

NGO Report

UN Committee on the Elimination of Racial Discrimination

Re: Reply to List of Themes in relation to the combined seventeenth to nineteenth periodic reports of Israel

Submitted by

Adalah – The Legal Center for Arab Minority Rights in Israel

3 November 2019

Adalah is pleased to submit this report to the UN Committee on the Elimination of Racial Discrimination, following the Committee's issuance of its List of Themes to the State of Israel on 2 October 2019, ahead of its review of the state's compliance with the ICERD in December 2019. This report provides information on Themes 7 and 8, and supplements an earlier report submitted by Adalah on 13 September 2019 regarding Palestinian citizens of Israel for the List of Themes.

Theme 7: Measures to eradicate all forms of segregation between Jewish and non-Jewish communities (CERD/C/ISR/17-19, para. 54; CERD/C/ISR/CO/14-16, para. 11).

Racially-based segregation as a deliberate state policy in the State of Israel

In response to this theme, Adalah wishes to emphasize strongly that, far from taking needed, effective measures to eradicate segregation between Jewish and Palestinian (non-Jewish) citizens in Israel – a homeland minority – the State of Israel has made the entrenchment of segregation a national policy and priority, in grave violation of Article 3 of the ICERD. With the exception of a number of “mixed cities”, including Haifa, Acre, Lod, Ramle and Nazareth Illit, the country is divided into Jewish and Arab localities: cities, towns and villages. About 90% of the Palestinian citizens of Israel (PCI) live in around 139 Arab towns or villages, with the remainder residing in the mixed cities.

The reality of segregation came about and has been maintained and deepened as a result of deliberate, explicit state policy. From 1948 onwards, Israel has enacted a series of laws that allow it to systematically confiscate and transfer Palestinian-owned land to the state and Zionist institutions, including the World Zionist Organization (WZO), the Jewish Agency, and the Jewish National Fund (JNF). In partnership with these groups, the state has dedicated enormous resources to developing and building new towns and villages for Israeli Jewish citizens and for the absorption of new Jewish immigrants.

The state continues to implement these policies with the assistance of these organizations, which today continue to operate for purpose of settling the land with solely for Jewish people, functioning as quasi-state entities with governmental authorities and functions. For example, the JNF controls around 13% of land in the state, which is reserved for the exclusive use of Jewish citizens. As much as 93% of the land in Israel, known as “Israel lands”, is under the direct control of the state and of the JNF, a quasi-state entity. The remainder is owned by private individuals.

Palestinian citizens of Israel are, in practice, blocked from purchasing or leasing land on around 80% of the land in Israel on the basis of their national belonging, and the vast majority of state land consists of segregated, Jewish-only areas.¹ While benefitting Jewish citizens of Israel, decades of discriminatory Israeli land and planning policies have minimized the amount of land on which Palestinian citizens live and build their communities. Today, while Palestinian citizens constitute around 20% of the population, only 3-3.5%² of the land in Israel is now owned by them, compared to 48% in 1948.

¹ A total of 47 regional councils in Israel (this number excludes regional councils located in the occupied Golan Heights and West Bank) govern around 850 rural towns and villages in Israel, covering 81% of state land in Israel, although they contain only around 8% of the state's population. See Israel's Central Bureau of Statistics (CBS), “Localities and other geographical divisions” (Hebrew):

<https://www.cbs.gov.il/he/settlements/Pages/default.aspx?mode=MoazaEzorit>. There are only four Arab regional councils: Al-Batouf, Bustan Al-Marj, and Neve Midbar and Al-Qasoum in the Naqab (Negev).

² Oren Yiftachel, “Lands, Planning and Inequality: The Division of Space Between Jews and Arabs in Israel,” Position Paper, The Adva Center, 2000 (Hebrew).

Since 1948, the State of Israel has established approximately 600 Jewish municipalities, but not one new Arab village, town or city.³ Moreover, the area of jurisdiction of the existing Arab localities, instead of expanding to cope with natural population growth, have in fact shrunk due to the massive expropriation of Arab-owned lands and their reallocation, inter alia, for the purpose of settling Jewish citizens all across the country. As a result, Arab towns and villages in Israel suffer from severe overcrowding, with Arab municipalities exercising jurisdiction over less than 3% of the total area of the state. For example, as of 2017 the jurisdiction of Nazareth (the largest Arab town in Israel), which has a population of around 76,000, is about 14,000 dunams.⁴ In contrast, the nearby Jewish town of Afula had a population of 49,000 and a jurisdiction over 29,000 dunams of land, i.e. over double the land space.⁵

Intended destruction of Bedouin village Umm al-Hiran and replacement with Jewish town Hiran

The Bedouin village Umm al-Hiran in the Naqab (Negev) desert in southern Israel provides an illuminating example of the state's systematic policy of maintaining spatial segregation between Jewish and Arab citizens in land and housing. The residents of Umm al-Hiran have a long history facing evictions and displacement by Israel. Until 1948, they lived in the Khirbet Zubaleh area, which they cultivated for centuries, and which is now under the control by of the Jewish community of Kibbutz Shoal. In 1956, the Israeli military's regional governor moved the tribe to Wadi Atir where they settled and rebuilt their community. However, even though the villagers complied with the governor's relocation order, their village was never granted recognition by the state.

In the late 1950s, the Israeli government began the process of drafting several plans to minimize the area of land inhabited by the Bedouin. The policy of concentrating the Bedouin has been pursued by successive Israeli governments. For close to three decades, despite the non-recognized status of the village, the state maintained the *status quo* with regards to Umm al-Hiran. However, in the early 2000s the area of the village was earmarked for a new and exclusively Jewish settlement, to be named Hiran. In 2003, the state issued demolition orders against all houses in Umm al-Hiran, despite the fact that the people had now been living in their village for decades. The state gave the people of Umm al-Hiran the sole option of relocating to the government-planned Bedouin township of Hura.

