NGO Report to the UN Human Rights Committee

Reply to List of Issues in relation to the fifth periodic report of Israel

Submitted by
Adalah – The Legal Center for Arab Minority Rights in Israel

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Introduction

Adalah is pleased to submit this report to the UN Human Rights Committee, in view of Israel's fifth periodic report on its implementation of the International Covenant on Civil and Political Rights (CCPR/C/ISR/5). The report responds to the List of Issues adopted by the Committee on 7 September 2018 (CCPR/C/ISR/QPR/5). In this report, Adalah demonstrates Israel's violations of the Covenant, both in Israel and in the Occupied Palestinian Territory (OPT). This submission is based on information contained in a range of publications by Adalah, and its legal work before the Israeli courts and state authorities.

Adalah is an independent human rights organization and legal center, founded in November 1996. Its mission is to promote human rights in Israel in general and the rights of the Palestinian minority, citizens of Israel, in particular. This work also includes promoting and defending the human rights of all individuals subject to the jurisdiction of the State of Israel, including Palestinian residents of the OPT. Adalah works before Israeli courts to protect the human rights of Palestinians in Israel and in the OPT.

Constitutional and legal framework within which the Covenant is implemented (art. 2)

List of Issues 1. Israel's Non-Implementation of the Convention and previous Concluding Observations

In its Concluding Observations (COs) from 2014, the Committee praised Israel for establishing an inter-ministerial team, in 2011, under the leadership of the Deputy Attorney General for International Law to review all COs of human rights treaty bodies with a view toward their implementation (B. Positive Aspects para. (c)) The SoI claims in its 2019 report (paras. 16-20), that this inter-ministerial team has brought about "significant changes", notably: (1) raising the marital age from 17 to 18 years of age; (2) establishing an Inspector for Complaints against the Israel Security Agency (ISA) interrogators; (3) obliging prison wardens to report suspicions against ISA interrogators to the Inspector; and (4) carrying out training for judges and lawyers.

In Adalah's view, as noted throughout this report, Israel is completely failing to abide by its obligations under the ICCPR, and has not implemented the hundreds of COs recommended by this Committee and the other human rights treaty bodies. While the handful of steps taken by Israel are important, they certainly do not rise to the level of "significant changes" as a whole, and rather highlight Israel's unwillingness to implement its international human rights law obligations. Notably, regarding the ISA Inspector for Complaints, mentioned by Israel, the Public Committee Against Torture in Israel has documented that around 1,300 complaints, predominantly from Palestinians, have been submitted to the Justice Ministry and later the ISA Inspector since 2001, and that in response only two criminal investigations were ever initiated, both of which were closed in 2021. Thus, no indictments have ever been filed against ISA interrogators.[1]

Adalah calls on the Committee to urge Israel to enact the Convention into its domestic law, implement its provisions, and instruct the inter-ministerial team to facilitate the implementation of the Committee's concluding observations

[1] See The Public Committee Against Torture in Israel (PCATI), "Torture in Israel 2021: Situation Report", available here. The UN Committee Against Torture stated in 2016 that it was particularly concerned that so far none of the hundreds of complaints brought against them [ISA interrogators] had resulted in prosecution (CAT/C/ISR/CO/5, para. 30).

State of emergency and counter-terrorism measures (arts. 4, 9, 14, 17, 19, 21 and 22)

List of Issues 4. State of Emergency

According to this Committee, a state of emergency (SoE) "must be of an exceptional and temporary nature", and emergency measures must be "limited to the extent strictly required by the exigencies of the situation" (CCPR/C/21/Rev.1/Add.11, paras. 2, 4). Israel, however, has declared and maintained a general, undefined, security-based SoE since 1948.

Previously, this Committee recommended that Israel examine the necessity for maintaining its decades-long state of emergency (CCPR/C/ISR/CO/4, para. 10), however, Israel has failed to do so. Rather, the Knesset, upon the Government's recommendation, has regularly extended the SoE without any meaningful evaluation of the present situation and whether such situation amounts to a "public emergency which threatens the life of the nation," as stipulated by the ICCPR. On 2 August 2021, the Knesset extended the SoE by another year.

While Israel claims in its report to this Committee that its authorities "have been reviewing the legislation connected to the existence of a declaration on a state of public emergency, in order to enable its termination", and that this process is "ongoing" (CCPR/C/ISR/5, para. 36), it remains firmly in place, along with attendant human rights violations.

Indeed, the Government of Israel immediately chose to resort to emergency regulations to tackle the COVID-19 crisis, and these regulations remained its primary tool for months, from mid-March 2020 onwards. The government's approach to the pandemic relied on the pre-existing general and security-based SoE despite the fact that the COVID-19 outbreak is a health crisis that is civilian in nature. The Government promulgated a total of 39 emergency measures and orders, decreed without parliamentary oversight, under the general security-based emergency.

Adalah documented the emergency measures introduced by the Government of Israel, the Israeli Supreme Court's response and the resultant human rights violations in a report issued in 2021, and in a 2020 report to the UN Special Rapporteurs and Independent Experts in response to Joint Questionnaire on COVID-19 and human rights.

- **Adalah Report, *The Israeli Supreme Court and the COVID-19 Emergency*, August 2021**

- **Adalah, Report to UN Special Rapporteurs and Independent Experts in response to Joint Questionnaire on COVID-19 and Human Rights, 4 July 2020 (resubmitted on 16 July 2020)**

Following criticism by the Supreme Court of the Israeli Government, made in the context of a petition filed by Adalah and the Joint List in April 2020 against Israel's extensive use of emergency COVID-19 regulations, the Knesset enacted The "Law of Special Powers for Dealing with the New Corona Virus (Temporary Order) 5720-2020", known both as the "Special Powers Law" and the "Major Coronavirus Law", on 23 July 2020. Far from remedying the human rights violations created by the Government's reliance on emergency powers, however, the Major Coronavirus Law anchors in law the same powers that the Government wielded via emergency regulations. The law authorizes the Israeli Government to declare a COVID-19-related state of emergency and to employ sweeping powers that may infringe upon and restrict individual rights and liberties of citizens without parliamentary oversight.

