



مركز مساواة  
Mossawa Center  
מרכז מוסאוא

# The New Wave of Israel's Discriminatory Laws

## The Legal Status of Palestinian Arab Citizens of Israel over the Last Decade

September 2014

This report documents Israel's discriminatory laws and policies over the last decade that operate to deepen discrimination against Palestinian Arab citizens and further entrench their status as unequal, second class citizens.

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## **TERMINOLOGY: PALESTINIAN ARAB CITIZENS OF ISRAEL**

This report focuses on the legal status of the Palestinian Arab community in Israel. The Mossawa Center identifies this community as the 'Palestinian Arab citizens of Israel.' The use of this terminology reflects their status as Israeli citizens and the community's self-identification as part of the Palestinian people and their links to the wider Arab world. They have a unique status given that they represent a national (Palestinian), ethnic (Arab) and religious (Muslim, Christian and Druze) minority in Israel. They are members of the Palestinian people, who were forcibly displaced in 1948 by the establishment of the Israeli State. They remained within the new Israeli borders and were later issued with Israeli citizenship. This report will also use the terms 'Arab citizens', the 'Arab minority' and the 'Palestinian Arab community' interchangeably to denote 'Palestinian Arab citizens of Israel.' In contrast, the Israeli government refers to this community as 'Israeli Arabs', 'non-Jews' or the 'Arab sector.'

## INTRODUCTION

The Palestinian Arab citizens of Israel, who constitute approximately 20% of the Israeli population, occupy a unique status within the State of Israel. Their identity within the Israeli State is complex and multifaceted. They are simultaneously Israeli citizens and Palestinians, sharing deep familial, cultural and historical ties with Palestinians in Gaza and the West Bank and the wider Palestinian Diaspora. By virtue of the tensions inherent in this identity, Palestinian Arab citizens have, since the establishment of the Israeli State in 1948, been identified by Israeli institutions and the Jewish majority constituency as an internal security threat and a 'fifth column' within Israeli society. For this reason, the Palestinian Arab community has always been treated as unequal, second-class citizens in Israel through discriminatory legal and policy-based measures sanctioned by the Israeli government.

Since Israel's 2009 national election, which brought into power one of the most extreme right-wing government coalitions in Israel's history, discriminatory legislation and policies targeting Arab citizens has dramatically intensified. This government proposed 35 discriminatory bills, the highest number of any Israeli government.<sup>1</sup> This trend of passing discriminatory legislation has continued after the most recent 2013 national elections for the 19<sup>th</sup> Knesset, under the direction of the same right-wing Likud-Beiteinu governing coalition. The purpose of this report is to document the central developments of Israel's discriminatory laws over the last decade and their impact on Palestinian Arab citizens by placing them within a wider historical context of Israel's discriminatory legal mechanisms.

As an indigenous minority, Palestinian Arab citizens are not only entitled to individual citizenship rights on an equal basis with other Israeli citizens, but they are also owed collective rights in order to protect their distinctive culture, language, religion and to recognise their unique history. This report draws upon the framework of international law in relation to indigenous minority groups in order to highlight the extent to which the Israeli State actively seeks to dismantle Palestinian collective identity and deny their individual and collective rights through its legal system. The new wave of discriminatory laws and policies in Israel over the last decade has operated to deepen discrimination against Palestinian Arab citizens of Israel and further consolidate their status as unequal, second-class citizens.

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<sup>1</sup> The Mossawa Center, *The Main Findings of the 2012 Racism Report* (March 2012). Accessible at [http://www.mossawacenter.org/my\\_documents/publication2/2012%20Main%20Findings%20of%202012%20Racism%20Report.pdf](http://www.mossawacenter.org/my_documents/publication2/2012%20Main%20Findings%20of%202012%20Racism%20Report.pdf).

Central to Israel's discriminatory laws and policies is the way in which the Israeli government routinely privileges the Jewish over the democratic character of the state. This has resulted in the development of a two-tiered system of rights and entitlements under Israeli law; one for Jews and one for Palestinian Arabs. It has resulted in the subjugation of Palestinian Arab citizens as unequal and second-class citizens. This report will examine this two-tiered phenomenon in Israeli law by exploring Israel's constitutional and citizenship law, land and planning regime, as well as the system of political and socio-economic rights.



## THE STATUS OF PALESTINIAN ARAB CITIZENS: AN INDIGENOUS MINORITY

The Palestinian Arab community in Israel shares a complex, multifaceted relationship with the Israeli State as both a minority and indigenous group. As a numerically inferior and non-dominant group in relation to the Jewish majority with different cultural, religious, ethnic and linguistic characteristics, they constitute a minority group.<sup>2</sup> However, as a national Palestinian minority, with strong historical and cultural links to the land that pre-dates the establishment of the Israeli State, they are also an indigenous group.<sup>3</sup> Yousef Jabareen, a human rights scholar and expert on the status of the Arab-Palestinian minority in Israel, explains that the Arab citizens of Israel are ‘the indigenous, original Arab –Palestinian population, living in its homeland even before the State was established, when it was the majority group together with the rest of its people.’<sup>4</sup> The establishment of the State of Israel was a national tragedy for the Palestinian people, referred to as the ‘Nakba’, which means massive catastrophe. It resulted in systematized violence and persecution against the Palestinian people, causing their widespread dispossession and displacement.<sup>5</sup> It has been described by Arab intellectual Constantin Zureiq as ‘the worst catastrophe, in the deepest sense of the word, to have befallen the Arabs in their long and disaster-ridden history.’<sup>6</sup> It is for this reason that the indigeneity of the Arab population is an integral part of the way in which it experiences its situation in Israel.

The recognition of the Palestinian Arab community in Israel as a minority as well as an indigenous group is important within the framework of international law. This is because different sets of protections apply to these groups under international law, as contained in the *United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious*

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<sup>2</sup> See Yousef Jabareen, ‘Redefining Minority Rights: Successes and Shortcomings of the UN Declaration on the Rights of Indigenous Peoples’, *UC Davis Journal of International Law and Policy*, Vol. 18 (2012); Abdulrahim P. Vijapur, ‘International Protection of Minority Rights’, *International Studies*, Vol. 43 (2006); UN Subcommittee on Prevention of Discrimination and Protection of Minorities, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, UN Doc E/CN.4/Sub.2/384/Rev.1 (1979) (by Francesco Capotorti).

<sup>3</sup> Special Rapporteur on the Study of the Problem of Discrimination Against Indigenous Populations, *Final Report*, UN Doc. E/CN.4/Sub.2/1986/7 (1986) (by Jose Martinez Cobo).

<sup>4</sup> Yousef Jabareen, *An Equal Constitution for All? On a Constitution and Collective Rights for Arab Citizens in Israel*, Mossawa Center Position Paper (May 2007)18-19. Accessible at [http://www.mossawacenter.org/my\\_documents/publication2/2007%20An%20Equal%20Constitution%20For%20AII.pdf](http://www.mossawacenter.org/my_documents/publication2/2007%20An%20Equal%20Constitution%20For%20AII.pdf).

<sup>5</sup> Walid Khalidi (ed), *All that Remains: The Palestinian Villages Occupied and Depopulated by Israel in 1948* (Washington Institute for Palestine Studies: 1992); Baruch Kimmerling and Joel Migdal, *The Palestinians: The Making of a People* (Cambridge: Harvard University Press, 1998).

<sup>6</sup> Constantin Zureiq, *The Meaning of El-Nakba* (Beirut: 1948).

and Linguistic Minorities and the more recent *United Nations Declaration on the Rights of Indigenous Peoples*.<sup>7</sup> These declarations constitute a form of 'soft international law' because they do not outline binding legal obligations for states, but rather articulate a set of rights and standards that have political and moral force. However, international legal scholars and UN bodies argue that they have 'growing legal status' because they elaborate on universal human rights by relating them to the specific context and needs of minority and indigenous groups.<sup>8</sup> For this reason, they are an important normative standard by which to assess the law, policy and practice of settler states like Israel, in relation to their minority and indigenous communities.

International law recognizes the importance of collective rights in protecting the status and interests of minority and indigenous groups. As distinct from individual rights to which all persons are entitled to by virtue of their state citizenship, collective rights derive from group differentiation within a state.<sup>9</sup> Collective rights require permanent special measures to ensure the protection of the unique identity and collective interests of minority and/or indigenous groups from the power imbalances and pressures exerted by the majority. Only the fulfillment of both individual and collective rights will give rise to the conditions whereby both formal and substantive equality for these marginalized groups can become a real possibility.<sup>10</sup>

In the context of settler states, it is the case that indigenous groups also constitute a national minority, as demonstrated by the case of Arab citizens in Israel. In these circumstances, it is accepted practice to apply the combined international protections of both categories.<sup>11</sup> Under international law indigenous groups are entitled to a stronger and more robust set of collective rights than national minorities. It is for this reason that it is important to recognize the Palestinian Arab community in Israel as both a minority and indigenous group.

Indigenous rights are sourced from the prior status of indigenous groups as sovereign peoples. The disadvantage and discrimination of indigenous groups within a state does not only

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<sup>7</sup> *United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, GA Res 47/135, UN Doc A/RES/47/295 (18 December 1992); *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (13 September 2007).

<sup>8</sup> Permanent Forum on Indigenous Issues, *Report on the Eighth Session*, UN Doc E/C.19/2009/14 Annex, General Comment 1, (2009); James Anaya, Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, *The Human Rights of Indigenous Peoples, in the Light of the New Declaration, and the Challenge of Making Them Operative*, UN Doc A/HRC/9/9.5 (5 August 2008) para 35; Abdulrahim P. Vijapur, 'International Protection of Minority Rights', *International Studies*, Vol. 43 (2006).

<sup>9</sup> See Will Kymlicka, *Multicultural Citizenship* (Oxford University Press, 1995); Will Kymlicka, *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship* (Oxford University Press, 2001).

<sup>10</sup> Yousef Jabareen, *An Equal Constitution for All? On a Constitution and Collective Rights for Arab Citizens in Israel*, Mossawa Center Position Paper (May 2007) 71.

<sup>11</sup> Yousef Jabareen, 'Redefining Minority Rights: Successes and Shortcomings of the UN Declaration on the Rights of Indigenous Peoples', *UC Davis Journal of International Law and Policy*, Vol. 18 (2012) 125.

stem from political, social, economic and cultural inequality by virtue of their difference. It is also the result of the forcible imposition of a foreign system of governance and the denial and confiscation of ongoing historical title to land. Moreover, indigenous groups often experience more severe and targeted discrimination because newly established states perceive their existence as a threat to their collective identity and legitimacy.<sup>12</sup>

The *UN Declaration on Minority Rights* focuses on the preservation of minority cultures as well as the achievement of political, social and economic equality. For example, Article 4(2) stipulates that states must take measures to allow minorities to ‘develop their culture, language, religion, traditions and customs’ and Article 4(1) requires states to ensure that all minority members can ‘exercise fully and effectively all their rights and fundamental freedoms without any discrimination and in full equality before the law.’ Building upon and extending this body of law, the *UN Declaration on Indigenous Rights* introduces a more robust concept of self-determination by recognizing indigenous rights to self-government as well as historical title to land. For example, Article 4 states that ‘Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs.’ A more specific example in the realm of education is Article 14(1), which states that ‘Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.’ In relation to land rights, Article 26 states that ‘Indigenous peoples have the right to the lands territories and resources which they have traditionally owned, occupied or otherwise used or acquired.’ In cases where land has been forcibly taken, occupied, used or confiscated, Article 28 states that ‘Indigenous people have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation.’

