

**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



Adalah's Submission to the UN Human Rights Council's

**Universal Periodic Review of Israel**

in January/February 2018

**Submitted 29 June 2017**

*Adalah is an independent human rights organization and legal center. Established in 1996, it works to promote human rights in Israel in general and the rights of the Palestinian minority, citizens of Israel, in particular. This work also includes promoting and defending the human rights of all individuals subject to the jurisdiction of the State of Israel. Adalah has held special consultative status with ECOSOC since 2005.*

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

חיפה 31090, ص.ב 8921 هاتف 04-9501610 فاكس 04-9503140  
חיפה 31090, ת.ד. 8921 טלפון 04-9501610 פקס 04-9503140  
Email: [adalah@adalah.org](mailto:adalah@adalah.org) <http://www.adalah.org>

## Adalah Submission to the UN Universal Periodic Review of Israel – 29 June 2017

Adalah wishes to raise three key concerns for the UPR of Israel: (I) the absence of the right to equality for Palestinian citizens of Israel; (II) threats to the land/housing rights of Bedouin citizens in the Naqab (Negev); and (III) violations of the rights of detainees/prisoners, and torture/ill-treatment.

### (I) THE ABSENCE OF THE RIGHT TO EQUALITY FOR PALESTINIAN CITIZENS OF ISRAEL

During its UPR session in 2013, Israel **accepted** the following recommendations relating to the principle of equality and the rights of the Palestinian national minority in Israel:

- 136.58: Increase efforts to ensure non-discrimination, particularly in the areas of access to justice, property rights and housing rights (Canada);
- 136.90: Continue to strive to protect the rights of minorities (Cyprus);
- 136.95: Intensify efforts to advance the rights of the Arab minority population (Norway).

While it is a positive step to accept these recommendations, in order to comply, Israel would need to address the **absence of a constitutional or basic law** that guarantees the right to equality. However, to date, there is still no constitutional provision ensuring that Palestinian citizens of Israel will be protected against **all forms of discrimination** based on race or national belonging.

Members of Israel's UPR issued multiple recommendations during the 2013 review that explicitly called on Israel to **enshrine the principle of equality** into its Basic Laws and legislation, and to ensure non-discrimination in law and practice in all fields of life. States that made these recommendations included Tunisia (136.17), Portugal (136.43) Austria (136.44), Finland (136.54), and France (136.96). However, Israel **did not accept** these recommendations.

In fact, since its review in 2013, Israel has enacted and introduced more laws that **further discriminate**, directly and indirectly, against the rights of Palestinian citizens in multiple fields, thereby violating the recommendations Israel accepted in its UPR. Examples include:<sup>1</sup>

**(1) The "Expulsion of Members of Knesset" Law (enacted July 2016):**<sup>2</sup> This law allows a majority of 90 Knesset Members (MKs) to oust a serving MK for the full period of the Knesset's remaining term on the following two grounds, as enumerated in Section 7A of the Basic Law: The Knesset: (1) incitement to racism; and/or (2) support for armed struggle of an enemy state or a terrorist organization against Israel. It presents a grave danger to the right to vote and the right to be elected, and threatens to further restrict the space allowed for freedom of expression. The law stipulates that when the Knesset decides on an expulsion, the statements of the "suspect" MK will also be examined and not only their aims or actions. It would therefore allow the Israeli Jewish majority in the Knesset to oust Arab MKs and parties on the basis of political/ideological considerations, despite the clear conflict of interest entailed in MKs voting to unseat their political rivals. In the case of a criminal offense, standing MKs can already be expelled from the Knesset for a conviction with moral turpitude under existing provisions of the Basic Law; the law is therefore superfluous and not fit for this purpose. The law is one of the latest attempts to delegitimize the elected representatives of the Palestinian minority. The Israeli Supreme Court will hold a hearing in November 2017 on a petition filed in December 2016 by Adalah, the Association for Civil Rights in Israel, and MK Yousef Jabareen.<sup>3</sup>

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<sup>1</sup> For more details and examples, see Adalah, "New Discriminatory and Anti-Democratic Legislation", September 2016: [www.adalah.org/uploads/uploads/New\\_Discriminatory\\_Laws\\_and\\_Bills\\_24.09.16.pdf](http://www.adalah.org/uploads/uploads/New_Discriminatory_Laws_and_Bills_24.09.16.pdf).

<sup>2</sup> The text of the law (Hebrew): [http://fs.knesset.gov.il/20/law/20\\_lsr\\_347851.pdf](http://fs.knesset.gov.il/20/law/20_lsr_347851.pdf).

<sup>3</sup> See Adalah press release, "Israeli Supreme Court orders expanded panel of justices to hear MK Expulsion Law case", 22 May 2017: <https://www.adalah.org/en/content/view/9106>.