Adalah and the Association for Civil Rights in Israel (ACRI) filed a petition to the Israeli Supreme Court on 9 September 2020 against the Major Coronavirus Law.[2] The petitioners challenged the granting of authority to the government to declare a state of coronavirus-related emergency, the scope of the powers transferred to the executive branch by the law, as well as the law's reduction of parliamentary oversight, arguing that the law constituted a violation of the principle of separation of powers and of the rule of law.

Under the law, the government is authorized, for example, to determine what rate of COVID-19 infection justifies the declaration of a SoE and what rate of infection justifies restrictions on public activity as well as the duration of those restrictions. The law also grants the Knesset's Ministerial Committee the power to declare restricted zones and to determine what restrictions will be imposed in these zones. Moreover, the law grants these extreme powers to the government without setting any criteria for determining if, when, or how they can be employed.

The Supreme Court rejected the petition on 4 April 2021, thereby approving the undemocratic norms established by the law, especially with regard to limitations on the legislature's authority, and a situation in which the Knesset is authorized only to retroactively approve or reject regulations already enacted by the government, on the basis of the general SoE.

Adalah calls on the Committee to urge Israel to lift its general, declared state of emergency, and to cancel all emergency measures promulgated under the existing state of emergency that do not comply with Israel's human rights obligations under the Covenant.

The Counter-Terrorism Law – 2016

On 16 June 2016, the Knesset passed the Counter-Terrorism Law, also known as the Anti-Terror Law. Among its many flaws, the Law: lacks a precise definition of terrorism; is not limited to countering terrorism and the maintenance of national security; incorporates legal proceedings that violate the fundamental rights of due process, including the use of secret evidence; and provides disproportionate and unjustified penalties for security offenses defined under the Law. Adalah's position paper provides additional information and legal commentary on the major flaws of the 2016 Counter-Terrorism Law.

- **Adalah's Position Paper, *Israel's Counter-Terrorism Law*, 31 October 2016 (updated 29 November 2021)**

This Committee previously noted (CCPR/C/ISR/CO/4, para. 11) that an earlier draft of the same law lacked specific information on the definitions of terrorism and on the legal safeguards afforded to persons suspected of, or charged with, terrorism-related offenses, and recommended that Israel "ensure that the new legislation governing the State party's counter-terrorism measures is in full compliance with its obligations under the Covenant." These obligations include, *inter alia* (CCPR/C/ISR/CO/3, para. 13): precise and limited definitions of terrorism; compliance with the principle of legality with regard to accessibility, equality, precision and non-retroactivity; and access to all evidence, including classified evidence.

In its report to this Committee, Israel claims that the Counter-Terrorism Law includes, "updated definitions of 'terrorist organization', 'terrorist act' and 'membership in a terrorist organization'", and that the Law "does not create discrimination on the grounds of gender,

[2] HCJ 6312/20, *Adalah v. The Knesset* (decision delivered 4 April 2021). Decision (in Hebrew) available at: https://www.adalah.org/uploads/uploads/HCJ_6312_20_ruling.pdf Petition (in Hebrew) available at: https://www.adalah.org/uploads/uploads/CoronaLaw_Petition_FINAL_06092020.pdf. The text of the law (in Hebrew) available at: https://fs.knesset.gov.il/23/law/23_lsr_577860.pdf

race, color, decent or national or ethnic origin and does not subject individuals to racial or ethnic profiling or stereotyping" (CCPR/C/ISR/5, para. 94).

Neither statement is true. The definitions provided by the Law, specifically for "terrorist organization" and "terrorist act", are overly broad and vague, and include otherwise lawful organizations and legal activities. Such broad definitions have resulted in an arbitrary and discriminatory enforcement policy based on unlawful and illegitimate political motives that will serve, much like the entire system of security legislation, as a means of suppressing the civil and political rights of Palestinians in Israel and in the OPT.

Due to its incompatibility with Israel's obligations under the Covenant, Adalah requests that this Committee recommend the immediate revocation of the Counter-Terrorism Law – 2016.

Non-discrimination and self-determination (arts. 1, 2, 9, 12, 17, 18, 25 and 26)

List of Issues 6. Basic Law: Israel as the Nation-State of the Jewish People

On 19 July 2018, the Knesset enacted the *Basic Law: Israel as the Nation-State of the Jewish People*, which constitutionally enshrines Jewish supremacy and racial segregation as foundational principles of the State of Israel. Also known as the Jewish Nation-State Law, this law – which has distinct characteristics of apartheid – guarantees the ethnic-religious character of Israel as exclusively Jewish and entrenches the privileges enjoyed by Jewish citizens. It simultaneously anchors discrimination against Palestinian citizens of Israel and legitimizes systemic inequality, exclusion and racism against them. Adalah's 2018 position paper (linked below) discusses the implications of the Basic Law: Israel as the Nation-State of the Jewish People on the legal status of all Arabs living under the Israeli constitutional regime, which includes Palestinian citizens of Israel, Palestinian residents of Jerusalem, and Syrians residing in the Golan Heights. Adalah also issued a position paper in 2019 (linked below) analyzing Section 7 of the Basic Law, which establishes the promotion and development of exclusively Jewish settlement throughout Israel as a national priority.

Article 7 of the Jewish Nation-State Law may be used by state authorities to justify the expansion and intensification of the illegal settlement enterprise in the Occupied Territories occupied since 1967. This is especially the case given the combination of Article 7 with Article 1 of the law, which states that "the Land of Israel is the historical homeland of the Jewish people, in which the State of Israel was established", and the fact that the law does not define the borders of the State of Israel.