The emphasis on the collective rights owed to Palestinian Arab citizens by virtue of their minority and indigenous status should not in any way detract from their equally valid claim to individual rights. The Arab minority that remained within the territory of the newly declared State of Israel in 1948 acquired Israeli citizenship. By virtue of their citizenship, they are entitled to equal citizenship rights alongside other Israeli citizens, such as civil and political rights as well as social, economic and cultural rights, which are outlined in two international conventions that Israel has ratified.<sup>13</sup> The Arab citizens of Israel do not possess equal citizenship rights nor have measures been taken by the Israeli State to recognize their entitlements and rights as a minority and indigenous group. It is for this reason that the Mossawa Center continues to advocate for a sustainable and lasting peace to the Israeli-Palestinian conflict that promotes

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<sup>12</sup> Ibid, 131.

<sup>13</sup> *International Covenant on Civil and Political Rights* (1966); *International Covenant on Economic, Social and Cultural Rights* (1966).

equality, minority status recognition and indigenous rights for the Palestinian Arab citizens of Israel.

## THE CHARACTER OF THE ISRAELI STATE: UNDEMOCRATIC AND UNEQUAL

### (A) The Jewish-Democratic Paradox

Since its establishment in 1948, Israel has defined itself as a Jewish and democratic state, which is reflected in the 1948 Declaration of Independence.<sup>14</sup> This characterization has also been codified in Israeli law, most notably in Israel's constitutional Basic Laws<sup>15</sup> and it has also been endorsed by the Israeli courts.<sup>16</sup> Whereas Israel seeks to enshrine its status as a Jewish state, it avoids firm commitment to a democratic governmental system.

The definition of Israel as both Jewish and democratic is a paradoxical contention. It is impossible to adhere to the fundamental principles of democracy, namely the political and legal equality of all citizens, and also define the character of the state on an ethnic basis. From a democratic perspective, the inclusion of a 'Jewish' state identity is clearly problematic where approximately 25% of the population do not identify as Jewish, the majority of whom, approximately 20%, are Palestinian Arabs.<sup>17</sup> Not only is this characterization unrepresentative, but it justifies systemic discrimination against Arab citizens under the guise of democracy. Oren Yiftachel, an Israeli critical geographer and social scientist, aptly explains that there is 'a duality in the Israeli state between a democratic façade and a deeper undemocratic regime logic, which facilitates the dispossession, control and peripheralization of groups that do not belong

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<sup>14</sup> It states that 'Israel will be open for Jewish immigration' but also that 'it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex.' Israel's Declaration of Independence is accessible at [http://www.knesset.gov.il/docs/eng/megilat\\_eng.htm](http://www.knesset.gov.il/docs/eng/megilat_eng.htm).

<sup>15</sup> For example, Section 7A of the *Basic Law: The Knesset* stipulates that a party or individual whose actions express or imply "the denial of the existence of the State of Israel as a Jewish and democratic state" will be ineligible as a candidate in the Knesset elections. Section 1A of the *Basic Law: Human Dignity and Liberty* stipulates that the purpose of this Basic Law is "to protect human dignity and liberty, in order to anchor in a basic law the values of the State of Israel as a Jewish and Democratic State."

<sup>16</sup> See for example Chief Justice Aharon Barak's comments on the core components of the State as a Jewish State in A.B. 11280/02 *The Central Elections Committee v. Ahmed Tibi*, PD 57(4) 1, 22.

<sup>17</sup> Central Bureau of Statistics, *Statistical Abstract of Israel 2013*, accessible at [http://www1.cbs.gov.il/reader/shnaton/templ\\_shnaton\\_e.html?num\\_tab=st02\\_01&CYear=2013](http://www1.cbs.gov.il/reader/shnaton/templ_shnaton_e.html?num_tab=st02_01&CYear=2013).

to the dominant ethno-class.<sup>18</sup> In order to uncover this reality, many scholars have conceptualized Israel as an 'ethnocratic state' or an 'ethnocracy' rather than a democracy.<sup>19</sup>

Over May and June 2014, there were Knesset debates about proposals to formalize within Israel's constitutional law a clear preference for the Jewish over the democratic character of the State. The *Basic Law: Israel, Nation State of the Jewish People Bill (2013)* is a private member's bill that seeks to constitutionally determine the identity of the State of Israel as the national state of the Jewish people. The Bill clarifies the definition of Israel as a 'Jewish State' by stating that the 'State of Israel is the national home for the Jewish people where they realize their aspirations for self-determination according to their cultural legacy and history.'<sup>20</sup> It also states that 'the right to realize national self-determination in the state of Israel is held exclusively by the Jewish people.'<sup>21</sup> If enacted, this bill could operate as a clear legal basis to justify the already existing laws and practices of discrimination against Arab citizens as well as new ones, on the basis of their non-Jewish status.

## **(B) Unequal Citizens**

The legal status of the Arab minority in Israel is a powerful example of the way in which the Jewish character of the State is currently privileged and used to bypass democratic principles of equality. Even though the Arab minority has Israeli citizenship, by drawing on the concept of the State of Israel as 'Jewish,' the Knesset has implemented many laws and policies that discriminate against Arab citizens and limit their full and equal participation in political as well as socio-economic life.

For Arab citizens in Israel, citizenship is not representative of a social contract between the citizen and the State, whereby the citizen accepts the authority of the State in return for protection and basic services. As Hassan Jabareen, a Palestinian lawyer in Israel, explains, it is rather a 'colonial form of citizenship' rooted in an 'ethnic hierarchy, which is built on institutional discrimination that leads to vulnerability, domination and control.'<sup>22</sup> This is exemplified by the separation of citizenship from nationality under Israeli law. There is no such thing as an 'Israeli' nationality under Israeli law, rather citizens are classed on the basis of their ethno-nationality, namely whether or not they are Jews or Arabs. For example, the *Citizenship*

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<sup>18</sup> Oren Yiftachel, "'Ethnocracy" and its Discontents: Minorities, Protests and the Israeli Polity', *Critical Inquiry*, Vol. 26 No. 4 (Summer 2000) 728.

<sup>19</sup> See Na'eem Jeenah (ed), *Pretending Democracy: Israel, an Ethnocratic State* (Johannesburg: Afro-Middle East Centre, 2012); Nadim Rouhana, *Palestinian Citizens in an Ethnic Jewish State* (New Haven: Yale University Press, 1997).

<sup>20</sup> Article 1A of the *Basic Law: Israel, Nation State of the Jewish People Bill (2013)*

<sup>21</sup> Article 1B of the *Basic Law: Israel, Nation State of the Jewish People Bill (2013)*

<sup>22</sup> Hassan Jabareen, 'Hobbesian Citizenship: How the Palestinians Became a Minority in Israel' in Will Kymlicka and Eva Pfostl (eds), *Multiculturalism and Minority Rights in the Arab World* (United Kingdom: Oxford University Press, 2014) 728.

*Law* (1952) clearly stipulates that there is 'no Israeli nationality save under this Law.'<sup>23</sup> Throughout Israel's laws and policies, it does not accord rights and benefits on the basis of citizenship, but rather on the basis of ethno-nationality. This allows for the existence of a system of unequal citizenship that privileges Jewish over Arab citizens.

In addition to preventing equal citizenship between Arabs and Jews, the privileging of the Jewish character of the State also poses an irreconcilable position for the Arab community in terms of their sense of belonging and identity in the Israeli state. The Arab local political leadership articulates this perspective, stating that, 'defining the Israeli State as a Jewish State and exploiting democracy in the service of its 'Jewishness' excludes us, and creates tension between us and the nature and essence of the State.'<sup>24</sup> Such serious and fundamental implications are also highlighted by David Kretzmer, an Israeli expert in international and constitutional law, when he states that:

On the decidedly fundamental level of identification and belonging there cannot be total equality between the Arab and Jew in Israel. The state is the state of the Jews, both those presently residing in the country as well as those residing abroad. Even if the Arabs have equal rights on all other levels the implication is abundantly clear: Israel is not their state.<sup>25</sup>

Given the central role of 'Jewish' character of the State in fostering the exclusion and targeted discrimination against Palestinian Arab citizens, there have been calls from Arab civil society for Israel to adopt a democratic constitution. This would require the constitutional recognition of the minority and indigenous status of Palestinian Arab citizens and their concomitant rights, in conformity with international law.

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<sup>23</sup> Article 1 of the *Citizenship Law* (1952).

<sup>24</sup> The National Committee for the Heads of the Arab Local Authorities in Israel, *The Future Vision of the Palestinian Arabs in Israel* (2006) 5. Accessible at [http://www.mossawacenter.org/my\\_documents/publication1/Future\\_Vision\\_ENG.pdf](http://www.mossawacenter.org/my_documents/publication1/Future_Vision_ENG.pdf)

<sup>25</sup> David Kretzmer, *The Legal Status of the Arabs in Israel* (Westview Press, 1990).

## ISRAEL'S CONSTITUTIONAL IMPASSE

Since its establishment in 1948, Israel has not yet managed to adopt a comprehensive Constitution. The Declaration of Independence stipulated that an Elected Constituent Assembly would prepare and adopt a Constitution by 1 October 1948.<sup>26</sup> However, to date, political disagreements have prevented the adoption of a formal Constitution. This constitutional impasse is mainly attributed to debates over the nature of the State of Israel, more specifically, whether its Jewish or democratic character should take precedence.

### (A) Israel's Basic Law

The 1948 Declaration of Independence is Israel's foundational document. It introduced the concept of Israel as a Jewish and democratic state. Despite its clear contention that Israel should be a homeland for the Jewish people, it also articulated principles of equality. For example, it included a guarantee of 'complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex.' This declaration does not have constitutional status, rather it operates as a normative source of principles that the Israeli judiciary may draw upon at their discretion. However, these principles of equality have not been translated into Israeli law nor implemented in practice in Israel's treatment of its Arab citizens.

Due to the challenges in reaching consensus on the content of a complete and formal Constitution, the Knesset adopted the 'Harari proposal,' which outlined an alternative method for developing Israel's constitutional law. It nominated the Constitution, Law and Justice Committee as responsible for drafting chapters of a future Constitution, each constituting a separate 'basic law'. The intention was that eventually each of these basic laws would together form the Israeli constitution. To date, 12 Basic Laws have been passed through this process.<sup>27</sup> Even though these Basic Laws are not comprehensive, the Israeli Supreme Court has determined that they form the basis of Israeli constitutional law.<sup>28</sup> This means that if other Israeli laws are determined to be inconsistent with the Basic Laws, they can be 'struck down' and rendered constitutionally invalid by the courts. They also require a higher threshold of votes to pass into law requiring a decisive majority of 61 votes in favour, rather than a simple majority as for normal legislation.