On 5 May 2015, after 13 years of litigation by Adalah on behalf of the people of Umm al-Hiran to prevent their forced displacement, the Israeli Supreme Court issued its final decision in the case, allowing Israel to carry out its racist plan to demolish the village, for the sole purpose of establishing a new Jewish town called 'Hiran' over its ruins.⁶ While the Court recognized that the residents were not illegal trespassers – as initially claimed by the state and disproved by Adalah via documents from the Israeli state archives – it nonetheless ruled that, because they were living on 'state land', the state could retake it and use it for other purposes, as the state saw fit. In its ruling (2 to 1) the Supreme Court acknowledged the state's intention to demolish the Bedouin village in order to build a town "with a Jewish majority".

The court's ruling in the Umm al-Hiran case legitimizes the demolition of an entire Arab village and the displacement of all of its inhabitants in order to build a Jewish one, and starkly illustrates the segregationist land and housing policies pursued by Israel throughout the state.

³ Excluding the seven Bedouin-only towns established by the State in the late-1970s and the 1980s, and the 11 Bedouin villages that were recognized in the late 1990s/early 2000s, all in the Naqab (Negev) desert in the south.

⁴ CBS, "Profile of Local Authorities in Israel 2017: Nazareth" (Hebrew): https://www.cbs.gov.il/he/publications/doclib/2019/local_authorities17_1759/243_7300.pdf.

⁵ CBS, "Profile of Local Authorities in Israel 2017: Afula" (Hebrew): https://www.cbs.gov.il/he/publications/doclib/2019/local_authorities17_1759/278_7700.pdf.

⁶ Supreme Court Appeal 3094/11, *Ibrahim Farhood Abu al-Qi'an, et al. v. The State of Israel* (decision delivered 5 May 2015). A subsequent request by Adalah and the community for a second hearing was denied in 2016.

Despite the Supreme Court's claim in the ruling that, "The planned town will not prevent [those from Bedouin villages] from living there and anyone who wishes to live in Hiran is entitled to do so," and the state's repeated assurances to the court that Hiran would accept all new residents – regardless of religion or ethnic background – Hiran is, in fact, closed to non-Jewish residents due to the operation of a local "admissions committee" to filter applicants for housing units (see following section).

Mechanisms of Segregation

Two of the principal mechanisms used to exclude Palestinian citizens from ownership and use of the land are "Admissions Committees", and the statutory authorities and policies of the Zionist organizations.

Admissions Committees

A major tool employed throughout the state to maintain ethnic and religious segregation is the "admissions committee". Admissions committees are bodies that select applicants for housing units and plots of land in hundreds of small Israeli Jewish communities in the Naqab (Negev) in the south and in the Galilee in the north with almost full discretion. They operate on a statutory basis, in accordance with the Admissions Committees Law, enacted by the Knesset in 2011.⁷ They are authorized to reject applicants in communities of up to 400 households based on the criteria of "social suitability" and the "social and cultural fabric" of the town.

By law, the committees include a representative from the Jewish Agency or the World Zionist Organization. In practice, admissions committees filter out Arab Palestinian applicants, as well as persons from other marginalized groups, solely on the basis of their race, ethnicity, religion, or other identity, via application of the discriminatory criterion of "social suitability". While the law states a duty to respect the right to equality and prevent discrimination, it also allows these committees to reject applicants deemed "unsuitable to the social life of the community...or the social and cultural fabric of the town," thereby legitimizing the exclusion of entire groups. The law also authorizes admissions committees to adopt criteria determined by individual community towns themselves based on their "special characteristics", including those community towns that have defined themselves as having a "Zionist vision".

On 17 September 2014, in a 5 to 4 decision, an expanded panel of the Israeli Supreme Court dismissed a petition brought by Adalah and other human rights organizations against the "Admissions Committees Law".⁸ The Supreme Court stated that, "We cannot determine at this stage whether the law violates constitutional rights". Thus the court upheld the law, and its decision effectively legalizes the principle of segregation in housing between Arab and Jewish citizens and permits racist practices against Arab citizens in hundreds of communities. The law and the Court's decision seriously undermine the Court's landmark decision in 2000 in the *Ka'adan* case.⁹ In this case, the quasi-governmental Zionist organization, the Jewish Agency, which controlled the land and established the Jewish town of Katzir, refused to allocate a plot of land to the Ka'adan family, who are Arab citizens of Israel, emphasizing that it works solely for the benefit of Jewish citizens (albeit on 'state land'). The Court accepted the petition and ruled that a plot of land must be allocated the Ka'adan family based on the principle of non-discrimination, despite their rejection by the town's admissions committee.

The Supreme Court's decision from 2014 on the Admissions Committees Law demonstrates the continued deterioration of the constitutional rights and legal protection of Palestinian citizens of Israel. Furthermore,

⁷ These committees also operated prior to the law's enactment.

⁸ HCJ 2504/11, *Adalah, et al. v. The Knesset, et al.* (decision delivered 17 September 2014).

⁹ HCJ 6698/95, *Adel Ka'dan v. Israel Land Administration*.

admissions committees in dozens of Israeli Jewish communities across the country are operating in severe violation of the Admissions Committees Law. The Knesset Research and Information Center report, published on 2 May 2019, revealed that admissions committees are operating illegally in at least 24 communities in the Negev and the Galilee because the number of households in those communities has exceeded 400, in violation of the law.¹⁰ The extensive use of this mechanism of maintaining segregation is one of the most direct and severe violations of the ICERD committed by Israel against the rights of the Palestinian Arab national minority in the state.