The Jewish Nation-State Law falls within the bounds of absolute prohibitions under international law, and is wholly incompatible with the Covenant and the principle of non-discrimination. Adalah submitted a petition[3] to the Israeli Supreme Court challenging the Jewish Nation-State Law, arguing, *inter alia*, that the law violates international human rights and humanitarian law. The Knesset and the Attorney General decided to ignore and disregarded these violations in their responses to the case and the Supreme Court held a hearing only for one day on 22 December 2020 on 15 petitions filed against the law, and without issuing an *order nisi* (an order to show cause) that would have obliged the State to respond to the violations of international human rights and humanitarian law, including treaties that Israel has signed and ratified. On 9 July 2021, the Israeli Supreme Court upheld the

[3] HCJ 5866/18, *High Follow-up Committee for Arab Citizens of Israel et al. v. The Knesset* (decision delivered 8 July 2021), petition available in English here

Jewish Nation-State Law in a ten-to-one decision, without any consideration of Israel's obligations under the Covenant and other human rights treaties.[4]

- **Adalah Position Paper, *The Illegality of Article 7 of the Jewish Nation-State Law: Promoting Jewish Settlement as a National Value*, March 2019**

- **Adalah Position Paper, *Proposed Basic Law: Israel - The Nation State of the Jewish People*, 16 July 2018**

In 2020, the UN **Committee on the Elimination of Racial Discrimination** expressed its concern about the discriminatory effect of the Jewish Nation-State Law, and urged Israel to bring it into line with the ICERD (CERD/C/ISR/CO/17-19, paras. 13-14).

In 2019, the UN **Committee on Economic, Social and Cultural Rights** stated that it was "deeply concerned" about the discriminatory effect of the law, and urged Israel to "review the Basic Law with a view to bringing it into line with the Covenant or to repealing it and to step up its efforts to eliminate discrimination faced by non-Jews in their enjoyment of Covenant rights, particularly the rights of self-determination and non-discrimination and to cultural rights" (E/C.12/ISR/CO/4, paras. 16-17).

In 2018, a group of four **UN Special Rapporteurs** (SR) expressed their "deep concern" about the Jewish Nation-State Law, writing, *inter alia*:

> We wish to express our deep concern over the recent adoption by the Israeli Knesset of the Basic Law: Israel as the Nation-State of the Jewish People, which appear to be discriminatory in nature and in practice against non-Jewish citizens and other minorities and does not apply the principle of equality between citizens, which is one of the key principles for democratic political systems. The law as adopted offers a legal basis for the pre-eminence of Jewish people over non-Jewish citizens who are members of other ethno-religious and linguistic minority groups, and creates a legal order and an environment that could potentially lead to further discriminatory legislative and/or policy actions, which contravene the international human rights obligations of Israel. [5]

Given the fundamental incompatibility of the Basic Law: Israel as the Nation-State of the Jewish People as a whole with the Covenant, Adalah requests that the Committee recommend its immediate cancellation.

List of Issues 8 (f). The process allowing for retroactive legalization of settlements

In response to the Committee's request for information, the SoI summaries the 2017 Settlements Regularization Law, acknowledges that the Attorney General (AG) argued that the law constituted a disproportionate infringement on basic right to property and did not

[4] An unofficial translation of the summary of the Israeli Supreme Court's decision released in Hebrew is available at: https://www.adalah.org/uploads/uploads/Translation_of_Summary_of_JNSL_Judgment.pdf.

[5] Communiqué to the Israeli authorities expressing their deep concerns regarding the impact of the new law from the UN SR in the field of cultural rights, the UN SR on the situation of human rights in the Palestinian territories occupied since 1967, the UN SR on minority issues, and the UN SR on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, 2 November 2018, available at: https://www.adalah.org/uploads/uploads/4_UN_Spec_Rapp_communication_02112018.pdf

defend the law on behalf of the Government of Israel, and noted that petitions against the law are pending before the Israeli Supreme Court (paras. 66-70).[6]

The Settlements Regularization Law (SRL) provides that the SoI can expropriate privately-owned Palestinian land in the occupied West Bank, and retroactively "regularize" or "legalize" the Israeli settlements built on it. An Addendum to the Law identified 16 settlements to which it would apply.

On 9 June 2020, the SCT decided, in an 8-to-1 judgment spanning 107-pages, to cancel the SRL, ruling that it violates the rights of Palestinians to property, equality and dignity disproportionately.[7] The Court's decision is based on several positive legal principles including that international law and the non-sovereignty doctrine applies to the West Bank; that there are difficulties in the Knesset's enactment of laws concerning the Palestinians in the West Bank, as it is the Military Commander who has legislative powers in the area; and that the Palestinians are "protected persons" and the settlers have a different status.

Despite the law's cancellation, however, the Court's decision, which adopts the AG's position, leaves open a wide range of "less harmful tools" that may be used for future confiscations of Palestinian private land for the purpose of settlements. These alternatives are noted by the Court and include, for example, the activation of Military Order 59, which recognizes a principle of "good faith" in property transactions; the use of a statute of limitations in Ottoman Land Law, which allows a person holding land for more than 10 years to demand proprietary rights; and other tools.

- **Adalah's Briefing Paper, *Israel's use of 'good faith' to confiscate private Palestinian land in the Occupied West Bank – in bad faith*, December 2019**

- **Adalah's paper, *Initial Analysis of the Israeli Supreme Court's Decision in the Settlements Regularization Law Case*, 15 June 2020**

Adalah urges the Committee to strongly reaffirm its previous recommendations regarding the illegality of the settlement enterprise (CCPR/C/ISR/CO/4, para. 17).