The vast majority of Israel's Basic Laws operate to award the Israeli government with vast powers that have been used to privilege and protect the Jewish character of the State. For

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<sup>26</sup> Israel's Declaration of Independence is accessible at [http://www.knesset.gov.il/docs/eng/megilat\\_eng.htm](http://www.knesset.gov.il/docs/eng/megilat_eng.htm).

<sup>27</sup> For an overview of Israel's Basic Laws see 'The Existing Basic Laws: Summary' on the Knesset website, accessible at [https://www.knesset.gov.il/description/eng/eng\\_mimshal\\_yesod2.htm](https://www.knesset.gov.il/description/eng/eng_mimshal_yesod2.htm).

<sup>28</sup> *Bank Mizrahi v The Minister of Finance* (1995).

example, the *Basic Law: Jerusalem, Capital of Israel* (1980) enshrines Israel's annexation of East Jerusalem in 1967 into Israel's constitutional law. Article 1 states that 'Jerusalem, complete and united, is the capital of Israel,' indicating the incorporation of East Jerusalem. This further affirms and entrenches the Israeli government's initial legal justification under emergency regulations contained in the *Law and Administration Ordinance* (1948), specifically Article 11B, which authorized the Israeli government to apply Israeli law, jurisdiction and administration in any area on the basis of governmental decree. In a similar vein, *The Basic Law: The Government* (1992) consolidated the power of the Israeli Knesset as well as the government to declare a state of emergency,<sup>29</sup> allowing it to pass laws that undermine basic standards of human rights in the interests of national security, which are usually infringe the rights of the Palestinian community. For example, the *Emergency Powers (Detentions) Law* (1979) which allows state authorities to detain individuals, used almost exclusively in relation to Palestinians, in administrative detention for indefinitely extendable six-month periods. There are currently 156 Palestinian prisoners being held indefinitely as administrative detainees under this law.<sup>30</sup>

In March 2014, the Israeli government passed the first new basic law in 22 years, entitled the *Basic Law: Referendum on Land Concessions* (2014). The basic law stipulates that there is a requirement for public approval via a national referendum in the event of any Israeli government decision in relation to a peace treaty that entails giving up land to which Israeli law applies, referring specifically to the territories of the Golan Heights and East Jerusalem, which were illegally annexed by Israel in 1967. However, if 80 MKs or more support such a peace treaty, it can be executed without a referendum. The rationale of this basic law was to increase Israeli control and authority over the illegally annexed territories of the Golan Heights and East Jerusalem that have always featured in peace negotiations. The sponsor of the basic law, Yariv Levin, stated that he is confident that 'the nation will not allow parts of our homeland to be given away' illustrating the legislative intent to increase obstacles to relinquishing control of these annexed territories and creating severe impediments to any future peace process.<sup>31</sup>

Of Israel's 13 Basic Laws, only two contain constitutional protections for some human rights. Both of these laws, the *Basic Law: Human Dignity and Freedom* and the *Basic Law: Freedom of Occupation*, were passed in 1992 and heralded by many Israeli legal scholars to be a

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<sup>29</sup> Article 9 of the *Basic Law: The Government* (1992).

<sup>30</sup> Adalah, *Briefing Paper on Recent Developments on Palestinian Prisoners held in Israeli Jails* (23 June 2013) 1. Accessible at [http://adalah.org/Public/files/English/International\\_Advocacy/UN/Briefing-Paper-Developments-Palestinian-Prisoners-23-June-2013.pdf](http://adalah.org/Public/files/English/International_Advocacy/UN/Briefing-Paper-Developments-Palestinian-Prisoners-23-June-2013.pdf).

<sup>31</sup> Lahav Harkov, 'Referendum bill is back on the way to becoming Basic Law', *The Jerusalem Post*, 12/02/2012, accessible at <http://www.jpost.com/Diplomacy-and-Politics/Referendum-Bill-is-back-on-the-way-to-becoming-Basic-Law-333618>.



mini bill of rights.<sup>32</sup> They include protections against the violation of the life, body or dignity of any person; property of a person; liberty of a person; privacy of a person as well as the movement of peoples out of Israel and the entry of Israeli nationals into Israel. There is also protection of the right for all citizens to engage in any occupation, profession or trade. However, the broader, more useful protections contained in the *Basic Law: Human Dignity and Freedom* are subject to stringent limitations that severely impact its application and effectiveness:

- **No retroactive application:** It does not affect the validity of any law in force prior to the commencement of the Basic Law in 1992;<sup>33</sup>
- **The ‘Jewish and democratic’ exception:** It permits the curtailing of the rights protected by its provisions if the law fits the ‘Jewish and democratic’ values of the State of Israel and is enacted for a proper purpose and to an extent no greater than required.<sup>34</sup>

### **(B) The Absence of Formal Equality**

What is striking about Israel’s so-called mini ‘bill of rights’ is that it does not include the protection of a clear and explicit right to equality. The history and drafting process of the *Basic Law: Human Dignity and Freedom* reveals that the intention was to exclude the right to equality; the inclusion of the right to equality was debated and then equivocally rejected. This is because there were concerns that it would disrupt the close relationship of Judaism with the state as well as its character as a ‘Jewish’ state. More specifically, this was linked to an overarching fear that formally recognizing the right to equality would alter the legal status of the Arab minority.<sup>35</sup>

In certain cases, the Israeli courts have recognized the right to equality. For example, in articulating this principle Justice Haim Cohn stated that:

It is the law (although at present unwritten) that any discrimination on the grounds of race, sex, belief, political or other opinion...is forbidden for everybody acting under law.<sup>36</sup>

The judicial recognition of the right to equality has led to several favorable outcomes for vulnerable groups in Israel, including women and religious groups. In turn, this has led to

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<sup>32</sup> David Kretzmer, ‘The New Basic Laws on Human Rights: A Mini Revolution in Israeli Constitutional Law?’, *Israel Law Review*, Vol. 26 (1993) 242.

<sup>33</sup> Article 10 of the *Basic Law: Human Dignity and Freedom* (1992).

<sup>34</sup> Article 1 and 8 of the *Basic Law: Human Dignity and Freedom* (1992).

<sup>35</sup> Yousef Jabareen, *Constitutional Protection of Minorities in Comparative Perspective: Palestinians in Israel and African-Americans in the United States* (Doctoral Dissertation, Georgetown University Law Center, 2003) 127.

<sup>36</sup> *Yafora Ltd v Broadcasting Authority* (1971) 25 P.D II 741, 743.

protective, anti-discrimination legislation in relation to some of these groups.<sup>37</sup> However, such judicial innovation has failed to benefit the situation of Arab citizens. In fact, the Supreme Court has dismissed all cases dealing explicitly with Arab citizens' right to equality.<sup>38</sup> Such judicial principles are very limited without formalization in an Israeli Constitution because they are highly discretionary, defined on an individual case basis and they cannot overcome contrary legislative intent.<sup>39</sup> This illustrates the importance of a future Constitution that expressly protects the rights of Arab citizens as a minority and indigenous group.

### **(C) A Future Constitution?**

There have been ongoing debates in Israel about the necessary process and content for establishing a future Israeli Constitution. Within mainstream debates, the perspectives and interests of the Palestinian Arab community have been excluded. Most draft proposals continue to frame the character of the State as 'Jewish and democratic.'

The draft proposal by the Israel Democracy Institute (IDI) entitled 'Constitution by Consensus' characterizes Israel as a 'Jewish and democratic state.'<sup>40</sup> While the draft espouses equality as a core democratic principle, it contains provisions that privilege the Jewish community. For example, its proposal for the Israeli flag, insignia and anthem all reflect Jewish culture and aspirations. It states that Hebrew is the 'language of the State' and that Arabic is only a secondary official language, its public use to be determined by the State.

Furthermore, it enshrines an unlimited 'right of return' for Jews to immigrate to Israel. The proposal recognizes Arab citizens as a minority group, but only goes as far as to outline limited group rights arising from this status, namely that they are entitled to 'preserve and develop...religion, language and heritage.' Such a proposal, while relatively progressive in the context of the debate, still fails to outline a true and equal democracy. It continues to privilege Jewish culture and fails to recognize the full spectrum of group rights that should be accorded to the Arab minority arising from their status as both a minority and indigenous group. Furthermore, this proposal has been subject to criticism given the lack of an inclusive, participatory drafting process, with no Arab representation or input.<sup>41</sup>

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<sup>37</sup> See Yousef Jabareen, *Constitutional Protection of Minorities in Comparative Perspective: Palestinians in Israel and African-Americans in the United States* (Doctoral Dissertation, Georgetown University Law Center, 2003) 123 – 126.

<sup>38</sup> Yousef Jabareen, *Constitutional Protection of Minorities in Comparative Perspective: Palestinians in Israel and African-Americans in the United States* (Doctoral Dissertation, Georgetown University Law Center, 2003), Chapter IV.

<sup>39</sup> David Kretzmer, *The Legal Status of the Arabs in Israel* (Westview Press, 1990) 11.

<sup>40</sup> Israel Democracy Institute, *Constitution by Consensus* (2007). Accessible at [http://en.idi.org.il/media/1529178/ConstitutionByConsensus\\_Draft.pdf](http://en.idi.org.il/media/1529178/ConstitutionByConsensus_Draft.pdf).

<sup>41</sup> Nadim Rouhana, 'Constitution By Consensus: By Whose Consensus', *Adalah Newsletter*, Vol. 9 (January 2005).

Arab civil society organizations and advocacy groups, including the Mossawa Center, lobbied against the IDI proposal and put forward alternative constitutional frameworks that recognize the interests and aspirations of the Arab minority in Israel.<sup>42</sup> These proposals outline that there are two overarching requirements to create a truly democratic and equal Constitution:

- **The Process:** A legitimate Constitution requires the social consent of all citizens. This necessitates a constitutional process that is able to overcome the power differentials presently existing between the Jewish majority and the Arab minority through inclusive and equal participation. Yousef Jabareen highlights that if this does not occur it will lead to an ineffective and illegitimate Constitution that ‘subjects the will of the Arab minority to the interests of the Jewish majority.’<sup>43</sup>
- **The Content:** It must guarantee the equality of the Arab minority as citizens of the State of Israel, but also recognize their status as a minority and indigenous group and provide legal protection for the collective rights arising from this status. It also must protect the relationship shared between the Palestinian Arab minority in Israel with Palestinians in the West Bank and Gaza, as well as the wider Arab world.