**(2) The Anti-Terror Law (enacted June 2016):**<sup>4</sup> This law substantially expands the scope of the Israeli penal law by incorporating severe provisions of the British Mandate Emergency Regulations and other emergency orders. It contains broad and vague definitions of terrorism and terrorist organizations, which may be exploited by the police and the General Security Services ('Shabak' or Shin Bet) to suppress and criminalize legitimate political action, and even humanitarian and cultural activities, by Palestinian citizens of Israel and Palestinians in the OPT against Israeli policies and the Occupation. The law establishes new criminal offenses such as public expressions of "support" or "empathy" for terror organizations, and significantly increases the maximum sentences for such offenses. The new law is expected to significantly harm the rights of Palestinians detained for suspected security-related offenses, for example by allowing the widespread use of "secret evidence" by the state prosecution. It further contains draconian measures for investigating security detainees – who are overwhelmingly Palestinian – adding to a pre-existing system that provides fertile ground for the security agencies to employ illegal methods in the interrogation room; removes essential procedural safeguards from security detainees that are provided to criminal suspects, including prompt access to a lawyer and judicial review; and lowers the evidentiary requirements of the state in such cases. It is liable to result in serious human rights violations and to further undermine democratic principles in Israel.<sup>5</sup>

**(3) The "Kaminitz" Law (enacted April 2017):** The Knesset enacted an amendment to the Planning and Building Law-1965, known as the "Kaminitz Law", for the purpose of increasing the "enforcement and penalization of planning and building offenses". The law's main objectives are: (1) To concentrate enforcement powers for planning issues into the hands of a national body, which is authorized to take some of these powers from local planning committees; (2) To expand the use of the state's administrative powers to implement demolition and eviction orders while limiting the judicial review of the courts; and (3) To increase the use and severity of financial penalties for offenses under the law. The law will have a disparate impact on Palestinian citizens of Israel because it fails to take into account the decades of systematic discrimination in state land allocation against them, which has resulted in a severe housing crisis in Arab towns and villages throughout Israel. By substantially expanding the state's administrative powers to enforce the Planning and Building Law, the law violates the due process rights of Palestinian citizens to contest demolition and evictions orders issued against them and their properties before the courts. The harsher penalties, including prison sentences and heavy fines, provided under the law also threaten to unjustly sanction Palestinian citizens of Israel who have been left with no option other than to build without a permit on their private properties by the state's policy of not issuing building permits for Arab towns and villages and decreasing the amount of land available to Palestinian citizens for housing purposes.<sup>6</sup>

## **(II) THREATS TO THE LAND & HOUSING RIGHTS OF BEDOUIN CITIZENS IN THE NAQAB**

During its 2013 review, Israel **accepted** the following recommendations regarding the land/housing rights of Palestinian Bedouin citizens of Israel, most of who reside in the Naqab in southern Israel:

- 136.99: Protect the Bedouin citizens from discrimination and ensure their rights to property, housing and public service on an equal basis with others (Czech Republic);
- 136.100 Find a durable and equitable solution to the problems faced by the Bedouin communities, particularly in the area of possession of land (Belgium).

<sup>4</sup> The text of the law (Hebrew): [http://fs.knesset.gov.il/20/law/20\\_ls2\\_pb\\_342150.pdf](http://fs.knesset.gov.il/20/law/20_ls2_pb_342150.pdf).

<sup>5</sup> See Adalah, "Anti-Terror Law violates Arab citizens' rights", 19 June 2016: [adalah.org/en/content/view/8834](http://adalah.org/en/content/view/8834).

<sup>6</sup> See Adalah position paper, "Adalah's Objections to Discriminatory Kaminitz Bill", 30 March 2017: <https://www.adalah.org/en/content/view/9068>; and Adalah press release, "Knesset adding insult to injury with approval of Kaminitz Law," 12 April 2017: <https://www.adalah.org/en/content/view/9074>.

Despite the acceptance of these recommendations, Israel has continued to attempt to **forcibly displace and dispossess** Bedouin citizens living in the Naqab from their lands and villages, and to relocate them to concentrated and impoverished urban townships. The state seeks to use Bedouins' former lands to establish new Jewish communities, man-made forests, and other state infrastructures. A prime illustration of this policy is the case of Umm al-Hiran, which the Israeli government (with the Supreme Court's approval in 2015 and 2016) seeks to destroy solely to **build a new Jewish town** called "Hiran".<sup>7</sup> Even though the Supreme Court noted in its decision that the residents are living in the area with the state's permission and at its instruction (they were moved there from their ancestral lands by the military government in the 1950s), in Adalah's view, the court made do with the technical authority of the state to act as it pleases with the land. In doing so, the court gave legitimacy to the erasing of an entire village and the expulsion of its residents, while ignoring the entire human, political, social and historical perspective. The government pursues these policies of displacement, which directly violate land and housing rights, together with the denial of **numerous other rights** to Bedouin citizens, including education, health, and economic development.