[6] Adalah, in cooperation with the JLAC and Al Mezan Center for Human Rights on behalf of 17 local councils in the West Bank (HCJ 1308/07), and Yesh Din and 12 human rights organizations, 23 council heads of Palestinian villages and four landowners (HCJ 2055/17) filed petitions before the Israeli SCT. For more information on the different positions taken by the Government of Israel and the Attorney General, see Adalah's 2018 paper, "The Responses of the Government of Israel and the Attorney General in the Settlements Regularization Law Case," available at: https://www.adalah.org/uploads/uploads/Adalah_Responses_of_the_Government_and_AG_to_Settlements_Law_Final_English_17.1.2018.pdf

[7] HCJ 1308/17, *Silwad Municipality, et al. v. The Knesset, et. al (petition accepted 9 June 2020)* (joined by the court with HCJ 2055/17, *The Head of Ein Yabrud Village v. The Knesset*).

Right to life (arts. 2, 6 and 24)

List of Issues 11. Israel's illegal policy of withholding Palestinian bodies as bargaining chips

As of 20 January 2022, Israel is holding **93 Palestinian bodies**, killed by Israeli forces, who were carrying out or who are alleged to have carried out attacks against Israeli soldiers or civilians since 2015.[8] Below is a timeline of relevant laws, caselaw and decisions taken by the Israeli Government and the Military Commander concerning these matters. The timeline refers to and builds on information contained in a report submitted in 2020 by Palestinian and regional human rights organizations.[9] As noted below, the law that applies to cases of Palestinian residents of the OPT is different than that of Palestinian citizens of Israel (PCI) – military law as opposed to Israeli domestic law.

In Adalah's view, Israel may not withhold Palestinian deceased bodies as bargaining chips, as hostages or for any other reason. There is no authority in Israeli law or international law for a state to do so. Every person has the right to be buried with dignity and within a short period of time following his or her death, and the right of a family to bury its child is established in law. The withholding of bodies violates the ICCPR, the Torture Convention (CAT), and the Rome Statute of the International Criminal Court, which prohibits the "taking of hostages".

Timeline of relevant legal developments	
1967	The Israeli Military Commander (MC) issued a military order applying the 1945 British Emergency (Defence) Regulations in the OPT, including Regulation 133(3), which provides that the MC may "order that the dead body of any person shall be buried in such place" as he may direct.[10]
1994	Israeli Supreme Court (SCT) decides that withholding bodies as bargaining chips is reasonable and proportionate based on Regulation 133(3) (HCJ 6807/94, *Abbas v. State of Israel*).
2004	Israel's AG recommends halting the practice of withholding the bodies of Palestinians, which reached its peak during the beginning of the second Intifada, unless there is a concrete prisoner swap deal in which the bodies can be used in exchange for captured or missing Israeli soldiers.
2015	Israel adopts measures to punish, repress, and "deter" Palestinians, which include the withholding of assailants' bodies on public order and security grounds.
January 2017	The Israeli Cabinet issues a uniform policy requiring, in principle, the return of alleged Palestinian attackers' bodies pending security assurances. The Cabinet laid out **two exceptions** to this rule: the alleged attacker is affiliated with Hamas and thus his body can be used in potential negotiations for prisoner exchange; or the attack allegedly carried out is exceptionally severe.

[8] Information provided to Adalah by the Jerusalem Legal Aid and Human Rights Center (JLAC). A full list of names and details is on file with Adalah and JLAC.
[9] See Jerusalem Legal Aid and Human Rights Center, Al-Haq, and the Cairo Institute for Human Rights Studies (CIHRS), "Joint submission to EMRIP and UN experts on the Israeli policy of withholding the mortal remains of indigenous Palestinians," 22 June 2020, available here.
[10] See the Emergency Defense Regulations – 1945: https://www.imolin.org/doc/amlid/Israel/The_Defence_Emergency_Regulations_1945.pdf

Timelines of relevant caselaw and decisions taken by the Israeli Government and the Military Commander

The Jabareen case: (Palestinian citizens of Israel)	
July 2017	Following a petition by Adalah on behalf of three families of Palestinian citizens of Israel (PCI) accused of killing two Israeli soldiers at the Al Aqsa Mosque complex, the SCT decides that the police are not authorized to withhold their bodies under the Police Ordinance. (HCJ 5887/17, *Jabareen v. The Israel Police*).
March 2018	In response to the SCT's decision, the Knesset adopts Amendment 3 to the 2016 Counter-Terror Law authorizing the police to impose conditions and restrictions on the funerals of alleged "terrorists" and the extraction of bail from PCI families.
The Alayan (also written Alian) case	
December 2017	Israeli SCT decides in a 2-to-1 decision in the **Alayan case** that Regulation 133(3) does not provide a sufficient basis to allow the military to withhold bodies as bargaining chips; explicit legislation is required.[11]
February 2018	The SCT grants the state's motion to hold a further hearing on the case, before an expanded 7-justice panel, finding that that it constitutes an important and sensitive precedent. A hearing is held in July 2018.[12]
September 2019	The SCT decides in a 4-3 decision that Regulation 133(3) authorizes the Israeli military to withhold bodies as bargaining chips, allowing the continued implementation of the 2017 Cabinet decision.[13]
The Erekat case	
23 June 2020	Ahmed Erekat, 27-years old, is shot dead by Border Police (BP) at a checkpoint east of Abu Dis. The BP alleged that he attempted to "car ram" them at the checkpoint. Erekat's body is held by the Israeli military.
24 June 2020	A family member asks the army when they will receive Erekat's body for burial. The initial response was that the body will be returned on the same

[11] See HCJ 4466/16, *Muhammad Alian et al. v. Military Commander* (decision delivered 14 December 2017) (English translation)