The institutionalized role of Zionist organizations in establishing and enforcing segregation

The World Zionist Organization (WZO), Jewish National Fund (JNF) and the Jewish Agency (JA) function as quasi-governmental agencies in some areas in lieu of state authorities, and operate exclusively and explicitly for the benefit of Jewish individuals, in accordance with their official public mandates. For example, the Memorandum of the JNF establishes that its principal goal is to purchase lands “for the purpose of Jewish settlement” on JNF lands.¹¹ The JNF’s Memorandum establishes its goals as including the acquisition of land in any area within the jurisdiction of the Government of Israel “for the purpose of settling Jews on such lands and properties” (Article 3(a)). Other articles of the JNF’s Memorandum emphasize that its funds are designated “to bring direct or indirect benefit to those of the Jewish religion, race or Jewish origins...” (Article 3(c)).

In June 2018, the Israeli Supreme Court rejected a petition filed by Adalah, the National Committee of Arab Local Authorities in Israel, and other NGOs against a clause in the Israel Land Authority (ILA) Act that determines that six out of 14 members of the Israel Land Council (ILC), a governmental body, be representatives of the JNF.¹² The petitioners argued that the compulsory and significant representation of the JNF on the ILC was illegal because of the inherent conflict between the Zionist aims of the JNF and the responsibility of the ILC to manage public land resources and determine national land policies for the benefit of all citizens. The Supreme Court dismissed the petition based on the assertion that there was no violation of the basic right to equality and dignity created by the JNF’s 43% presence on the ILC. The Court ruled that, even if the JNF were acting, per se, for Jewish people only, the representatives of JNF in the ILC are expected to adhere to the principle of equality, and therefore there would not be a violation of the rights to equality or dignity of non-Jewish citizens.¹³ In its decision, the Court failed to take adequate account of the rights violations inflicted by awarding a decisive influence in national land policy and decisions to the JNF, an organization that is mandated to work for the exclusive benefit of Jewish people.

A 2015 amendment to the World Zionist Organization - Jewish Agency (Status) Law grants the WZO’s Settlement Division authority over settlement, land acquisition, and the establishment and expansion of development projects in Israel. On 6 September 2017, the Israeli Supreme Court upheld the constitutionality of the law, rejecting a petition brought against it by Adalah and the Association for Civil Rights in Israel (ACRI). The organizations demanded the cancellation of the law since it allows the Israeli government to

¹⁰ The Knesset’s data is only partial, since there are no official supervisory mechanisms to ensure compliance with the provisions of the law. Indeed none of the relevant authorities contacted by Knesset researchers actually had the relevant data. Further, seven regional councils did not even respond to official inquiries made by Knesset researchers. For more information, see Adalah’s press release, “Adalah demands Israel cancel illegal ‘admissions committees’ enforcing segregation in dozens of communities across the country,” 25 June 2019: <https://www.adalah.org/en/content/view/9751>.

¹¹ The JNF’s Memorandum was approved on 9 May 1954 by the Minister of Justice, who was specifically authorized to do so by the Jewish National Fund Law – 1953.

¹² H CJ 6411/16, *The National Committee of Arab Local Authorities in Israel, et al. v. The Knesset, et al.* (decision delivered 19 June 2018).

¹³ Adalah press release, “Israeli Supreme Court rejects petition against JNF membership in ILA land council,” 22 June 2018: <https://www.adalah.org/en/content/view/9595>.

transfer part of its land-use authorities to a private body that acts exclusively to advance the interests of Israeli Jewish citizens.¹⁴ While noting that the WZO was bound to abide by the principle of equality in its operations, with this ruling, the Supreme Court granted the state a license to transfer authority to a body that in practice implements policies of racial segregation against Arab citizens in violation of their basic rights to equality and human dignity.

Constitutionalizing segregation: The Basic Law: Israel – The Nation-State of the Jewish People

Far from working to put an end to segregation, Israel’s legislature recently passed primary legislation that deliberately entrenches it and turns it into a constitutional principle. Article 7 of Israel’s newest basic law, The Basic Law: Israel – The Nation-State of the Jewish People, enacted by the Knesset in July 2018, reinforces the legal framework supporting ethnically and religiously-based segregation within the state.¹⁵

Article 7 explicitly establishes the development of Jewish settlement as a “national value”, and stipulates that the state must act to encourage, promote and consolidate it.¹⁶ The law thereby institutes ethnic segregation as a new legal norm throughout the “Land of Israel” (Article 1). Within the Green Line, the law is likely to be used to establish new exclusively Jewish towns in areas where Arab citizens are most concentrated, including in the Negev/Naqab and the Galilee. In the OPT, it gives legal justification to the establishment and retroactive legalization of the settlements, and gives existing annexations and laws constitutional backing; indeed, the annexation of the West Bank was a major purpose behind the law.

It also legitimizes the aforementioned mechanisms of segregation, admissions committees and the operation of quasi-governmental organizations such as the WZO and the JNF in *lieu* of state authorities. The basic law could also give constitutional justification to discriminatory budgeting policies that channel public funds to Jewish communities and individuals as incentives to relocate to the Negev/Naqab, in order to secure a Jewish demographic majority and spatial segregation.

Article 7 contradicts a preexisting constitutional principle anchored in Israeli Supreme Court jurisprudence through the *Ka’adan* case in 2000 in which the court held that discrimination between Jewish and Arab citizens of the state in the use and allocation of state-controlled land was impermissible. While this principle has not been implemented in practice on the ground, the new basic law establishes segregation as a binding constitutional norm.