In 2013, the Israeli government also attempted to advance legislation that would facilitate the "**Prawer Plan**", which would have overseen the forced displacement of around 80,000-90,000 Bedouin citizens of Israel from 35 "unrecognized" villages to townships in the northern Naqab.<sup>8</sup> In part as a result of local and international opposition, the legislation was frozen in December 2013.

Toward the end of 2016, the Israeli Agriculture Ministry began promoting an amended version of the Prawer Plan. The Memorandum of Law on the Regulation of Bedouin Settlement in the Negev, referred to as "Prawer II", offers **no substantial changes** in the concept or the aims of the original Prawer Plan, or in the means specified to implement it on the ground.<sup>9</sup> Despite strong international criticism of the original Plan – including from the UN Committee on the Elimination of Racial Discrimination<sup>10</sup> – Prawer II outlines an **almost identical framework process** to expedite procedures to demolish the unrecognized villages in the Naqab. The fundamental aim of the plan continues to be to dispossess and forcibly displace the Bedouin citizens from the unrecognized villages.

The government's plan is based on **false information** that has long-dictated Israeli policy towards its Bedouin citizens: **first** that the Bedouin community is trespassing on "state land" and their presence there is "illegal"; and **second**, that the Bedouin have no legal claim to their land and any final settlement on Bedouin land claims should be resolved in favor of the state. The main criticisms of the Prawer II Plan are summarized as follows:<sup>11</sup>

- *The plan envisions the mass evacuation and destruction of the unrecognized villages.* It considers no other potential options that have been embraced and promoted by the Bedouin community itself, first and foremost granting recognition to the unrecognized villages and allowing their inhabitants to remain on their land, with respect for their land and property rights on an equal basis with Israeli Jewish citizens living in the Naqab.
- *The plan denies Bedouin land ownership rights*, and thus the extremely limited provision of compensation in land and money are insufficient, inadequate and unacceptable.
- *The plan violates Bedouin citizens' constitutional protections* and denies them access to regular procedures of administrative law. It instead grants wide-ranging, sweeping administrative powers to the state, comparable to emergency laws declared during wartime.

<sup>7</sup> See Adalah paper, "The Dangerous Implications of the ruling on Atir-Umm al-Hiran", February 2016:

<https://www.adalah.org/uploads/Dangerous-Implications-SCT-Atir-Umm-al-Hiran-updated-Feb-2016.pdf>.

<sup>8</sup> See Adalah paper, 2013: [adalah.org/uploads/oldfiles/Public/files/English/Publications/Articles/2013/Prawer-Begin-Plan-Background-Adalah.pdf](https://www.adalah.org/uploads/oldfiles/Public/files/English/Publications/Articles/2013/Prawer-Begin-Plan-Background-Adalah.pdf).

<sup>9</sup> See Adalah position paper on Prawer II, January 2017: <https://www.adalah.org/en/content/view/9049>.

<sup>10</sup> See UN CERD, March 2012: <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.ISR.CO.14-16.pdf>.

<sup>11</sup> See Adalah position paper on Prawer II, January 2017: <https://www.adalah.org/en/content/view/9049>.

During its review in 2013, several states put forward recommendations to Israel that offered ways to address these human rights concerns. These included the call to “**Reconsider the current proposal**, in order to better meet both the State’s interest to regularize the habitation in Negev and the fundamental rights of the Bedouin community” (136.94, Netherlands); and to “Respect the Bedouin population’s **right to their ancestral land** and traditional livelihood (136.97, Switzerland). However, Israel **rejected** these recommendations.

### (III) **VIOLATIONS OF THE RIGHTS OF DETAINEES & PRISONERS, TORTURE & CIDT**

During its review in 2013, Israel **accepted** the following recommendations relating to the rights of prisoners and detainees:

- “Ensure that administrative detention is carried out in accordance with international human rights standards” (136.124, Denmark);
- “Ensure that the use of administrative detention is minimized and that human rights are fully respected in the fight against terrorism” (136.133, Sweden).

However, as documented extensively by human rights organizations such as Addameer, Israel has made **no efforts to reduce** its use of administrative detention against Palestinians in the OPT or to ensure that the policy is used in compliance with international law. In fact, from January 2014 to October 2016, the number of Palestinians put under administrative detention **sharply increased** from 155 to 720.<sup>12</sup> Numerous other recommendations put forward by states during Israel’s UPR session, such as those regarding the detention of Palestinian children, were **rejected** by Israel.