[12] See Adalah Press Releases: Israeli Supreme Court decision to allow additional hearing on Israel's holding of Palestinian bodies violates int'l law, 21 February 2018 and Supreme Court holds additional hearing on Israel's practice of withholding bodies of deceased Palestinians 18 July 2018

[13] See HCJFH 10190/17 M*ilitary Commander v. Alian et al.* (decision delivered 9 September 2019) (English summary). See also Adalah Press Release: Israeli Supreme Court reverses earlier ruling, authorizes Israel to hold bodies of Palestinians as bargaining chips 9 September 2019

	night. A few hours later, the army informs, without explanation, that the body will not be returned due to a "political decision".
30 June 2020	After sending multiple requests for the release of the body, Adalah files a petition to the SCT on behalf of Mustafa Erekat, the father of the deceased. Two weeks later, Adalah demands that the AG and the Military Advocate General (MAG) order an autopsy and open a criminal investigation.
22 July 2020	The SCT holds its first hearing on the case and the state admits that holding the body does not meet the criteria of the 2017 Cabinet decision, but that there is an intent to change that decision. The state also announces that a final decision on Erekat's body has yet to been made. The SCT order the state to explain, within two weeks, why it is not legally required to return the body.
23 August 2020	The State replies to the court order, and requests more time to present changes to 2017 Cabinet decision. The state acknowledges that without changes, the body should be released.
25 August 2020	The SCT holds a second hearing, and decides to allows the state to update until 3 September. Part of the hearing is confidential (secret) without the petitioner (Mustafa Erekat) or his lawyers (Adalah) allowed to be present.
2 September 2020	Israel's security Cabinet announces that it would not allow the return the bodies of Palestinians killed by Israeli security forces to their families for burial.[14]
6 September 2020	The State updates on a new cabinet decision, according to which bodies can be held "unrelated to organizational affiliation." In other words, the decision permits all Palestinian bodies allegedly engaged in any terror act, killed by Israeli forces, to be held.
17 September 2020	Adalah files its response to the state and the change in policy. Adalah argues that the new Cabinet decision is illegal, it contradicts previous SCT rulings, and that it may not be applied retroactively to Erekat (killed in June 2020).
22 October 2020	Adalah files a new, amended petition to SCT that also addresses the new policy / Cabinet decisions.
18 November 2020	The SCT holds a third hearing. The state explains that the reason for the change is the military believes that some bodies may have symbolic significance in the context of the Palestinian struggle, and that Hamas might see them as a valuable asset in a future deal, regardless of whether or not the deceased is not affiliated with them.

[14] See Adalah Press Release: Israeli cabinet declares: We won't return bodies of Palestinians to their families for burial, 2 September 2020.

20 December 2020	The state updates the SCT on the criteria of which bodies should be held by implementing the new 2020 Cabinet decision.
11 February 2021	The MAG Corps' reject Adalah's demand to open a criminal investigation.
23 February 2021	Forensic Architecture publishes its report: The Extrajudicial Execution of Ahmad Erekat, which Adalah later submits to the SCT.
18 March 2021	The SCT holds a fourth and last hearing. The state informs the SCT that since the new Cabinet decision, the grounds for continuing to hold 31 of the bodies in accordance with the new criteria was being reexamined. It has since been decided that 10 of the bodies meet the new criteria, and the other 21 bodies/cases are still under consideration. After the Court holds another secret session with the respondents alone, it decides that the state should update again by 1 July 2021, with more clarifications on the procedure and criteria.
15 April 2021	Adalah appeals to the AG against the MAG's decision not to open a criminal investigation.
8 July 2021	The state submits more "secret evidence" to the SCT with a statement from the General Commander of the Army (Maj.-Gen.), and a diagram showing how decision are made to hold a body.
18 August 2021	The SCT issues its final decision, 2-to-1 to reject Adalah's petition and to allow Israel to continue to hold Erekat's body. The SCT ruled that the military has the authority under the 1945 Emergency Regulations to withhold the body, even without any decision of the Cabinet.[15]
31 October 2021	Adalah files a request for a second hearing (HCJ 7324/21), and the state responds (on 22 December 2021).
31 January 2022	The SCT rejects the request for a second hearing.

The **UN Committee Against Torture** recommended in 2016 that Israel "should take the measures necessary to return the bodies of the Palestinians that have not yet been returned to their relatives as soon as possible so they can be buried in accordance with their traditions and religious customs" (CAT/C/ISR/CO/5, para. 43).

Adalah urges the Committee call on Israel to immediately return the bodies of deceased Palestinians to their relatives for a dignified burial, in accordance with their traditions and customs, and to rescind its Cabinet decisions and policies of withholding bodies as bargaining chips. Israel must also end all restrictions on the funerals of families of Palestinian citizens of Israel and cancel Amendment 3 to the 2016 Counter-Terror Law.

[15] See HCJ 4462/20 *Mustafa Erekat v. The Military Commander for Judea and Samaria (the West Bank) and the Minister of Defense* (decision delivered 18 August 2021) (English translation). See Adalah Press Release, 18 August 2021, available at: https://www.adalah.org/en/content/view/10392

List of Issues 12 (a & b). Lack of independent investigations into Gaza attacks in 2008-09, 2012, and 2014

Israel's domestic system of "investigating" suspected international law violations by its military is unfit for purpose and falls far short of compliance with international standards of independence, impartiality, effectiveness, promptness and transparency. The chronic failings of the system allow illegal conduct by Israeli soldiers and commanders to continue with a wide margin of impunity.