In the 2007 Mossawa report entitled ‘An Equal Constitution for All’, Jabareen provides a comprehensive outline of how these protections can be included in the substantive content of a future Constitution.<sup>44</sup> These can be summarized as follows:

- **(1) Official recognition of the Arab citizens as a minority and indigenous group:** Their collective identity should be protected through linguistic, religious and cultural rights and their special relationship with ancestral, native land and historical rights should be recognized.
- **(2) Civic equality:** Express protection of the full equality of the Arab minority based on their Israeli citizenship.
- **(3) Bilingualism:** It should recognize both Hebrew and Arabic as official languages of the State, with equal access and quality across the work and services provided in public institutions.
- **(4) Self-government in education, religion and culture:** The Arab minority must be granted control of Arabic educational, cultural and religious institutions.

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<sup>42</sup>Yousef Jabareen, *An Equal Constitution for All? On a Constitution and Collective Rights for Arab Citizens in Israel*, Mossawa Center Position Paper (May 2007); Mada al-Carmel, *The Haifa Declaration* (May 2007); Adalah, *The Democratic Constitution* (March 2007).

<sup>43</sup>Yousef Jabareen, *An Equal Constitution for All? On a Constitution and Collective Rights for Arab Citizens in Israel*, Mossawa Center Position Paper (May 2007) 11.

<sup>44</sup> *Ibid*, 72-78.

- **(5) Proportional representation in government institutions and decision-making bodies:** Full and equal democratic participation of the Arab minority in the institutions of the State must be guaranteed.
  - *(a)Quota:* There should be a required quota of Arab representatives in all public institutions that is no less than the general ratio of the Arab population in Israel.
  - *(b)Mandatory consultation and veto rights:* On issues that directly relate to or will have a profound effect on the Arab population, there must be mandatory consultation with Arab public leadership and they should also be accorded with a veto right in such decision-making processes.
- **(6) Special allocation of State resources:** There should be a policy of affirmative action in the allocation of state resources that recognizes the historical discrimination against the Arab minority that has resulted in their inferior socio-economic status.
- **(7) Expression of Arab identity and culture in State symbols:** There must be appropriate expression of the presence of Arab citizens in Israel and their historic place in the country in the state's symbols.
- **(8)Equality and fairness in immigration and citizenship:** It should guarantee fair and equal processes of immigration and allocation of citizenship rights that do not prioritize a particular group.
- **(9) Historic land rights:** There must be recognition of the policy of dispossession and displacement instituted against the Palestinian Arab population since the establishment of the State of Israel. It follows that there needs to be a process that allows the Arab minority, including the Bedouin communities in the Negev to return to their original communities and claim ownership over their lands or receive adequate and fair compensation or restitution for their losses in cases where the right to return is not impossible.
- **(10) Protection of links between the Palestinian people and the wider Arab community:** It should guarantee the right of the Palestinian people in Israel to maintain and cultivate relationships – familial, cultural, social, economic – with other members of the Palestinian people as well as with the wider Arab community.

## CONTROLLING DEMOGRAPHICS: ISRAEL'S CITIZENSHIP LAWS

Israeli citizenship law has, from its very foundations, been directed towards preserving the Jewish character of the State. It does this by seeking to limit the number of non-Jews residing within Israel, with a particular focus on the Arab Palestinian community. These measures specifically impact upon the lives of Palestinians, since it is a body of law that bars them from residence and citizenship in their own homeland. Israeli law operated to cancel Palestinian citizenship under the British Mandate Law, rendering Palestinian refugees and those internally displaced within Israel without access to voluntary durable solutions and/or reparation, including the right to return to their homes of origin and the right to repossess their properties. In 2008, 67% (7.1 million) of the worldwide Palestinian population (10.6 million) were forcibly displaced persons, including 6.6 million Palestinian refugees and 455,000 internally displaced persons.<sup>45</sup>

### (A) A Two-Tiered System

The process for attaining citizenship in Israel is a two-tiered system; there is one for Jews and one for Arabs. Shortly after the establishment of the State of Israel, the government introduced *The Law of Return* (1950), which gives any Jew the 'right to return' to Israel and receive automatic citizenship.<sup>46</sup> This law applies to the children and grandchildren of Jews, as well as their spouses and the spouses of their children and grandchildren. No comparable law exists to guarantee the rights of Palestinians to immigrate or receive citizenship, even if they were born in the area that is now the State of Israel.

In fact, Israeli citizenship law explicitly prohibits Palestinians, who were residents of Palestine prior to 1948 and were forced to flee their homeland during the fighting of 1948 from gaining citizenship or residence status in Israel. Article 3 of *The Citizenship Law* (1952) stipulates that the only Palestinians eligible for Israeli citizenship are those who continued to inhabit the territory of the new State of Israel directly after its creation as a State and continued to live there up until this law entered into force in 1952.<sup>47</sup> It explicitly denies Palestinian refugees of their 'right to return.' Israel has also come up with mechanisms to revoke Israeli citizenship from Arabs as well as to forcibly remove them from Israeli territory:

- **Breach of trust**: Israeli officials can revoke citizenship due to a 'breach of trust or disloyalty to the state', which is broadly defined and even includes the act of

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<sup>45</sup> BADIL, *Survey of Palestinian Refugees and IDPs: Summary of Findings* (2008) 1.

<sup>46</sup> Article 1 and 2 *The Law of Return* (1950); Article 2(a) *The Citizenship Law* (1952).

<sup>47</sup> Article 3 *The Citizenship Law* (1952).

naturalization or obtaining permanent residency status in one of the nine Arab states which are listed by the law, including the Gaza Strip.<sup>48</sup>

- **Deportation of ‘infiltrators’:** An ‘infiltrator’, defined as a national, citizen or resident in Lebanon, Egypt, Syria, Saudi-Arabia, Jordan, Iraq, Yemen, or a Palestinian citizen or resident who has left his/her ordinary place of residence in an area that has become part of Israel for a place outside of Israel, who has entered Israel illegally, is to be detained and deported by Israeli officials.<sup>49</sup>

## (B) Dividing Arab Families

Israel recently extended the *Citizenship and Entry into Israel Law* (2003) for another year on 19 March 2014. It is a temporary order that requires annual approval and extension by the Knesset, which has occurred routinely since its original enactment in 2003. This law prohibits citizenship and residency to all Palestinians from the West Bank and Gaza, who are married or intend to marry Israeli citizens and residents, including Palestinians in East Jerusalem with permanent residency status in Israel.<sup>50</sup> The ban was extended in 2007 to include citizens from ‘enemy states’, including Iran, Lebanon, Syria and Iraq. The validity of the law has been upheld by the Israeli Supreme Court most recently in January 2012, when it rejected a petition on the grounds that this law was necessary to safeguard national security.<sup>51</sup>

The *Citizenship and Entry into Israel Law* has been widely criticized and condemned for the following reasons<sup>52</sup>:

- **Denial of family life:** It prevents newly married couples as well as those who have been married for years from being able to live together with their families in Israel.
- **Discrimination on the basis of ethnicity and nationality:** It directly targets and discriminates against the Palestinian and wider Arab community. Palestinian Arab citizens of Israel are almost exclusively the ones to marry other Palestinians from the West Bank and Gaza as well as other Arabs from so-called ‘enemy states.’ By way of comparison, Jewish foreigners can gain Israeli citizenship automatically under the *Law of Return* (1950) and non-Jewish foreigners, excluding Palestinians and other Arab nationals, who marry Israeli citizens, can obtain Israeli residency or citizenship over a four-year period.

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<sup>48</sup> Article 11 of *The Citizenship Law* (1952), Amendment No 9 (Authority for Revoking Citizenship, 2008).

<sup>49</sup> Article 1 and 30 of the *Prevention of Infiltration (Offences and Jurisdiction) Law* (1954).

<sup>50</sup> Article 1 and 2 of the *The Citizenship and Entry into Israel Law* (2003).

<sup>51</sup> HCJ 7052/03 *Adalah et al v The Interior Ministry et al*; HCJ 466/07 *MK Zahava Galov v The Attorney-General et al*.

<sup>52</sup> See Committee on the Elimination of Racial Discrimination, *Concluding Observations on Israel* (March 2012) 4. Accessible at <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.ISR.CO.14-16.pdf>; Human Rights Watch, *Israel: High Court Rulings Undermine Human Rights* (January 2012). Accessible at <http://www.hrw.org/news/2012/01/30/israel-high-court-rulings-undermine-human-rights>.

Moreover, there exists insufficient evidence to support the state's claim that this law is justified on the basis of national security. Of the 130,000 entering into Israel for the purposes of family reunification between 1994 and 2008, only 7 were convicted due to involvement in acts against the State of Israel.<sup>53</sup> Imposing a sweeping, generalized ban, rather than discerning security threats on a case-by-case basis is a highly disproportionate approach.

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<sup>53</sup>Mossawa Center, *Nationality and Entry into Citizenship Law (Temporary Order)* (2012). Accessible at [http://www.mossawacenter.org/my\\_documents/publication2/2012%20Citizenship%20and%20Entry%20into%20Israel%20Law.pdf](http://www.mossawacenter.org/my_documents/publication2/2012%20Citizenship%20and%20Entry%20into%20Israel%20Law.pdf)

## DISPOSSESSION AND DISPLACEMENT

### (A) The Transfer of Palestinian-Owned Land to the Israeli State

Israel's foundational body of land law was created to legalize the often violent confiscation and transfer of Palestinian-owned land and property into Israeli State control. The purpose of these laws was to legitimize the swift acquisition of as much Palestinian-owned land into the hands of the Israeli State and to prevent the return of Palestinian refugees to their land and properties. Initially, Emergency Ordinances were passed to grant the Israeli government with broad powers to expropriate Palestinian land and property in the national interest as well as to declare 'abandoned areas' as state land.<sup>54</sup> These emergency powers were later consolidated into Israeli law, which remain in force today:

- **The Absentees' Property Law (1950)**: This law authorizes the transfer of property from 'absentee' Palestinian refugees, who were forced to flee from 1947 onwards, into Jewish ownership by virtue of a government payment to an Israeli institution called the Custodian of Absentees' Property. This gave the Israeli government the ability to claim that these 'absentee properties' had been legally acquired through payment rather than through violent eviction and confiscation. The 'absentees' also include Palestinians that were internally displaced within Israeli borders, as well as those Muslim Palestinians that administered vast Waqf (religious trusteeship) lands for the benefit of religious communities. The Custodian was also able to take control of land and property that it declared to be 'absentee property' on the basis of information provided by professionally paid Custodian informants, which has in many cases been challenged as fraudulent information.<sup>55</sup>
- **The State Property Law (1951)**: This law codifies some of the expansive powers under the Emergency Ordinances into Israeli law so that the ability of the government to expropriate private land 'as it may think fit' is not dependent on there being a state of emergency.<sup>56</sup> It also transfers all property and land formerly owned or controlled by the British Mandate government into the control of the Israeli State and reaffirms that any property or land abandoned or that appears 'ownerless' also becomes property of the State.<sup>57</sup>

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<sup>54</sup> *Emergency Regulation (Requisition of Property) Ordinance (1948); Abandoned Areas Ordinance (1948); Land Ordinance (Acquisition for Public Purposes) (1943).*

<sup>55</sup> BADIL, *Land Ownership in Palestine/Israel (1920-2000)* (March 2000). Accessible at <http://www.badil.org/en/al-majdal/item/1055-land-ownership-in-palestine/israel-1920-2000>.