Israel also **continues to violate** the rights of detainees and prisoners in many areas, including their right to meet with lawyers, access to medical services, family visits, and others. On 17 April 2017, some 1,500 Palestinians held by Israel and classified as “security prisoners or detainees” began a hunger strike to protest the inhumane conditions of their detention in Israeli prisons and to demand improvements.<sup>13</sup> In response to the strike, as a punitive measure, the Israel Prison Service (IPS) prevented hunger-striking prisoners from meeting with their lawyers. Attorneys who had scheduled visits with their clients were surprised to discover that the IPS had cancelled their meetings for a variety of **illegal pretexts**. In May 2017, following a petition to the Israeli Supreme Court filed by Adalah and the Commission of Detainees and Ex-Detainees Affairs on behalf of 17 lawyers, the IPS was compelled **to halt this practice**.<sup>14</sup> The organizations argued that the prisoners had a right to meet with counsel, and that the denial of this right was illegal and constituted a forbidden form of punishment. *(Note: The prisoners suspended their hunger-strike after 40 days at the end of May 2017. The parties and the ICRC agreed to increase visits from one to two visits per month.)*

Arab MK Yousef Jabareen has also been prohibited from visiting Palestinian hunger-strike leader Marwan Barghouti. Adalah, together with MK Jabareen, petitioned the Supreme Court in May 2017 against a 2016 decision of the Knesset and the IPS to impose a **blanket ban on meetings** between MKs and Palestinians classified by Israel as “security prisoners.”<sup>15</sup> Adalah argued that the decision amounted to illegal infringement in parliamentary activities: “The purpose of parliamentary immunity is to ensure freedom of political expression and action for MKs. The decision runs contrary

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<sup>12</sup> See Addameer Statistics: <http://www.addameer.org/statistics>.

<sup>13</sup> For examples of the prisoners’ demands, see joint NGO statement, “Human rights organizations demand humane treatment of Palestinian hunger strikers”, 9 May 2017: [www.adalah.org/en/content/view/9095](http://www.adalah.org/en/content/view/9095).

<sup>14</sup> See Adalah press release, “Israel Prison Service compelled to allow hunger-striking Palestinian prisoners to meet with lawyers”, 7 May 2017: <https://www.adalah.org/en/content/view/9091>.

<sup>15</sup> See Adalah press release, “Adalah, MK Jabareen petition Israeli Supreme Court to allow MKs to visit Palestinian prisoners on hunger strike”, 25 May 2017: [www.adalah.org/en/content/view/9117](http://www.adalah.org/en/content/view/9117).

to this purpose and actually allows the public security minister to interfere in the duties of MKs and to decide who will be permitted to visit prisoners and who will not.” The case is pending.

In addition to such punitive practices, Israel continues to **use torture and ill-treatment** against Palestinian detainees and prisoners. Many states in Israel’s UPR made recommendations in this regard, including to “Effectively ban torture in all its forms and ratify the OP-CAT” (136.8, Portugal); and to “Incorporate CAT into domestic law and investigate and prosecute those suspected of torture and other cruel, inhuman or degrading treatment” (136.22, Spain). Israel **rejected** these recommendations.

During its review at the UN Committee Against Torture (CAT) in 2016, Israel announced that the Justice Ministry was preparing a bill that would **make torture a crime**, with no information provided about the definition to be adopted or a timeline for completing it.<sup>16</sup> However, one year later, there has been **no evidence or reports** to show that any anti-torture law is in preparation. Further, the existence of the “**necessity defense**” in Israeli law is a gaping loophole that allows for forms of torture and ill-treatment to be exercised by security authorities. New laws passed by the Knesset, such as the Forced-Feeding Law (July 2015), which would allow (after many review processes) for the forced-feeding of Palestinian prisoners on hunger strike, and the Anti-Terror Law (June 2016), discussed above, further add to a wider repertoire of legal tools that grant Israeli authorities **extensive impunity** to carry out practices that constitute torture and ill-treatment. The UN CAT in its concluding observations of May 2016,<sup>17</sup> and the UN Special Rapporteurs on Torture and Health in 2014 and 2015,<sup>18</sup> highlighted many of these laws and practices as matters of strong concern.

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<sup>16</sup> See Yaniv Kubovich, “Israel’s Justice Ministry drawing up law against torture”, Haaretz, 4 May 2016: <http://www.haaretz.com/israel-news/.premium-1.717752>.

<sup>17</sup> See UN CAT concluding observations: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1011&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1011&Lang=en).

<sup>18</sup> See OHCHR, “UN experts urge Israel to halt legalization of force-feeding of hunger-strikers in detention”, 28 July 2015: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16269&LangID=E>.