants the Ministry the power to revoke, freeze or condition the granting of any status in Israel and to refuse to upgrade such status on the basis of concerns of the security forces or police at any point during the process, why is this procedure inadequate for dealing with applications for family unification submitted by Palestinians from the OPTs?
24. Given the fact that under the Nationality and Entry into Israel Law the ban on the upgrading of status in Israel from Palestinians from the OPTs leaves thousands of individuals living for years in Israel on temporary visit permits, making their presence legal but leaving them without basic rights, and given Israel's claim that all Palestinians from the OPTs married to citizens of Israel create a security threat to the state, why cannot their status be upgraded to temporary residency, and how does the prohibition on the upgrading of status serve the declared security purpose of the Law?
25. How does Israel reconcile its obligations under the ICERD with the collective punishment inflicted on Palestinians from the OPTs by the amendments to the Nationality and Entry into Israel Law enacted in July 2005, which allow for the revocation, freezing and conditioning of any previously-granted status in Israel and the refusal of applications for temporary visit permits (allowed in limited circumstances) in cases of the applicant being related to an individual whom security officials suggest might constitute a security threat to the state?

Article 5(e)(iii) – The Right to Housing

26. What steps will Israel take to address the high levels of population density in Arab towns and villages in the state and how will be natural population growth of these localities be accommodated in accordance with the right of all to adequate housing? Can the state provide data on how many Jewish and how many Arab settlements Israel have established since 1948, providing details of what kinds of settlements have been established in each case?
27. How will Israel ensure that planners draw up local, regional and national plans which do not discriminate against Arab citizens of the state regarding land allocation? In particular, the low socio-economic status of the recognized Arab Bedouin towns in the Naqab is symptomatic of poor and inappropriate planning. How will Israel address the planning problems of these towns?
28. For what reasons does Israel not recognize the unrecognized Arab Bedouin villages, given that they either pre-date the establishment of the state in 1948 or their inhabitants were forced to

relocate to them after being expelled from their original villages? What processes are in place for the resolution of the long-running land disputes between Arab Bedouin citizens and the state?

29. There is currently no real community participation in the planning processes for Arab towns and villages in Israel, which is a major reason why current plans do not fit the needs, suit the priorities or uphold the rights of Palestinian communities. What steps is or will Israeli take in order to guarantee the participation of Arab citizens in the planning processes for their towns and villages?

Article 5(e)(v) – The Right to Education and Training

30. Please provide details regarding the allocation of resources by the Ministry of Education in total on each Arab student as compared with each Jewish student. How is the government monitoring the distribution of educational resources to the Jewish and Arab school systems?
31. What, if any, are Israel's plans to increase the decision-making power of Palestinian citizens of the state over educational goals, objectives and curricula? What measures is the state taking to ensure that Palestinian Arab students have an opportunity to develop a positive cultural and national identity?
32. What measures, if any, is Israel taking to fully implement the Compulsory Education Law for three and four-year-old Arab children, as well as for high school-aged students, especially for those living in the unrecognized villages Naqab, where there are no on-site educational facilities? What measures is Israel taking to implement the Long School Day Law in Arab schools?
33. In response to a petition filed by Adalah, in January 2005 the Israeli Supreme Court found that wide gaps exist in the provision of educational services and educational attainment levels between Jewish and Arab Bedouin students, particularly in the Naqab, and ruled that a policy of affirmative action must be put in place in order to minimize these gaps. What measures, if any, is Israel taking to implement this ruling?
34. What measures, if any, is Israel taking to reduce the high drop-out rates and poor performance on matriculation exams of Arab students? Which, if any, of the recommendations of the "Committee on the Advancement of Higher Education among the Arab Population in Israel," established by the Council for Higher Education to examine the problem of Palestinian students' low scores on the psychometric examination, have been adopted?
35. Given the relatively low numbers of Arab students enrolled in universities in Israel and the very low percentage (1%) of Arab academic staff with permanent teaching positions at these universities, what steps, if any, is Israel taking to increase both university admission and university academic employment for Arab citizens of Israel?