<sup>56</sup> Article 4 of the *State Property Law (1951)*.

<sup>57</sup> Article 2 and 3 of the *State Property Law (1951)*.



- **The Land Acquisition (Validation of Acts) Law (1953)**: This law reaffirms and retroactively validates the rights of the government to take over abandoned lands or those which were otherwise acquired and awards it to the Development Authority, a government land acquisition agency.<sup>58</sup>

These laws operated in conjunction with Israeli military strategies that forcibly displaced Palestinians from their land. For example, the Israeli military evacuated and destroyed 80% of Palestinian towns and villages in their operations leading up to the declaration of the State of Israel in 1948.<sup>59</sup> The destroyed Arab villages were declared 'closed military zones' and the Israeli military had the authorization at this time to 'shoot to kill' any illegal entrant on sight. This prevented Palestinians from returning to their land, thereby satisfying the legal criteria of 'abandonment' for land and property to pass into the control of the Israeli State. Prior to the 1948 war, total Jewish land ownership in British Mandate Palestine comprised of between 5.67 and 6.59%. In the aftermath of the 1948 war, the Israeli state gained control of 77.9% of the land of Mandate Palestine, which was formerly owned by Palestinians.<sup>60</sup> Since 1948, Israeli state ownership of land has only expanded. Today, the Israeli state owns 93% of the land. In contrast, only 3.5% of the land is currently owned by Palestinian Arab citizens of Israel.<sup>61</sup>

### **(B) Israel Lands: For the Benefit of Jews Only**

Once these mechanisms 'legalized' the widespread transfer of conquered Palestinian Arab lands to Israel, a series of laws and policies have been introduced to ensure that this land remains in State control and is made available predominantly for the benefit of the Jewish community.

The Israeli government has prohibited the sale or transfer of land and property owned by the state, referred to as 'Israel Lands.'<sup>62</sup> Israel's *Basic Law: Israel Lands* (1960) defines 'Israel Lands' as land that is owned by the State of Israel or by one of its affiliated governmental land agencies, including the Development Authority and the Jewish National Fund (Keren Kayemet Le-Israel). However, the exception is that land and property can be transferred between as well

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<sup>58</sup> Article 2 *Land Acquisition (Validation of Acts) Law* (1953).

<sup>59</sup> BADIL, *Israel's Land Law as a Legal-Political Tool: Confiscating and Appropriating Palestinian Arab lands and Creating Physical and Legal Barriers in order to prevent Future Property Restitution*, Working Paper No. 7 (December 2004).

<sup>60</sup> BADIL, *Land Ownership in Palestine/Israel (1920-2000)* (March 2000). Accessible at <http://www.badil.org/en/al-majdal/item/1055-land-ownership-in-palestine/israel-1920-2000>.

<sup>61</sup> Mossawa Center, *The Palestinian Arab Citizens of Israel: Status, Opportunities and Challenges for an Israeli-Palestinian Peace* (June 2006) Part VI, Chapter 1. Accessible at [http://www.mossawacenter.org/my\\_documents/publication2/2006%20The%20Palestinian%20Arab%20Citizens%20of%20Israel%20Status.pdf](http://www.mossawacenter.org/my_documents/publication2/2006%20The%20Palestinian%20Arab%20Citizens%20of%20Israel%20Status.pdf).

<sup>62</sup> Article 1 of the *Basic Law: Israel Lands* (1960).

as into the control of these governmental land agencies.<sup>63</sup> For example, the Custodian of Absentee Property has sold nearly all of the property under its custodianship to the Development Authority. While these lands remain 'Israel Lands', the Israeli state and its agencies will offer leases, predominantly and most beneficially to the Jewish community, for a period of up to 99 years.

The discriminatory policies of Israel's public land administration bodies, which manage 93% of the land in Israel, have resulted in a national land policy that privileges the interests of the Jewish community. For example, none of the 'Israel lands' have been made available for the development of new Arab towns since the establishment of the State of Israel, whereas significant swathes of state land have been allocated without restriction to establish new Jewish communities and towns across the country.

The Jewish National Fund (JNF), associated with the Jewish Agency and the World Zionist Organization, specializes in buying and taking over private Palestinian land and distributing it to the Jewish community. Prior to 1948, it acted as a private foreign company in Britain that sought to purchase land in British Mandate Palestine in order to facilitate Jewish immigration. After the establishment of Israel, it was, alongside other powerful Zionist institutions, accorded special quasi-governmental status, gaining responsibility for 'directing absorption and settlement enterprises in the State.'<sup>64</sup> According to the JNF's own Charter, it will only lease land under its control to Jewish citizens of Israel. The JNF has made public statements regarding its discriminatory policies:

The JNF is not the trustee of the general public in Israel. Its loyalty is given to the Jewish people in the Diaspora and in the state of Israel...The JNF, as the owner of the JNF land, does not have a duty to practice equality towards all citizens of the state.<sup>65</sup>

Not only does the JNF own 13% of the land within Israel, but it also exercises extensive influence over Israel's land and planning laws and policies.<sup>66</sup> The JNF has been awarded representation on almost all of Israel's land authorities, from settlement committees, to local land and planning bodies as well as at the national level of land administration. For example, in 1960, the JNF and the Israeli government signed a charter to establish the Israel Land Administration (ILA) as the national body responsible for determining and administering land policy in Israel. The *Israel Land Administration Law* (1960), which established the ILA, allocated

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<sup>63</sup> See Article 3(4) (a), (b) of the *Development Authority (Transfer of Property) Law* (1950); Article 2 of the *Israel Lands Law* (1960).

<sup>64</sup> Article 3 of *The World Zionist Organisation – Jewish Agency (Status) Law* (1952)

<sup>65</sup> Response of the JNF to a petition filed by Adalah to the Supreme Court of Israel HC 9205/04 (December 2004). See <http://www.badil.org/en/article74/item/429-the-jewish-national-fund-jnf>.

<sup>66</sup> Yousef Rafiq Jabareen, 'The Geo-Political and Spatial Implications of the New Israel Land Administration Law on the Palestinians', *Adalah Newsletter*, Vol. 62 (July 2009).

50% of ILA council seats to the JNF, thereby granting this discriminatory body a substantial and highly influential role in formulating Israel's land and planning policies. The Israeli government restructured the ILA in 2009 by creating a new public land authority called the Israeli Land Authority Council. The JNF was once more granted decisive weight in the allocation of 6 out of 13 seats on the council.<sup>67</sup> It is highly problematic that the JNF, an agency with such clearly discriminatory practices, has become such an important player in administering public land resources and determining Israel's land policy.

### **(C) Land Privatization**

In the 2009 reform to the *Israel Land Administration Law* (1960), the government began a process of land privatization in Israeli cities and areas designated for state development, allowing ownership rights to pass from the Israeli state to private individuals.<sup>68</sup> This shift to privatization was framed around the neo-liberal discourse that privatization of property will lead to greater economic growth and efficiency. However in reality, as Yousef Jabareen, an expert in Israeli town planning, points out, this 'neo-liberal economic vision, which focuses on the privatization of public resources, would converge with the completion of Palestinian disinheritance.'<sup>69</sup> Much of the 800,000 dunams of state land (4% of total state land) that the 2009 reform earmarked for privatization includes 'absentee properties' owned by Palestinian refugees and internally displaced persons and currently held by the Israeli State.<sup>70</sup> The act of selling this land and properties to private investors would place the Israeli government beyond future restitution claims by Palestinians in relation to their dispossession and ultimately privatize this real estate into the hands of Jewish developers and individuals.

### **(C) The Admissions Committees**

The admissions committees in small Jewish communities, such as Moshavim and Kibbutzim, select applicants for housing units and plots of land. With full discretion to accept or reject individuals, the admissions committee process has been extensively used to exclude Arabs from gaining residency in these towns, thereby fulfilling the goal of maintaining exclusively Jewish communities. This exclusionary administrative practice was challenged in the 2000 Kaadan decision, which held that the State could not circumvent the requirement of non-discrimination in housing by transferring property to the Jewish National Fund, which does not lease land to non-Jews.<sup>71</sup> In this case, the Kadaan family had applied to live in the Jewish settlement of Katzir, in order to receive basic services such as water and electricity to which they were otherwise denied. The Katzir admissions committee denied their application, in the

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<sup>67</sup> See *Israel Land Administration Law* (1960) (Amendment No. 7, 2009).

<sup>68</sup> Ibid.

<sup>69</sup> Yousef Rafiq Jabareen, 'The Geo-Political and Spatial Implications of the New Israel Land Administration Law on the Palestinians', *Adalah Newsletter*, Vol. 62 (July 2009) 3.

<sup>70</sup> Adalah, 'The New Israeli Land Reform', *Adalah Newsletter*, Vol. 63 (August 2009).

<sup>71</sup> *Adel Kaadan v Israel Lands Administration* HCl 6698/95 (2000).

first instance, on the basis that they were Arabs and in the second instance, when requested to review their decision by the Court, on the basis that they were 'socially unsuitable' for the Katzir community. Based on the judicial finding in the case, the Israel Lands Authority awarded the Kadaan family a plot of land.

In order to prevent this case from being used as a precedent to allow Arabs to live in these small Jewish communities, the Israeli government passed an amendment in 2011 to the Cooperative Societies Ordinance, otherwise known as the 'Admissions Committee Law.'<sup>72</sup> This legalizes the admissions committee system and their discriminatory practices for Jewish communities of less than 400 families located in the Galilee or the Negev, both areas in which high numbers of Palestinian Arab citizens live. The law allows the admissions committee to reject an applicant on the basis that they are 'not suitable for the social life in the community' or because of their 'lack of compatibility with the social-cultural fabric of the community town.'<sup>73</sup> It authorizes admissions committees to adopt a criteria based on their self-defined 'special characteristics' as a community, many of whom have defined themselves having a Zionist vision, which necessarily excludes Arab applicants on the basis of 'social unsuitably.' These legalized practices exclude Palestinian Arab citizens from being able to buy land and property in 475 towns in the Galilee and Naqab, which comprise 46% of all communities in Israel and 65% of all rural communities.<sup>74</sup>

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<sup>72</sup>*Cooperative Societies Ordinance* (Amendment No. 8, 2011)

<sup>73</sup> Article 6C(A) 4, 5 of the *Cooperative Societies Ordinance* (Amendment No. 8, 2011)

<sup>74</sup> Adalah, 'Israeli Attorney General Supports Discriminatory Admission Committees Law' (29/01/2012), accessible at <http://www.adalah.org/eng/Articles/1550/Israeli-Attorney-General-Supports-Admission-Law>.