Notably, the UN Committee on Economic, Social and Cultural Rights, in its concluding observations issued on 18 October 2019, expressed “deep concern” about the “possible discriminatory effect” of the Jewish Nation State Law, including through the provision in Article 7 for the development of Jewish settlement as a national value. The Committee urged Israel to amend or repeal it “to eliminate discrimination faced by non-Jews in enjoying the Covenant rights, particularly rights of self-determination, non-discrimination and cultural rights.”¹⁷

¹⁴ H CJ 778/17, *Adalah and ACRI v. Knesset, Government, Agriculture Minister, and the World Zionist Organization’s Settlement Division* (decision delivered 6 September 2017).

¹⁵ Adalah filed a petition against the Basic Law on 7 August 2018) to the Israeli Supreme Court on behalf of all of the Arab political leadership in Israel – the High Follow-Up Committee for Arab Citizens of Israel, the National Committee of Arab Mayors, the Joint List parliamentary faction. H CJ 5866/18, *The High Follow-Up Committee, et al. v. The Knesset, et al.* (case pending). There are 15 different petitions against the law pending before the Court.

¹⁶ For an English translation of the law, see: <http://knesset.gov.il/laws/special/eng/BasicLawNationState.pdf>.

¹⁷ Committee on Economic, Social and Cultural Rights, Concluding Observations on Israel, E/C.12/ISR/CO/4, 18 October 2019, paragraphs 16 and 17.

Theme 8: Measures to amend criminal legislation on incitement to racism, racist organizations and participation in and support for such organizations to ensure full compliance with article 4 of the Convention. Efforts to counter the tide of racist hate speech in public discourse, in particular by public officials and political and religious leaders, and to combat the proliferation of racist hate crimes that particularly target non-Jewish minorities, especially Palestinian citizens of Israel, Palestinians residing in the Occupied Palestinian Territory and migrants and asylum-seekers of African origin (CERD/C/ISR/17-19, paras. 55-65 and Annex No. I; CERD/C/ISR/CO/14-16, paras. 14 and 23).

Rather than taking serious measures to curb racist hate speech in public discourse, numerous public officials, including Prime Minister Benjamin Netanyahu, stoke racial tensions and exploit them, contrary to the state's obligation under Article 4 of the Convention to eradicate racial incitement. Palestinian citizens of Israel and their leadership are the main targets of these racist statements and discourse by Israeli public officials, as well as the subjects of Israeli discriminatory laws and policies. The propagation of such incitement directly violates Article 4 of the ICERD, which calls on state parties to condemn any "attempt to justify or promote racial hatred and discrimination in any form" and "not [to] permit public authorities or public institutions, national or local, to promote or incite racial discrimination."

The problem of this incitement is particularly alarming in cases in which government officials are expressing and inciting racial hatred and discrimination, since they create an atmosphere throughout the state in which racism against the national minority is tolerated and legitimized, and can be voiced with impunity and without fear of prosecution or other forms of sanction. It is harmful and dangerous to the Palestinian community in Israel. Unchallenged, recurrent racial incitement by government officials constitutes a violation of Israel's obligations under Article 4(c) of the Convention."

Examples of racial incitement made by Israeli government officials

The following are a small number of examples of racist statements made by Israeli government ministers, including Prime Minister Binyamin Netanyahu, about Palestinian citizens of the state over the last seven years, from 2013 to 2019. The statements concern the Palestinian minority as a whole and Arab parliamentarians in the Knesset.

1) Prime Minister Benjamin Netanyahu

- On 17 March 2015, in a video released on Facebook on election day, Netanyahu told his followers, "The right-wing government is in danger. Arab voters are coming out to the polling stations in droves. Left-wing NGOs are bringing them on buses."¹⁸
- On 10 March 2019, after Israeli actress Rotem Sela criticized the government for not promoting equality for Palestinian citizens, Netanyahu responded via Instagram that, "Israel is not a state of all its citizens. According to the nation-state law we passed [in July 2018], Israel is the nation-state of the Jewish people – and not anyone else."¹⁹
- On 22 August 2019, in a video issued as part of his election campaign, Netanyahu said, "Ayman Odeh [an Arab Member of Knesset (MK) and the head of the Arab Joint List] announced that he will join a Lapid-Gantz government. What does this mean? That the supporter of terror will sit in the left government. He salutes [Marwan] Barghouthi [a Palestinian political leader of Fatah (PLO), imprisoned for murder by Israel] and Ahed Al-Tamimi [Palestinian teenager, political activist, imprisoned for confronting Israeli soldiers in her village in the West Bank] and supports martyrs,

¹⁸ Mairav Zonszein, "Binyamin Netanyahu: 'Arab voters are heading to the polling stations in droves'," The Guardian, 17 March 2015: www.theguardian.com/world/2015/mar/17/binyamin-netanyahu-israel-arab-election.

¹⁹ Times of Israel staff, "PM to star who rapped anti-Arab rhetoric: Israel 'not a state of all its citizens', 10 March 2019: <https://www.timesofisrael.com/pm-to-star-who-rapped-anti-arab-rhetoric-israel-not-state-of-all-its-citizens/>.

and refrains from condemning those killing soldiers. He considers members of the right-wing government as murderers. He also says that Jerusalem is the eternal capital of Palestine...²⁰

- In September 2019, Netanyahu and other Likud officials repeatedly warned Israeli voters about the threat of a “leftist-Arab government”, referring to a scenario of the Joint List’s Arab representatives allying with Likud’s rival Kahol Lavan [Blue and White] party – and made deliberately inflammatory, baseless claims that Palestinian citizens were “stealing” the elections through voter fraud.²¹
- In September 2019, Netanyahu’s Facebook page issued digital messages to his followers telling them that “the Arabs want to destroy us all.”²²