Although the Government of Israel set up and officially approved reports made by Israeli commissions of inquiry – the Turkel Commission (2013) and the Ciechanover Team (2015) - and by the State Comptroller's Office (2018), it has not implemented the vast majority of the recommendations made. The reports remain ink on paper, in what appears to be an empty exercise designed to present a facade of action and good intentions, and the flaws that mar the "investigatory" system remain in place. Overall, the pattern that emerges from these successive reviews is that there is an appearance of a serious, credible process, which contains some references to the relevant precepts of international law, but which ultimately results in no significant concrete modifications to the system. The result is the preservation of the status quo: the system as a whole provides near blanket impunity to the Israeli military and denies remedies to the victims as a matter of routine, and has absolutely failed to provide accountability, it appears that it is primarily geared towards protecting or "shielding" its armed forces.

Adalah and Al Mezan Center for Human Rights filed criminal complaints into 28 incidents to the Military Advocate General (MAG) and the Attorney General (AG) concerning suspected criminal violations committed by Israel against Palestinian civilians during OPE, and demanded independent investigations. These cases concern the killing and serious injury of scores of Palestinian civilians, including women and children, and the massive destruction of civilian objects. None of these cases resulted in any genuine investigations, indictments or criminal proceedings. Over 91 percent of the "exceptional incidents" received by the MAG Corps involving alleged IHL violations during "Operation Protective Edge" (OPE) in Gaza in 2014 had not been investigated (as of 2019), and no commander or soldier was prosecuted for grave violations of IHL. The military did not release further public information in these cases.

An egregious example of the failings of the system is the 'Bakr boys' case. In July 2014, during OPE, the Israeli air forces fired missiles that killed four children of the Bakr family while they were playing on the fishing beach west of Gaza City, in full view of foreign journalists. After five years, in September 2019, the AG announced that he had fully adopted the MAG's decision to close the investigation. A petition filed by Adalah, Al Mezan, and PCHR is currently pending before the Supreme Court.[16] However, the SCT, when called upon to review Israeli military attacks on civilians, has also routinely afforded the Israeli military full impunity and discretion in its lethal, excessive actions.

- ***Adalah's Report to the UN Independent Commission of Inquiry on the 2018 Protests in the Occupied Palestinian Territory*, submitted in 2019** *(providing additional information on the lack of Israeli domestic accountability mechanisms)*

[16] HCJ 8008/20, *Atef Ahad Subhi Bakr et al v. Military Advocate General et al.* (case pending); and Joint Press Release: Israeli Supreme Court will hear the Bakr Boys case re: the closure of the investigation into their killing by the Israeli military during 2014 Gaza War, 6 January 2022.

- ***Adalah response to the Israeli Attorney General's memorandum on the lack of the ICC's jurisdiction in relation to the "Situation in Palestine", June 2020*** *(arguing that the Gaza Strip has become a "legal black hole" through the suspension of both international humanitarian law and Israeli law for Gaza residents)*

The **UN Committee Against Torture** expressed its concern in 2016 at allegations of excessive use of force by the Israeli security forces and at the rarity of accountability for instances of excessive use of force, and called on Israel to "make more vigorous efforts to effectively prevent and sanction incidents of excessive force, including by ensuring that… All instances and allegations of excessive use of force are investigated promptly, effectively and impartially by an independent body, that alleged perpetrators are duly prosecuted and, if found guilty, adequately sanctioned" (CAT/C/ISR/CO/5, paras. 32-33).

In its report from February 2019, the **UN Commission of Inquiry on the 2018 protests in the OPT**[17] found that Israeli responsibility for the killing and wounding of Palestinian demonstrators in Gaza lies on two fronts: Israeli military snipers, spotters, and commanders on site; and those who drafted and approved the Israeli military's rules of engagement.

The commission further found that the Israeli government has consistently failed to meaningfully investigate and prosecute commanders and soldiers for crimes and violations committed against Palestinians, or to provide reparations to victims in accordance with international norms. Further, scarce Israeli accountability measures arising out of Israeli Military Operations Cast Lead (2008-2009) and Protective Edge (2014) in Gaza, and public comments by high-ranking Israeli public officials, cast doubt over the state's willingness to scrutinize the actions of its military and civilian leadership.

Adalah requests that this Committee strongly reaffirm its previous recommendation (CCPR/C/ISR/CO/4, para. 6): ensure that all human rights violations committed during its military operations in the Gaza Strip in 2008-2009, 2012 and 2014 are thoroughly, effectively, independently and impartially investigated, that perpetrators, including, in particular, persons in positions of command, are prosecuted and sanctioned in a manner commensurate with the gravity of the acts committed, and that victims or their families are provided with effective remedies, including equal and effective access to justice and reparations.

List of Issues 12 (c). Declaration of Gaza as an "enemy entity"

According to Article 5/B-1 of Amendment No. 8 of Israel's Civil Wrongs Law (State Responsibility) of 1952, enacted in 2012, residents of a territory declared by the Israeli government as "enemy territory" – as Gaza was declared in 2007 – are not eligible to seek compensation from Israel for any reason.

Amendment No. 8 essentially means that Israeli soldiers and state authorities are immune from damage claims and paying compensation to persons harmed if they are: 1) acting within a "combat situation"; and 2) acting in or against an "enemy territory", even if they violate domestic and international law and cause harm to civilians. It renders state responsibility, as well as the victims' inherent rights to a remedy, meaningless.

In November 2018, Israel's Be'er Sheva District Court ruled that Israel was not liable for damages for the shooting and serious wounding of an unarmed 15-year-old Palestinian boy, Attiya Nabaheen, in Gaza near his home in 2014, and that Gazans are not entitled to seek compensation for damages from Israel as they live in an "enemy entity", based on Amendment No. 8. In issuing its decision, the Court rejected a case filed by Adalah and Al Mezan on behalf

[17] Report of the UN Commission of Inquiry on the 2018 protests in the OPT, 2019, available at: https://www.ohchr.org/EN/HRBodies/HRC/CoIOPT/Pages/Report2018OPT.aspx

of the Nabaheen family against the Israeli military. The petitioners brought evidence before the Court that Israeli troops had opened fire on Attiya Nabaheen on 16 November 2014, while he was on his family's property near Al-Bureij, just 500 meters from the fence between Israel and the Gaza Strip. As a result of the shooting, Nabaheen was left a quadriplegic, expected to be confined to a wheelchair for life. The petitioners argued that Amendment No. 8 was in violation of international law, which requires that protected civilians be entitled to effective legal remedies, including compensation.