## THE FORCED DISPLACEMENT OF ARAB BEDOUIN CITIZENS IN THE NAQAB

The situation faced by Arab Bedouin citizens in the Naqab clearly illustrates the intent and serious ramifications of Israel's land and planning laws, which also affects other Arab communities within Israel. Arab Bedouin citizens live in the Naqab desert, the district of Beer el-Sabe in southern Israel, which comprises 62% of the total area of the State of Israel.<sup>75</sup> These communities of Arab Bedouins lived in the Naqab as a semi-nomadic, indigenous people with recognized rights to their lands and way of life long before the establishment of the State of Israel. Not only are the Arab Bedouin communities Israel's most impoverished group, but they face an ongoing struggle against the State's refusal to recognize their land ownership rights and its policies of forced displacement.

### (A) A History of Dispossession and the 'Mawat' Myth

Prior to the Nakba, 91,707 people, mostly Arab Bedouins were living in the Naqab. During 1947-1948, most of the Arab Bedouin population was forced to flee into the neighboring areas of Gaza and Jordan, leaving only 12% of the original Arab Bedouin population in the Naqab.<sup>76</sup> One of the first measures adopted by the new Israeli government was to forcibly dispossess the Bedouin community of their expansive lands, by forcibly relocating them to a northern area in the Naqab, called the Siyag. The Siyag covers only 6% of the total area of the Naqab and comprises of rocky land that is relatively unsuitable for cultivation by way of comparison to areas the Bedouin inhabited prior to their dispossession.<sup>77</sup> The land outside the Siyag was declared a closed military zone, forbidding the entry of all Bedouin tribes, thereby preventing them from returning to their land.<sup>78</sup>

Since the establishment of the State of Israel in 1948, the concept that the land in the Naqab was vacant and empty became widely accepted within mainstream Israeli society and politics. It was argued that the Bedouin were entirely nomadic and possessed no permanent connection or private ownership of the land that they had cultivated for centuries. This idea

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<sup>75</sup> Adalah, *Nomads Against Their Will: The attempted expulsion of the Arab Bedouin in the Negev* (September 2011) 5.

<sup>76</sup> Shlomo Swirsky and Yael Hasson, *Invisible Citizens: Israeli Government Policy Toward the Negev Bedouin* (Adva Centre, February 2006).

<sup>77</sup> Adalah, *Nomads Against Their Will: The attempted expulsion of the Arab Bedouin in the Negev* (September 2011) 8.

<sup>78</sup> Shlomo Swirsky and Yael Hasson, *Invisible Citizens: Israeli Government Policy Toward the Negev Bedouin* (Adva Centre, February 2006) 4.

was consolidated by the government's position that Bedouin land was 'mawat' land,<sup>79</sup> meaning 'dead land' that was vacant and unoccupied, over which the Bedouin could have no legitimate legal claims.<sup>80</sup> This 'mawat' doctrine has permeated all of Israel's bureaucratic-administrative land settlement processes to give Israel the ability to justify its control over large swathes of Bedouin land.<sup>81</sup> During the first land rights settlement process, initiated by the Israeli government in the 1970s, the concept of 'mawat' land was used to confiscate Bedouin land and transfer it to State ownership, as well as to freeze and challenge Bedouin land claims submitted through this process.<sup>82</sup>

## (B) The Unrecognised Villages

There are currently 35 'unrecognized villages' in the Naqab.<sup>83</sup> These communities comprise of Arab Bedouin citizens, whose settlement and ownership rights are not recognized by the Israeli government. Their status as 'unrecognized villages' is the result of government 'master plans' created under the *National Planning and Building Law* (1965), which have retroactively rezoned the land on which the villages exist as state-owned, non-residential land. For this reason, Israel classifies these villages as illegal under its national land planning regime. Under the guise of the 'illegality' of the Bedouin villages, Israeli authorities employ various coercive tactics in an attempt to forcibly displace the village inhabitants into cramped, government planned townships in the Naqab. The State is seeking to concentrate the Arab Bedouin population in a managed and controlled corner of the Naqab in order to open up space for new Jewish settlements and Israeli military zones. The tactics of forced displacement that Israeli authorities use includes:

- **The Denial of Basic Services:** The government denies unrecognized villages with access to basic services, such as water, electricity, telecommunications services (mobile network coverage and internet), sewage systems, healthcare, schools and proper infrastructure. For example, article 157A of the *National Planning and Building Law* (1965) prohibits national utility companies from connecting buildings to national electricity, water and telephone networks if it lacks a building permit issued by a local

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<sup>79</sup> Mawat is originally an Arabic term.

<sup>80</sup> Negev Coexistence Forum for Civil Equality, *Processes of Disposition in the Negev-Naqab: The Israeli Policy of Counter-Claims against the Bedouin-Arabs* (10 December 2012).

<sup>81</sup> The concept of 'Mawat land' was first coined in the Albeck Report, which was produced by a special government committee, formed in 1975 called the Albeck Committee, to advise the government on how to deal with Bedouin land claims during the 1970s. See State of Israel, Ministry of Justice, *Summary Report of the Experts Team on Land Settlement on the Siyag and the Northern Negev* (Jerusalem: October 1975) (in Hebrew).

<sup>82</sup> For more information on the land rights settlement process in the 1970s, see Negev Coexistence Forum for Civil Equality, *Processes of Disposition in the Negev-Naqab: The Israeli Policy of Counter-Claims against the Bedouin-Arabs* (10 December 2012).

<sup>83</sup> See Negev Coexistence Forum for Civil Equality, 'The Village Project', accessible at <http://dukium.org/maps/>

authority, which has been used to exclusively deny basic service access to the unrecognized villages in the Naqab.

- **Forestation:** Through the Jewish National Fund, responsible for planting forests, the State of Israel uses practices of forestation as a means of displacing Bedouin communities in the Naqab.
- **Evacuations and Demolitions:** Given the illegality of the unrecognized villages, their houses and local structures are subject to evacuation and demolition orders, and their crops often subject to destruction. The *Removal of Intruders Law* (1981), in particular its 2005 amendment, details the legal process for the removal of inhabitants from 'illegal' homes built on non-residential, government land as defined by the *National Planning and Land Act* (1965) through demolition and evacuation orders. During 2012-2013, this regime was used to demolish over 1300 homes of Bedouin Arab citizens in the Naqab.<sup>84</sup> For example, the unrecognized village of Al-Arakib has been demolished a total of 64 times.<sup>85</sup>

### (C) Individual Settlements

In stark contrast to the situation of the unrecognized Arab Bedouin villages, Jewish Israeli families have been allocated 'individual settlements' comprising of a total of 81,000 dunams of land for their exclusive use in the Naqab.<sup>86</sup> Often these settlements were established without permits and in violation of Israel's land planning laws. In 2010, the government amended the *Negev Development Authority Law* (1991), providing a legal mechanism for retroactively recognising individual settlements and providing powers for the allocation of more lands to individual settlements in the Naqab.<sup>87</sup> While individual settlements are automatically recognized under this law, longer standing Arab Bedouin villages in the Naqab continue to be denied official recognition and subjected to state policies of dispossession.

### (C) The Praver Plan

In the decades following the end of Israel's military rule over its Arab citizens, the Israeli government proposed *many* plans to 'finalize' the issue of the Bedouins and their claims to land in the Naqab – the most recent of which is the Praver Plan.<sup>88</sup> It was proposed to the government cabinet on 3 January 2012 by the Praver Committee, which was set up to implement the recommendations of the Goldberg Committee Report.<sup>89</sup> These respective

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<sup>84</sup> Negev Coexistence Forum for Civil Equality, *Housing Demolitions in the Negev 2012/2013*, 1.

<sup>85</sup> Negev Coexistence Forum for Civil Equality, *House Demolitions: Record of House Demolitions and Crop Destruction 2014*, accessible at [http://www.dukium.org/eng/?page\\_id=885](http://www.dukium.org/eng/?page_id=885).

<sup>86</sup> Adalah, *New Discriminatory Laws and Bills in Israel* (October 2012) 2.

<sup>87</sup> *Negev Development Authority Law* (1991) (Amendment No. 4, 2010).

<sup>88</sup> *Bill for the Regulation of Bedouin Settlement in the Negev* (2012).

<sup>89</sup> See Adalah and the Negev Coexistence Forum for Civil Equality, *The Praver-Begin Bill and the Forced Displacement of the Bedouin* (May 2013) 5-6.

government plans to resolve the so-called 'problem of the Bedouin in the Negev' follow a pattern of forcible displacement. Whilst the purported aim of the Praver Plan is to resolve and regulate the settlement of the Bedouin in the Negev,<sup>90</sup> its implementation will result in the forcible displacement of the Bedouin population from their ancestral lands into government-planned towns unsuited to their way of life. It is estimated that if the Praver Plan goes ahead, it would result in the forced displacement of up to 70,000 Arab Bedouin citizens.<sup>91</sup> This will allow the Israeli State to consolidate its control over the vast majority of land in the Naqab and allow space for state development projects that benefit Jewish citizens, such as Jewish settlements and farms.

The Goldberg Committee, appointed in December 2007 to advise the government about its policy to regulate Bedouin settlement in the Naqab, recognized that Bedouins are not illegal squatters, but rather are legitimate residents of the Naqab. In its 2008 report, the Goldberg Committee stated that:

We cannot ignore the forced move of some of the Bedouin tribes to the Siyag after the establishment of the State, and that others possessed land in the Siyag for many years. It cannot be said about the tribes that have been there and about those who were moved, that they are trespassers in the Siyag.<sup>92</sup>

Even though the Committee recognized that the Bedouin should not be classified as 'illegal' inhabitants in the Naqab, it concluded, in line with the government position that the Bedouin have no legal title and therefore legitimate ownership of their lands. It nevertheless recommended that the unrecognized villages in the Siyag should be recognized as far as possible in accordance with the Regional Master Plan. However, the master plan for the Be'er Sheva Metropolitan Area, approved in August 2012, outlines the government's 'development' plans to confiscate Arab Bedouin land through the destruction of most of the unrecognized villages.

The Praver Plan is based on the same 'mawat myth' that has long dictated Israeli state policy towards the Bedouins. The basic premise is that the Bedouin have no legitimate legal title or personal attachment to land in the Naqab and for this reason any final settlement of Bedouin land claims should be resolved in favour of the State. The Praver Plan, if implemented, would work in conjunction with other laws and policies, such as the Be'er Sheva master plan, the *National Planning and Land Act* (1965) and the *Removal of Intruders Law* (1981) to systematically displace the Bedouin community. However, the Praver Plan would take this

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<sup>90</sup> Article 2 of the *Bill for the Regulation of Bedouin Settlement in the Negev* (2012).