2) *Public Security Minister Gilad Erdan*

- On 3 December 2016, Erdan alleged, without any evidence and prior to any investigation, that massive fires that had spread across northern Israel were being deliberately started by Palestinian citizens of Israel. He posted the following statement on his Facebook page: “Israel has experienced arson terrorism and I won’t let anyone sweep this fact under the rug. The problem with arson: Why does it seem unrealistic that Arabs would attempt to harm Jews?”²³
- On 18 January 2017, a deadly police shooting incident occurred during home demolition operations in the unrecognized village of Umm al-Ḥirān in the Naqab (Negev). Mr. Ya’aqub Abu al-Qi’ān, a math teacher and Bedouin resident of the village, and a police officer were killed as the former was trying to drive out of the village at a slow speed. Erdan immediately declared the incident, without evidence and before any investigation, as having “a nationalist background” – in other words, a terror attack – and tweeted that, “The terrorist sharply turned his wheel and quickly accelerated in order to run over a group of police officers.” However, police video footage of the incident and eyewitness testimony revealed that police had opened fire on Abu al-Qi’ān’s vehicle before he accelerated in the direction of officers, contrary to Erdan’s and the police claims that Abu al-Qi’ān sought to “ram” them.²⁴ The minister has not apologized for his remarks to this day.
- On 18 January 2017, Erdan made public statements of incitement against Arab members of Knesset following the afore-noted killing in Umm al-Hiran, including the following, “I want to say at this moment to [Knesset Member] Ayman Odeh and the rest of the MKs from the Arab List who have come to enflame sentiments this morning: This blood is also on your hands. This is a grave statement, I know. But not as grave as your actions today. You are a disgrace to the State of Israel.” MK Odeh himself was wounded when Israeli police opened fire on him with sponge-tipped bullets in Umm al-Hiran that same day.²⁵

²⁰ Benjamin Netanyahu Twitter page: <https://twitter.com/netanyahu/status/1164565474681769985>.

²¹ Jonathan Lis and Josh Breiner, “Netanyahu alleged massive Arab voter fraud. Police found one case – in favor of Likud”, Haaretz, 8 September 2019: <https://www.haaretz.com/israel-news/elections/.premium-netanyahu-s-likud-alleged-over-100-instances-of-election-fraud-only-one-was-legit-1.7808394>.

²² Following these statements, Adalah filed complaints to the Central Elections Committee to issue a restraining order banning Netanyahu from further illegal dissemination of racist election propaganda, and to the Attorney General (AG) to open a criminal investigation into the Israeli prime minister’s incitement to racism. No response has been received from the AG to date. For more information, see Adalah press release, “Adalah files incitement complaint on behalf of Arab Joint List after Netanyahu statement ‘Arabs want to destroy us all’”, 1 September 2019: <https://www.adalah.org/en/content/view/9812>.

²³ Adalah press release, “Will Israeli public security minister face criminal probe for racist incitement against Arab citizens?” 12 February 2017: <https://www.adalah.org/en/content/view/9035>.

²⁴ Adalah press release, “In wake of Haaretz expose on Umm al-Hiran, Adalah sends urgent demands to AG”, 12 June 2019: <https://www.adalah.org/en/content/view/9544>.

²⁵ Adalah wrote to the Attorney General demanding a criminal investigation into Erdan for incitement in the three cases above; no investigation was opened. See Adalah press release, “Will Israeli public security minister face criminal probe for racist incitement against Arab citizens?” 12 February 2017, at: <https://www.adalah.org/en/content/view/9035>.

- On 7 October 2019, speaking to Jerusalem Radio, Erdan said, “It’s a very, very — and another thousand times — very violent [Palestinian] society. It’s connected to the culture there. A lot of disputes that end here with a lawsuit, there they pull out a knife and gun.” Erdan also said that in Arab society, “a mother can give a son permission to murder the sister because she’s going out with a man who’s not pleasing to the family.”²⁶

3) *Defense Minister Avigdor Lieberman (2015-2019)*

- In January 2015, Lieberman launched a new election campaign slogan titled “Ariel to Israel, Umm al-Fahem to Palestine”, which called for the annexation of the illegal Israeli settlement of Ariel in the West Bank, and the transfer of the Arab town of Umm al-Fahem in northern Israel to the occupied territories. Lieberman is a longtime proponent of “population transfer” or stripping Palestinian citizens of the state of their Israeli citizenship.²⁷
- On 8 March 2015, during a speech at the Academic Center in Herzliya, Lieberman stated: “Those who support us should get everything – up to half the kingdom. As to those who are against us, there is no other option before us – we must raise the axe and cut off their heads; otherwise we will not survive here.” He added that, “As far as I’m concerned, citizens of the State of Israel who raise a black flag on Nakba Day [the Palestinian “catastrophe” of 1948] can get out of here, and I am ready to bequeath them to Abu Mazen [President Mahmoud Abbas of the Palestinian Authority] with great pleasure.”²⁸
- On 10 December 2017, following a stone-throwing incident near the Arab town of Ar’ara in Israel, Lieberman told the Israeli radio station Reshet Bet: “Those people [Palestinian citizens] don’t belong in Israel. They must be part of the Palestinian Authority; there they can get unemployment benefits and idleness benefits. They are part of Ramallah. They have no connection to the State of Israel, and I call on the citizens of the State of Israel simply to boycott Wadi Ara ... these people have to understand they are not wanted here ... All that they learn in their schools is to hate Israel.”²⁹
- On 27 March 2019, in an election campaign video, an actor dressed as a Palestinian militant tells the camera, “Today I am embarking on the mission of my life to restore my people’s honor. Today I start the next intifada from within and join the Knesset of Israel.” Lieberman then appears on the screen and tells viewers: “When [Arab] members of Knesset aid and abet the enemies of Israel they are terrorists [from within].”³⁰

4) *Transportation Minister Bezalel Smotrich (2015-2019)*

- On 5 April 2016, following a report that Israeli hospitals had been racially segregating maternity wards between Jewish and Arab mothers when requested, Smotrich wrote on Twitter, “My wife is truly no racist, but after giving birth she wants to rest rather than have a *hafla* (Arab party) like the Arabs have after their births.” He continued, “It’s natural that my wife wouldn’t want to lie down [in a bed] next to a woman who just gave birth to a baby who might want to murder her baby twenty

²⁶ Times of Israel staff, “Police minister called racist after blaming Arab culture for violence”, 7 October 2019: <https://www.timesofisrael.com/police-minister-called-racist-after-blaming-arab-culture-for-violence/>.