The ruling grants comprehensive immunity to the Israeli military and the State of Israel for illegal and even criminal actions taken during military operations in occupied territories, including the Gaza Strip, and leaves their victims without any hope of compensation. It violates the right of Gaza residents to fulfill their right under international humanitarian law to an effective legal remedy from Israel as the occupying power. Following an appeal, a Supreme Court hearing was held on the case in July 2021, and a decision is now pending.[18]

Adalah requests that this Committee conclude that the State of Israel cannot exempt itself from responsibility and liability for damages, injuries or deaths of Palestinians in Gaza harmed by Israeli military forces, and that it urge Israel to cancel the 2012 amendment to the Civil Wrongs Law

List of Issues 13 (c). Extrajudicial executions of Palestinian residents in East Jerusalem

Israel is implementing a *de facto* and illegal "shoot to kill" policy against Palestinians, resulting in many cases of extra-judicial execution (EJEs). This claim is supported by six EJE cases from East Jerusalem that Adalah has worked on, in which Israeli forces shot at alleged Palestinian assailants at a time when they appear to have posed no imminent danger to officers or other people. Five of these cases were documented in video footage which shows that the victims indeed did not pose a threat to any police officer or civilian when they were shot. In all six cases, Adalah filed complaints to the Justice Ministry's Police Investigation Department (PID).

Case/complaint	State's response	Current status
1. **Fadi Alloun**, 19 years old, East Jerusalem (EJ); complaint filed October 2015.	May 2021: **Appeal rejected – "No crime has been committed."**	Sept 2016: Preliminary appeal to AG. January 2017: PID finally provided Adalah with the investigation materials after legal action threatened. March 2017: Submitted additional arguments to appeal based on new materials obtained. 27 May 2021: State Attorney (Appeals Unit) rejected the appeal over the AG's decision.
2. **Mustafa Khateeb**, 17 years old, EJ; complaint filed December 2015.	February 2017: **Appeal rejected – "No crime has been committed."**	August 2016: PID closed the case claiming, "No crime has been committed" February 2017: State Attorney (Appeals Unit) rejected the appeal.

[18] (Supreme Court) Civil Appeal 993/19, *Nabaheen v. Israeli Defense Ministry* (case pending).

3. **Mu'taz Ewisat**, 16 years old, EJ; complaint filed January 2016.	August 2018: **Appeal rejected – "No crime has been committed."**	2016: Petitioned SCT for an autopsy and for the state to release the body. December 2016: Received autopsy report from Palestinian doctor who participated in autopsy. March 2017: Received autopsy report from the Abu Kabir Israeli autopsy institute. August 2017: Appeal filed. August 2018: State Attorney (Appeals Unit) rejected the appeal.
4. **Muhammad Abu Khalaf**, 19 years old, Kufr 'Aqab, EJ; complaint filed April 2016.	August 2017: **Appeal rejected – "No crime has been committed."**	December 2016: Received autopsy report from Palestinian doctor who observed the autopsy. March 2017: Received autopsy report from Abu Kabir. August 2017: Appeal filed, decision still pending.
5. **Ahmad Abu Shaaban**, 22 years old, EJ; complaint filed January 2016.	August 2019: **Appeal rejected – "No crime has been committed."**	July 2016: PID claims there is no investigation material. Appeal filed. August 2019: State Attorney (Appeals Unit) rejected the appeal.
6. **Mohammad Salima**	Awaiting response.	January 2022: Complaint filed by Adalah and JLAC, request to open investigation or alternatively to be provided access to the investigatory materials.

In all cases, the Israeli investigatory authorities failed to follow minimum standards in its investigations, and such investigations were characterized by: a lack of promptness, with the PID very slow to respond to inquiries or make decisions; a lack of transparency, with inaccessible investigatory materials and documents missing from the investigatory files; and a lack of independence and impartiality. The PID receives material solely from the police, gathers no independent witness statements, and makes no further checks of the police evidence. The result is near-blanket impunity and a systemic lack of accountability.

The UN **Committee Against Torture** in 2016 expressed its concerns regarding allegations of excessive use of force including lethal force, by Israel's security forces, and referenced with concern the UN High Commissioner for Human Rights' finding that "some of these responses strongly suggest unlawful killings, including possible extrajudicial executions" (A/HRC/31/40, para. 10). The Committee recommended that, "The rules of engagement or regulations on opening fire are fully consistent with the Convention and other relevant international standards" (CAT/C/ISR/CO/5 paras. 32-33).

Adalah requests that this Committee recommend an immediate end to Israel's "shoot to kill" policy; thorough, effective, independent and impartial investigations into the extrajudicial executions of Palestinians; prosecution and sanctioning of the perpetrators, including, in particular, persons in positions of command, in a manner commensurate with the gravity of the acts committed; and the provision of effective remedies to the victims' families.