<sup>91</sup> Mossawa, *From Goldberg to Praver* (June 2011). Accessible at [http://www.mossawacenter.org/my\\_documents/publication2/2011%20From%20Goldberg%20to%20Praver.pdf](http://www.mossawacenter.org/my_documents/publication2/2011%20From%20Goldberg%20to%20Praver.pdf)

<sup>92</sup> Goldberg Commission, *Policy Proposals to Regulate Bedouin Settlement in the Negev* (December 2008) 27 (in Hebrew). Accessible at [http://www.moch.gov.il/SiteCollectionDocuments/odot/doch\\_goldberg/Doch\\_Vaada\\_Shofet\\_Goldberg.pdf](http://www.moch.gov.il/SiteCollectionDocuments/odot/doch_goldberg/Doch_Vaada_Shofet_Goldberg.pdf)



process one step further by precluding the rights of the Bedouin communities to challenge their eviction through the courts, rendering their forced displacement an entirely administrative process.

The Plan seeks to fast-track the 'resolution of the settlement of the Bedouin population'<sup>93</sup> by bringing to an end 'all activity surrounding the issue of the lands' within a 5 year period.<sup>94</sup> It outlines an administrative process for Bedouin citizens to access a highly unfair and inadequate compensation scheme, in exchange for rescinding any claim to their land and conditional upon relocation to a government planned and recognized township. There are serious problems with the mechanisms and outcomes involved in the proposed Praver Plan, including:

- **Limited eligibility:** Only if a person or their descendant submitted an original ownership claim during the land settlement process of the 1970s, between 2 May 1971 and 24 October 1979, and it was not rejected by an administrator or a court are they eligible to seek compensation from the Praver scheme.<sup>95</sup>
- **Inadequate compensation:** The compensation available is either in the form of land or monetary compensation, however strict limitations apply.
  - (a) *Land:* A person can only receive land if evidence exists of cultivation and residence at the time of the original claim and only if the land remains to date in the possession of the current claimant. If an Arab Bedouin family has lost their ongoing possession of their ancestral land as a result of targeted state policies of dispossession, then they are not entitled to compensation in the form of land. Furthermore, only the State is entitled to bring evidence of ongoing possession and cultivation, so important pieces of evidence such as Ottoman and British tax records, archaeological evidence such as wells and cemeteries as well as the oral histories of the claimants and their communities will be excluded. In the unlikely case that the Israeli State finds in favour of the claimant, it is the government that will decide upon the location of the compensated land, so the claimant is not guaranteed to receive their ancestral land.<sup>96</sup>
  - (b) *Monetary:* For the majority of Bedouins, who have already been internally displaced, they can access fixed monetary compensation for their land, which is now held by the State, up to a maximum of only 50% the total value of the land claimed.

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<sup>93</sup> Article 2 of the *Bill for the Regulation of Bedouin Settlement in the Negev* (2012).

<sup>94</sup> Article 3 (1) of the *Bill for the Regulation of Bedouin Settlement in the Negev* (2012).

<sup>95</sup> Articles 27-30 of the *Bill for the Regulation of Bedouin Settlement in the Negev* (2012).

<sup>96</sup> Articles 50-59 of the *Bill for the Regulation of Bedouin Settlement in the Negev* (2012).

- **Waiving ownership rights:** The availability of compensation is conditional upon the claimants fully waiving, in writing, all ownership claims to their land.<sup>97</sup>
- **Ousting the jurisdiction of the courts:** There is no judicial review or remedy available in relation to eviction and demolition orders issued under the Praver Plan.<sup>98</sup>
- **Wide and coercive administrative power:** The Israel Lands Authority (ILA) is issued with wide, coercive powers to issue eviction and demolition orders in relation to persons who hold land in violation of the Praver Plan and is authorized to ‘employ all measures to ensure that the eviction order is fulfilled.’<sup>99</sup>
- **Lack of consultation:** The Bedouin communities that will be affected by the Praver Plan were not involved in the development of the Praver Plan and moreover, they have voiced their widespread opposition to the Plan and its outcomes, if implemented. In collaboration with professional land planners, the Arab Bedouin communities developed an ‘Alternative Master Plan for the Bedouin Villages in the Naqab’ which has not been referred to or tabled in government discussions and planning.<sup>100</sup>

The proposed Praver Plan was amended in May 2013 in a process overseen by Minister Benny Begin, culminating in the ‘Praver-Begin Plan.’ This process led only to small technical amendments, leaving most of the former ‘Praver Plan’ proposal fully intact. At the end of 2013, Minister Benny Begin withdrew his support for the ‘Praver-Begin Plan’ on the basis that there was a lack of consultation with the affected Bedouin communities, forcing the government to shelve the plan for the time being.<sup>101</sup> Even though the Praver Plan has currently been put on hold, the forcible displacement of the Bedouin communities in the Naqab continues through other ‘legal’ means outlined in Israel’s national land and planning laws.

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<sup>97</sup> Articles 50-59 of the *Bill for the Regulation of Bedouin Settlement in the Negev* (2012).

<sup>98</sup> Articles 71-72 of the *Bill for the Regulation of Bedouin Settlement in the Negev* (2012).

<sup>99</sup> Article 71 of the *Bill for the Regulation of Bedouin Settlement in the Negev* (2012).

<sup>100</sup> Bimkom – Planners for Planning Rights, *Alternative Master Plan for the Bedouin Villages in the Naqab* (2012). Accessible at <http://bimkom.org/eng/the-alternative-master-plan-for-bedouin-villages-in-the-negev/>

<sup>101</sup> Mossawa Center, ‘Mossawa Center welcomes the withdrawal of Benny Begin’s support from the Praver Plan,’ (December 2013). Accessible at <http://www.mossawacenter.org/en/item.asp?aid=1138>.

## THE EXCLUSION OF ARAB POLITICAL PARTIES

### (A) The Power to Disqualify Political Parties and Candidates

The Central Elections Committee (CEC) has the power to disqualify a party or candidate from the Knesset elections. Article 7A of the *Basic Law: The Knesset* (1958) outlines the grounds for which a party or individual candidate can be disqualified from the elections. Article 7A, entitled 'Prevention of Participation in the Elections' provides that a candidate or political party list may be disqualified from the Knesset elections if their goals or actions: (1) deny the existence of the State of Israel as a Jewish and democratic state; (2) incite racism or (3) support of armed struggle, of an enemy state or of a terrorist organization against the State of Israel.<sup>102</sup> Moreover, those candidates wishing to run for election must pledge their loyalty to the State of Israel and avoid acting in violation of Article 7A of the Basic Law: The Knesset.<sup>103</sup> To date Article 7A has been used consistently as a mechanism to disqualify and exclude Arab parties and candidates.<sup>104</sup>

These grounds for disqualifying political parties and candidates specifically limit the political freedom of the Arab community. It prevents Arab politicians from engaging in any substantive criticism of the Israeli government based on the needs and experiences of their Arab constituents, for fear of being excluded from Israel's political process. For example, the following positions could result in disqualification:

- Support of a one state solution in the context of the Israeli-Palestinian conflict would likely be construed as the denial of Israel as a Jewish state;
- Opposition to Israeli occupation could likely be viewed as support of an armed struggle;
- Rejection of the legal advantages that Jews enjoy over Palestinians, such as their unfettered 'right to return' could once again be considered as a denial of Israel as a Jewish state.

As a further disincentive, if an Arab MK adopts any such political position during their representative term, they could be criminally prosecuted on the basis that they are 'supporting an armed struggle against the State of Israel.'<sup>105</sup>

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<sup>102</sup> Article 7A *Basic Law: The Knesset* (Amendment No. 35, 2002). See also Article 5 of the *Law of Political Parties* (1992)(Amendment No. 12, 2002) which outlines similar limitations to the registration rights of political parties in Israel.

<sup>103</sup> Article 57 of the *Law of Elections* (1969) (Amendment No. 46, 2002).

<sup>104</sup> See Adalah, *Elections Q&A: The 2013 Israeli Elections and Arab Parliamentarians* (11 December 2012) p. 3-4

<sup>105</sup> *Law of Immunity of Members of Knesset: Their Rights and their Duties* (1951) (Amendment No. 29, 2002).

## (B) Raising the Election Threshold

In March 2014, the Knesset passed an amendment to the *Basic Law: The Knesset* (1958) raising the election threshold from 2% to 3.25%.<sup>106</sup> This means that for a member of a political party to be elected to the Knesset, their party must receive at least 3.25% of the total of national votes. The purported rationale behind increasing the election threshold was to improve Knesset efficiency in coalition building. This claim is misleading, given that the amendment affects almost exclusively the Arab parties, who are generally not invited to join government coalitions and have little influence over this process. In reality, the effect of the law will be to undermine the democratic principle of equal political participation by diminishing the influence and diversity of Arab political parties:

- **A Barrier for Arab Political Parties:** Of a total of 11 parties in the Knesset, there are only 3 Arab political parties in the Knesset, including Balad, Hadash and the United Arab List. They are all very small, minority parties within the Knesset. They will struggle to meet the election threshold of 3.25%, which will bar their party members from election to the Knesset. During the 2013 Israeli elections, this election threshold would have prevented Hadash (2.99%) and Balad (2.56%) from entering the Knesset.<sup>107</sup>
- **Diminishing Political Diversity:** The new election threshold will decrease political diversity within the Israeli political system. For the next election, it is likely that in order to meet the 3.25% election threshold, the Arab parties will have to unite as a single party, thus limiting the political freedom of the Arab community and diminishing the spectrum of political perspectives in the Knesset.

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<sup>106</sup> The amendment was specifically to the Knesset Elections Law (1969), which is incorporated as a Basic Law through Article 4 of the *Basic Law: The Knesset* (1958) which states that the 'Knesset shall be elected...in accordance with the Knesset Elections Law.'

<sup>107</sup> Haviv Rettig Gur, 'Governance Bill is a game-changer for Israeli politics', *The Times of Israel*, 11 March 2014, accessible at <http://www.timesofisrael.com/governance-bill-is-a-game-changer-for-israeli-politics/>

## THE REPRESSION OF ARAB CIVIL SOCIETY

### (A) Curtailing Political Expression

The Israeli government has enacted laws that specifically operate to curtail the ability of the Arab community from exercising their rights to free political expression and public protest.

The *Nakba Law*, enacted on 22 March 2011, authorizes the Finance Minister to reduce state funding or support to an institution if it holds an activity that is deemed to commemorate 'Israel's Independence Day or the day on which the state was established as a day of mourning.'<sup>108</sup> Palestinians traditionally mark Israel's Independence Day (15 May) as a day of mourning with various commemorative events. This is because Israel's 'Independence' is inextricably linked with the disaster experienced by the Palestinian people, referred to as the Nakba, which means 'massive catastrophe'. It has been described by Arab intellectual Constantin Zureiq as 'the worst catastrophe, in the deepest sense of the word, to have befallen the Arabs in their long and disaster-ridden history.'<sup>109</sup> This law will impact upon the ability of Arab educational, cultural and political organizations to teach, explore, express and commemorate an event of central significance to the contemporary experience of the Palestinian people. It hampers the ability of the Arab community in Israel to express and preserve their collective historical memory and the devastating impact that this has had on their lives.