²⁷ Jonathan Lis, “Lieberman reveals campaign slogan: Ariel for Israel; Umm al-Fahm for Palestine”, Haaretz, 15 January 2015: <https://www.haaretz.com/.premium-lieberman-reveals-campaign-slogan-1.5360839>; Adalah, “In Israel’s elections, racism is the winning ballot”, 23 March 2015: www.adalah.org/en/content/view/8491.

²⁸ Adalah wrote to the AG demanding a criminal investigation into Lieberman’s remarks. The State Attorney’s Office rejected the request, saying, “It is difficult to understand these statements as an actual, concrete call to commit acts of violence.” See Adalah press release, “State Attorney’s office rejects request for criminal investigation into Lieberman’s ‘ax’ comment”, 1 June 2015: <https://www.adalah.org/en/content/view/8565>.

²⁹ Ben Lynfield, “Lieberman calls for Jewish boycott of Wadi Ara Arabs”, Jerusalem Post, 10 December 2017: <https://www.jpost.com/Arab-Israeli-Conflict/Lieberman-calls-for-Jewish-boycott-of-Wadi-Ara-Arabs-517627>.

³⁰ Avigdor Lieberman’s Facebook page: <https://www.facebook.com/AvigdorLieberman/videos/396709367588765/?v=396709367588765>.

years from now”, and added “Arabs are my enemies and that’s why I don’t enjoy being next to them.”³¹

- On 4 October 2019, after Arab MKs decided not to attend Knesset’s opening in protest of the state’s inaction in addressing gun violence in Arab communities in Israel, Smotrich wrote on his Twitter page: “We are in luck that the Arabs boycotted the opening ceremony of the 22nd Knesset. They would have shot into the air to express happiness/sadness/their protest/ because that’s their habit, and then, of course, blame the police.” After Joint List MK Ayman Odeh gave his reply, Smotrich responded: “I was just scared to find an illegal gun under the chair so you could also blame the Knesset guard and not just the Israeli police. And since you brought it up then yes – God did promise us all of the Land of Israel, a promise he kept. We’ve been just been the most hospitable people in the world since the days of Abraham and so you’re still here. At least for now.”³²

5) *Culture Minister Miri Regev (2015-2019)*

- Since 2015, Regev has repeatedly attacked the Arab Al-Midan Theater in Haifa for ‘cultural disloyalty’, and worked to freeze its funding and close it for hosting Palestinian performances and films, including the play ‘A Parallel Time’ about a Palestinian political prisoner.³³ For example, in July 2019, Regev said, “Al-Midan has been a home that has given a platform to inciters against the Israeli army and the State of Israel, its symbols and values, and has occupied itself with incitement and not art. State funding and the taxpayers are not up for grabs and the right to receive it is conditioned on meeting the basic definition of what is considered a theater in Israel.”³⁴ Regev repeated this sentiment on 10 October 2019: “Al-Midan is not a theater but a stage for incitement and supporting terror.”³⁵
- On 17 March 2019, after the killing of an Israeli girl by a Palestinian, Regev made inciteful remarks against Arab MK Ahmad Tibi, saying that he “is not willing to condemn the murder of the dead girl. That is exactly the incitement, and with this person [Tibi], Gantz and Lapid want to create a bloc to form a government.”³⁶

6) *Education Minister Naftali Bennett (2015-2019)*

- On 29 July 2013, a report published in the Israeli daily *Yediot Aharonot* quoted statements made by Bennett at a cabinet meeting to discuss the possible release of Palestinian prisoners as part of the peace talks being brokered by then-US Secretary of State John Kerry. The news article cited a conversation between Bennett and National Security Adviser Yaakov Amidror, during which Bennett stated that, “If you catch a terrorist, then you just have to kill him.” Amidror reportedly

³¹ Daniel Douek, “Lawmaker backs segregated Jewish, Arab maternity wards”, Times of Israel, 5 April 2016: <https://www.timesofisrael.com/lawmaker-backs-segregated-jewish-arab-maternity-wards/>.

³² Jack Houry, “Israeli Minister: Arabs are guests here, for now”, Haaretz, 4 October 2019: <https://www.haaretz.com/israel-news/.premium-israeli-minister-arabs-are-guests-here-for-now-1.7944936>.

³³ Adalah, “Culture Ministry agrees to reinstate funding to Al-Midan Theater following petition and AG intervention”, 31 March 2016: <https://www.adalah.org/en/content/view/8779>.

³⁴ Aya Chajut, “Israeli court rejects petition to restore gov’t funding to controversial Arab theater”, Haaretz, 23 July 2019: <https://www.haaretz.com/israel-news/.premium-israeli-court-rejects-petition-to-restore-gov-t-funds-to-controversial-arab-theatre-1.7565295>.

³⁵ Hagay Hacohen, “Minister Regev: ‘The show is over’ for ‘terror theater’”, Jerusalem Post, 10 October 2019: <https://www.jpost.com/Israel-News/Minister-Regev-The-show-is-over-for-terror-theater-604220>.

³⁶ Yvette J. Deane, “Regev on terrorist attacks: This is exactly the incitement that Gantz wants”, Jerusalem Post, 17 March 2019: <https://www.jpost.com/Arab-Israeli-Conflict/Regev-on-terrorist-attacks-This-is-exactly-the-incitement-Gantz-wants-583720>.

replied that what Bennett was espousing was illegal, but Bennett disagreed, adding that, “I’ve killed lots of Arabs in my life – there’s no problem with that.”³⁷

- On 8 September 2019, remarking on baseless claims of Arab voter fraud, Bennett wrote on Twitter, “I am not a racist, and I do not have any hatred of the other, but factually most of the [electoral] chaos we saw was in the non-Jewish [Arab] sector. It’s just a fact...”³⁸

7) *Justice Minister Ayelet Shaked (2015-2019)*

- On 30 June 2014, in the days leading up to Operation Protective Edge in the Gaza Strip, Shaked wrote on her Facebook page that, “Behind every terrorist stand dozens of men and women, without whom he could not engage in terrorism. Actors in the war are those who incite in mosques, who write the murderous curricula for schools, who give shelter, who provide vehicles, and all those who honor and give them their moral support. They are all enemy combatants, and their blood shall be on all their heads. Now this also includes the mothers of the martyrs, who send them to hell with flowers and kisses. They should follow their sons, nothing would be more just. They should go, as should the physical homes in which they raised the snakes. Otherwise, more little snakes will be raised there.”³⁹
- In October 2018, during a municipal election campaign in the mixed Arab-Jewish city of Ramle, Shaked’s and Bennett’s Habayet Hayhudi party ran a campaign ad targeted at Jewish voters featuring a woman in a hijab with the caption, “There are hundreds of cases of assimilation in Ramle and nobody cares. Tomorrow it could be your daughter. Only a strong Habayit Hayehudi can preserve Jewish Ramle.” When asked to clarify, the party’s national office stated, “The party’s position on [racial] assimilation is clear: The Jewish people must preserve its national character and preserve its tradition, religion, culture and heritage.”⁴⁰

8) *Minister of Construction and Housing Yoav Galant*

- In June 2018, during a discussion in the Knesset Interior Committee, referred to the unrecognized Bedouin villages in the Naqab as “terrorism” and “Islamist Palestinian expansion”.⁴¹

Selective prosecution of incitement-related offences

In its recent report to the Committee, the State of Israel claimed that changes in policy had been made to increase the criminal prosecution of incitement to racism, especially on the Internet, in compliance with Article 4 of the ICERD. The state also submitted a list of cases on the issue.⁴² Contrary to the state’s claims, in fact, the state is predominantly prosecuting Palestinian citizens of Israel for crimes of incitement, at far higher rates than Jewish Israeli citizens. In many cases, the purpose of this prosecution is to silence Palestinian activists and violate their right to free speech.

Arrests and subsequent criminal charges in incitement-related offenses are discriminatory, overwhelmingly targeting Palestinians. While Palestinian citizens of Israel constitute only 20% of the total population of

³⁷ Adalah wrote to the Attorney General demanding a criminal investigation into these comments. No investigation was opened. See Adalah press release, “Adalah demands criminal investigation into Minister Naftali Bennett for incitement to violence”, 1 August 2013: <https://www.adalah.org/en/content/view/8195>.

³⁸ Naftali Bennett Twitter post: <https://twitter.com/naftalibennett/status/1170676965130559489>.

³⁹ Judy Maltz, “What does Israel’s new Justice Minister really think about Arabs?” Haaretz, 11 May 2015: <https://www.haaretz.com/premium-what-does-ayelet-shaked-really-think-about-arabs-1.5360885>.

⁴⁰ Bar Peleg, “Tomorrow it could be your daughter”: Right-wing party campaigns on anti-assimilation in central Israeli town”, Haaretz, 16 October 2018: <https://www.haaretz.com/israel-news/premium-right-wing-party-campaigns-on-anti-assimilation-in-central-israeli-town-1.6568941>.

⁴¹ Globes (Hebrew), at: <https://www.globes.co.il/news/article.aspx?did=1001239628>.

⁴² See Israel’s Report to CERD, CERD/C/ISR/17-19, 14 March 2017, paras. 55 - 65. Also see, Annex No. II of Israel’s Report, Pages 14 -15.

Israel, according to Israeli police statistics in 2016, 82% of those arrested for incitement-related offenses were Palestinian citizens, and just 18% Jewish Israeli citizens. Statistics for 2015 are similar: 81% of those arrested for incitement-related violations were Palestinian citizens, and 19% were Jewish Israeli citizens. In 2015, 43 people were charged with incitement-related offenses: 40 Palestinian citizens (93%) and 3 Jewish citizens (7%). These statistics were published by the media website *Sicha Mekomit* following a series of investigatory press articles regarding discrimination in persecution in incitement-related offenses and the refusal of the police to publish the data on the issue, as a result of which the police provided the relevant statistics to the website.⁴³

Adalah obtained similar data during the course of its legal representation of Palestinian political leader Raja Eghbaria, who was arrested in 2018 for a series of Facebook posts on charges of incitement. Specifically, Adalah learned from an Israeli prosecutor during an earlier court hearing on Eghbaria's detention that the state had only ever sought detention until the end of court proceedings for Arab suspects in online incitement to terror cases, and never for Jewish suspects.⁴⁴ The state attorney in these cases provided Adalah with the police data regarding investigations opened and the indictments submitted in cases of incitement to terror (see attached as *Annex I*). The police data is classified by religion and not by nationality - Jews and non-Jews.⁴⁵