The *Anti-Boycott Law*, enacted on 11 July 2011, prohibits the promotion of boycott against Israeli institutions and businesses, including those located within illegal settlements in the West Bank.<sup>110</sup> The term 'boycott' is defined as the 'deliberate avoidance of economic, cultural or academic ties' that could cause economic, cultural or academic harm to the particular person, institution or business associated with the State of Israel.<sup>111</sup> The law creates a new 'civil wrong' or 'tort' in relation to boycott activities within Israel. It allows for civil cases to be brought against any Israeli citizen or organization that makes a public call to boycott the State of Israel and the court has the power to order the party that committed the 'civil wrong' to pay compensation to the affected party, even if no actual damage is proven.<sup>112</sup> It also

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<sup>108</sup> Article 3B of the *Budgets Foundations Law* (1985) (Amendment No.40, 2011) ("Nakba Law").

<sup>109</sup> Constantin Zureiq, *The Meaning of El-Nakba* (Beirut, 1948).

<sup>110</sup> *Law for the Prevention of Damage to the State of Israel through Boycott* (2011) ("Anti-Boycott Law").

<sup>111</sup> Article 1 of the *Law for the Prevention of Damage to the State of Israel through Boycott* (2011) ("Anti-Boycott Law").

<sup>112</sup> Article 2 of the *Law for the Prevention of Damage to the State of Israel through Boycott* (2011) ("Anti-Boycott Law").

empowers the Minister of Finance to revoke state-sponsored benefits, such as tax exemptions, from Israeli businesses that undertake to participate in such boycotts.<sup>113</sup>

The *Anti-Boycott Law* prohibits Israeli citizens and organizations, including the Arab minority, from engaging in non-violent, public protest against Israeli business, including products produced in illegal settlements. It violates the rights of the Arab community to freely express their political views through non-violent means. A petition against the *Anti-Boycott Law* was submitted to the Supreme Court, and the Court ordered the State to explain why the law should not be cancelled.<sup>114</sup> In response, the State argued that the appeal against the law should be rejected on the basis that the issue is 'not yet ripe' for judicial deliberation, given that no civil action had yet been initiated under the law. A civil action has not been commenced under the law to date and so there has been no further judicial consideration of the law. Given that those who may seek to use the 'Anti-Boycott Law' in the future retain their right to do so, the freedom of expression of those in opposition to the expansion and financing of illegal settlements continues to be coercively restricted.

## **(B) Arab NGO Funding Restrictions**

The 'Foreign Government Funding Law' passed by the Knesset on 21 February 2011 imposes invasive reporting requirements on Arab NGOs. It requires them to submit quarterly reports on their funding arrangements, obligations and undertakings with any foreign donors on their website, to the Ministry of Justice and the Registrar of Associations.<sup>115</sup> The law is problematic for a number of reasons:

- **Specific targeting of Arab NGOs:** Given that this law only affects organizations within Israel that receive foreign funding, it disproportionately impacts upon Arab NGOs that rely almost solely on foreign funding sources for their work and activities, unlike for example, Jewish settler groups, who are privately funded. Furthermore, the law specifically exempts The World Zionist Organization, the Jewish Agency, the Jewish National Fund and their subsidiaries from these reporting requirements.<sup>116</sup>
- **Superfluous reporting obligations:** The purported goal of this law is to increase transparency, but in reality it imposes obligations that Arab NGOs already have under Israeli law to list donors and financial information on their websites as well as to provide annual reports to the government on their funding sources and activities.
- **Discouraging foreign funding and increasing the financial burden for Arab NGOs:** Such invasive reporting obligations could discourage foreign donors to provide funding to

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<sup>113</sup> Article 3 of the *Law for the Prevention of Damage to the State of Israel through Boycott* (2011) ("Anti-Boycott Law").

<sup>114</sup> HGJ 2072/12, *The Coalition of Women for Peace et al v The Minister of Finance et al*.

<sup>115</sup> Article 2 of the *Law on Disclosure Requirements for Recipients of Support from a Foreign State Entity* (2011).

<sup>116</sup> Article 7 of the *Law on Disclosure Requirements for Recipients of Support from a Foreign State Entity* (2011)

Arab NGOs in Israel and these superfluous reporting requirements require Arab NGOs to employ extra staff to carry out these tasks.

The Israeli government has also proposed other bills that seek to restrict the activities and funding of Arab NGOs, illustrating a pattern in the government's discriminatory targeting of Arab NGOs. For example, the 'Bill on Income of NGOs Receiving Funding from Foreign State Entities' proposes that NGOs, depending on their classification by the Israeli State will be subject to restrictions in their ability to access foreign funding.<sup>117</sup> If an NGO is deemed to be a 'political organization' it will be banned from receiving foreign funds; if an NGO is not deemed to be a 'political organization' but receives no funding from the Israeli government, it would be required to pay a 45% tax on foreign funding; but if an NGO receives funding from the Israeli government, it is entitled to continue receiving all of its international funding.

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<sup>117</sup> *Bill on Income of Public Institutions Receiving Donations from Foreign State Entity* (2011).

## DIVIDE AND RULE: SEPARATING MUSLIM AND CHRISTIAN PALESTINIANS

In February 2014, the Knesset enacted a law that creates a legal distinction between Muslim and Christian Palestinians. It allocates the Christian community separate representation on the public advisory board of the Equal Employment Opportunity Commission. On its face, the law appears to target labor discrimination by giving minority groups increased representation. However, it is in fact an attempt to reclassify Christians as 'non-Arabs' in order to further divide and control the Palestinian community in Israel.

This law forms part of a wider Israeli government strategy, reminiscent of colonial practices, to impose an artificial system of hierarchy and division on the Arab population. It has been described by Palestinian civil society as well as joint Arab/Israeli non-profits as a law with 'colonial motives' and one that 'reflects the unacceptable practice of divide and rule.'<sup>118</sup> Such a strategy aims to undermine the strength and unity of the collective Palestinian identity, thereby rendering them a weaker and more malleable group for the purposes of government control. This was the expressed intent of the sponsor of the law, MK Yariv Levin, who explained that this law 'is a historic and important move that could help balance the State of Israel, and connect us and the Christians, and I'm being careful about not calling them Arabs because they aren't Arabs.' He stated further that, 'We and the Christians have a lot in common. They're our natural allies, a counterweight to the Muslims, who want to destroy the country from within.'<sup>119</sup>

Other facets of the government's 'divide and rule' strategy include attempts to draft Christian Palestinians into the Israeli Defense Force. The National Coalition of Christian Organizations in Palestine (NCCOP) highlights that involvement in Israeli military service imparts a 'national Israeli-Zionist consciousness' that threatens the ability of Arab Christian youth to self-identify as Arab Palestinians.<sup>120</sup> In a similar vein, the deeper, subjective impact of creating separate legal categories for Muslim and Christian Palestinians imposes an artificial, government-sanctioned division that does not reflect the shared history and culture of these two groups. A coalition of Palestinian non-governmental organizations issued a statement in

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<sup>118</sup> Adalah, 'Palestinian NGOs in Israel reject the 'Sectarian Representation Law': We hold on to our Arab Palestinian Identity', 27/02/2014, accessible at <http://adalah.org/eng/Articles/2250/Palestinian-NGOs-in-Israel-reject-the-Sectarian--We>.

<sup>119</sup> See MK Yariv Levin's comments in Quinn Coffey, 'Israel passes legislation to reclassify its Christian citizens as non-Arab', *Open Democracy* (3 March 2014) accessible at <http://www.opendemocracy.net/arab-awakening/quinn-coffey/israel-passes-legislation-to-reclassify-its-christian-citizens-as-%E2%80%98non-a>.

<sup>120</sup> NCCOP, *Attempts to Mobilise Christians into the Israeli Military: The Case of Christian Arab Citizens of Israel* (2013). Accessible at <http://www.kairopalestine.ps/sites/default/Documents/The%20Case%20of%20Christian%20Arab%20Citizens%20of%20Israel.pdf>.



opposition to the law, making the point that irrespective of religious and ideological differences 'we are all an integral part of the Arab Palestinian people...based on our Arab culture, language, common history, and on the unity of our destiny and our future as a single original group that remains in its homeland.'<sup>121</sup>

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<sup>121</sup> Adalah, 'Palestinian NGOs in Israel reject the 'Sectarian Representation Law': We hold on to our Arab Palestinian Identity', 27/02/2014, accessible at <http://adalah.org/eng/Articles/2250/Palestinian-NGOs-in-Israel-reject-the-Sectarian--We>.

## PREFERENTIAL TREATMENT FOR MILITARY SERVICE

There is a pattern in Israeli politics of granting preferential treatment for those that have completed military service. Military service is compulsory for all Israeli citizens, however, a historical exemption is granted to the Arab minority, given that Israel's military operations are often exercised against the Palestinian people.<sup>122</sup> Given that the majority of the Arab community in Israel does not serve in the Israeli military, providing state benefits on the basis of military service is a wholly discriminatory criterion that targets and specifically impacts upon Arab citizens.

All citizens who serve in the Israeli military receive a generous pension upon the completion of their service. The total allocation of state funds for soldier pensions in 2014 was 6.8 billion NIS. In addition to this already generous government pension, recent amendments in 2010 to the *Absorption of Discharged Soldiers Law* (1994) stipulates that any students enrolled at university that have completed their military service receive state benefits in the form of an educational 'compensation package.'<sup>123</sup> According to the Israeli State budget in 2014, 2.2 billion NIS was allocated to discharged soldiers under this benefits scheme. This package includes payment of full tuition fees for the first year of their university studies, a year of free preparatory academic education and student housing benefits. As the Palestinian Arab community in Israel is exempt from military service, they are excluded from receiving these state-allocated benefits.

There are also a series of bills that have not yet been enacted as laws that adopt the same logic of providing particular benefits and preferential treatment on the basis of military service.<sup>124</sup> Most notably, the *Contributors to State Bill* seeks to incorporate into law that preferential treatment on the basis of military service should not be considered discrimination as prohibited by Israeli law. It proposes preferences to be allocated in terms of hiring, job salaries, higher education as well as the allocation of land for housing.

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<sup>122</sup> This exemption does not apply to the Druze community, who signed an agreement with the Israeli government regarding their compulsory conscription.

<sup>123</sup> *Absorption of Discharged Soldiers Law* (1994) (Amendment No. 7, 2008; Amendment No. 12, 2010).

## CONCLUSION

The new wave of Israel's discriminatory laws and policies over the last decade demonstrates the ongoing unequal treatment of the Palestinian Arab community and the further entrenchment of their status as second-class citizens. The two-tiered nature of Israel's legal system operates to privilege the interests of the Jewish community, while simultaneously disenfranchising its Palestinian Arab minority. This challenges Israel's perceived status as a democratic state within the international community. In light of systemic legal discrimination in Israel against Palestinian Arab citizens, the Mossawa Center continues to expose and challenge Israel's discriminatory legal regime, whilst advocating for equality, minority status recognition and indigenous rights.