This data shows a similar pattern to that obtained by the media: there is a large gap in the rates at which investigations are opened and indictments are submitted against Israeli Jewish citizens and Palestinian citizens of Israel. The data, which relates to the years 2016-2018, indicates that in 482 cases in which investigations were opened, 343 were non-Jews (71%), and 81 were Israeli Jews (24%). The data also shows that of 182 indictments submitted in these years for these offenses, 161 were submitted against non-Jews (88%), and just 19 against Jews (10%). This gap exists despite the fact that 70% of the 175,000 recorded social media posts in Israel that specifically incited to violence between June 2015 and May 2016 were made by right-wing Israeli Jews against Palestinians and left-wing Jews, according to an Israeli research center.⁴⁶ Thus the afore-cited figures entail huge disparities that clearly reveal the existence of a major, systemic and racially-based bias against Palestinians citizens in the state's policies relating to policing and prosecuting alleged cases of racial incitement.

⁴³ John Brown and Noam Rotem, "Despite claims of racially discriminatory enforcement: The police refuse to release on incitement cases", *Sicha Mekomit*, 13 September 2016: <https://tinyurl.com/y2aybleq>; John Brown, "Police data: Dozens of indictments against Arabs for incitement, zero against Jews", *Sicha Mekomit*, 18 September 2016: <https://tinyurl.com/y2tpwvq4> (Hebrew).

⁴⁴ See Adalah press release, "Israeli prosecutor reveals: Requests for jail without bail until end of trial for Facebook incitement offenses - for Arab suspects only", 18 October 2018: <https://www.adalah.org/en/content/view/9604>

⁴⁵ The "non-Jews" category includes Muslims, Christians, Druze and Circassians, who are all Arabs except for Circassians.

⁴⁶ Berl-Katzenelson Foundation's Incitement to violence report, the Hate Report project (2017): <https://tinyurl.com/yywwm66z> (Hebrew).

Annex 1

At the Haifa Magistrates Court

C.C. 18-09-36001

Before the Honorable Judge Dr. Ziad Falah

The Appellant:

Raja son of Mohamed Eghbaria

(The defendant)

Born 27.7.1952, ID 051129476

Alkina neighborhood, Umm el-Fahem

V.

The Respondent:

The State of Israel

(The appellant)

Represented by the Haifa District Attorney's Office –

Criminal

15 Pal-Yam A', Haifa 31008

Telephone: 04-8633904, Fax: 02-6467892

Data in Accordance with the Court's Decision regarding the Request

Pursuant to Section 108

1. In accordance with the decision of the Honorable Court dated 10.12.18, the Respondent was charged with the task of collecting the requested data, insofar as this action is possible, for the purpose of submitting it for Court's review, so that it may rule on the question of its submission to the defense, inasmuch as it does not deem it appropriate to hand it directly to the defense.
2. Firstly, from a technical point of view, regarding the request to receive statistical data regarding nationality in the context of investigation files opened for incitement offenses, it should be clarified that the Respondent does not classify files in this manner. The nationality of a defendant or suspect cannot be discerned from all the files.

3. In consideration of the operation of computerized systems used by the Respondent, the collection of data regarding cases of this type of offenses that were submitted and then closed requires a separate examination in each of the districts. Given the manner of data entry in terms of system settings and work procedures, it is very difficult to gather this data, and it is not possible in practice to extract the complete data in this context. In consideration of the fact that, in any case, data relating to the suspect's nationality or religion is not entered when a file is opened, examining whether the case that was submitted or closed concerns a Jew or a member of another religion is only possible through the examination of the details of each and every case.

4. After examining the matter with the Israel Police, we found that the police had a classification based only on religion, and we are attaching the data given to us as it stands. The data refers to the years 2016, 2017 and 2018, according to a classification of Jews and non-Jews. The "non - Jews" category includes Muslims, Christians, Circassians and Druze.

	Article 4 of the Prevention of Terror Ordinance	Article 24 of the Counter-Terrorism Law	Article 144D2 of the Penal Law
Overall [criminal] Investigation files opened by the police	97	171	214
Number of files on Jews	2	12	67
Number of files on non- Jews	88	146	109
Overall Number of indictments submitted	47	77	58
# of Indictments submitted against Jews	1	7	11
Number of Indictments submitted against non- Jews	46	68	47
Overall number of Cases closed	40	36	111
Number of Cases closed against Jews	1	0	34
Number of Cases closed against non-Jews	34	38	44

5. Regarding the discrepancies in data on the opening of an investigation, we will note that we were informed by the police that this gap is due to the fact that a suspect is not necessarily involved in every investigation.
6. With regard to gaps in the submission of indictments, the police said the cases in question were apparently still awaiting decision whether to submit an indictment or to close the file.
7. Notably, the number of cases in which an investigation was opened does not relate to all those in which a suspect is interrogated under caution with the required approval of the Deputy State Attorney (Special tasks), but rather, this concerns every complaint regarding which an investigation file was opened even prior to receiving the approval.
8. It should be clarified again that we take individual considerations into account regarding each case according to its circumstances, with no relation to the nationality of the defendant. The decision to open an investigation for incitement offenses, which, as is known, requires the approval of the Deputy State Attorney (Special Tasks), is deliberated on an individual basis, according to the scope of the published materials, the amount of time involved, content, their support they contain for terror activities and organizations, the exposure they received (number of members), the influence they had (likes and reactions), the status of the person who presented the material, and especially the proximity to violent events, the public atmosphere, and similar actions carried out by the target group. This is the case, of course, in all that regards the filing of indictments, which are examined by the Attorney General himself and approved only by him.

Moshe Eyal, Adv.

Senior Deputy in the Haifa District Attorney's Office (criminal)