List of Issues 13 (d). The Great March of Return, Gaza: Open-fire regulations

On 30 March 2018, Palestinians living under closure in the Gaza Strip began a series of weekly protests known as "The Great March of Return" (GMR), which took place for almost two years. The protesters' main demands included the return of the Palestinian refugees and their descendants, living in Gaza and elsewhere, to their towns and villages of origin in Israel,

and an end to Israel's closure of Gaza. However, the Israeli military responded to these peaceful, civilian protests with excessive, often lethal force. In total, 217 Palestinians were killed at the protests, including 48 children and two women, and over 19,000 persons were wounded, including 4,966 children and 867 women, and 9,515 persons shot by live fire.[19]

Human rights organizations submitted two urgent petitions to the Israeli Supreme Court in April 2018, demanding that the it order the Israeli military to cease using snipers and live ammunition to disperse the GMR protesters.[20] The petitioners argued that the rules of engagement (ROE) employed by the Israeli military, which authorize the deadly open-fire policy against the protesters, were patently excessive and illegal, as evidenced by the high number of resultant deaths and injuries. The petitioners also argued that the Israeli military's response to the protests constituted arbitrary use of force for the purpose of punishing and deterring protesters, in violation of international law. They further contended that the appropriate normative framework applicable to civilian demonstrations is that of 'law enforcement', and not the framework of IHL.

On 24 May 2018, the Supreme Court unanimously rejected the petitions, thereby sanctioning the Israel military's continued use of snipers and live fire against Palestinian GMR protesters. The Supreme Court failed to intervene in the military's discretion, and thus to provide legal accountability or any other remedy to the victims. The Court neither ordered the military to re-examine its ROE, nor to open a criminal investigation into any of the killings or injuries. Rather, the Court fully adopted the state/military's position, as advanced during the legal proceedings.

Based on this analysis, the Court legitimized the targeting of so-called "key rioters" and "key inciters", even though the judges were aware that these categories were not "grounded in international law." The use of lethal weapons against "key rioters" or "key inciters" is not in accordance with IHL, since the protesters are civilians and thus not legitimate targets. It is also not in line with the paradigm of law enforcement, since the protestors did not pose any imminent threat to life. This assessment was accepted by the UN Commission of Inquiry into the 2018 protests in the Occupied Palestinian Territory (COI 2018).

In its report of March 2019, the COI 2018 examined a document entitled "Gaza Border Events: Questions & Answers", which was published by the Israeli military in February 2019, and which explains how the ROE were implemented on the ground. The COI 2018 concluded in this regard that, "In the law enforcement paradigm, none of the above listed activities can in themselves be lawfully met with lethal force – unless the person simultaneously poses an imminent threat to life or limb by, for instance, being armed and attacking."[21] The COI 2018 also found that, "the use of live ammunition by Israeli security forces against demonstrators was unlawful", as the protestors did not pose any threat to the lives of Israeli soldiers or civilians or participate directly in hostilities.[22]

- ***Adalah and Al Mezan, Briefing Paper on Israeli Supreme Court petition challenging the Israeli military's use of lethal force against Gaza protesters and the State of Israel's response, 15 May 2018***

- ***Adalah response to the Israeli Attorney General's memorandum on the lack of the ICC's jurisdiction in relation to the "Situation in Palestine", June 2020***

[19] See, Al Mezan, Statistics of the victims of the Great March Of Return from the 30 March 2018 until 31 March 2020 (in Arabic), available here.
[20] HCJ 3003/18 *Yesh Din, et. al v. IDF Chief of Staff et al.* and HCJ 3250/18, *Adalah, et. al v. IDF Chief of Staff, et al.* (cases dismissed 24 May 2018).
[21] See: Report of the detailed findings of the independent international Commission of inquiry on the protests in the OPT, A/HRC/40/CRP.2, 18 March 2019, para. 316, available here.
[22] Id., para. 119.

(arguing that the Gaza Strip has become a "legal black hole" through the suspension of both international humanitarian law and Israeli law for Gaza residents)

Adalah requests that this Committee affirm the recommendations of the aforementioned U.N. Commission of Inquiry in its report (A/HRC/40/74, para. 119), specifically that Israel refrain from using lethal force against civilians, including children, journalists, health workers and persons with disabilities, who pose no imminent threat to life; ensure that the rules of engagement do not authorize lethal force against "main inciters" as a status; and prohibit targeting persons based solely on their actual or alleged affiliation to any group.

List of Issues 13 & 14. The violent events of May 2021

During May 2021, there was a swift and deadly escalation in violence in Israel and in the OPT. Hostilities were sparked by Israel's violent repression of demonstrations against the imminent, forced displacement of Palestinian refugee families from the Sheikh Jarrah neighborhood in occupied East Jerusalem, and then intensified by Israeli police storming and blockading the Al-Aqsa Mosque Compound, attacking worshippers and preventing them from praying at the site during the holy month of Ramadan. As militant groups in Gaza retaliated against Israel's assaults on Al-Aqsa, the Israeli military responded by launching massive airstrikes killing an estimated 260 Palestinians, including 65 children, and injuring another 1,950.

The situation in Israel also quickly deteriorated as Palestinian citizens of Israel (PCI) took to the streets in Arab towns and mixed Arab-Jewish cities across Israel to demonstrate in mass protests in solidarity with Palestinians in East Jerusalem and Gaza. These protests were met by police brutality and a draconian clampdown on freedom of speech and assembly. Israel's Defense Minister declared an extraordinary "civil emergency" in Lydd (Lod), a first in Israel since military rule ended in 1966. Organized, ultra-right Jewish Israelis, including settlers, attacked PCI and their property, and desecrated mosques, often with police protection and collusion. Israeli government officials, including then-Prime Minister Bibi Netanyahu, made inflammatory comments and incited violence against Palestinians. The High Follow-up Committee for Arab Citizens of Israel issued a statement on 14 May 2021, calling for international intervention to protect the safety and human rights of PCI.[23]

Major examples of Covenant violations perpetrated by Israel during the May 2021 events

Excessive use of force by police: Police violently dispersed peaceful demonstrations by PCI, without justification, clamping down on freedoms of expression and assembly. Police arrested and detained hundreds of Palestinian citizen protestors, and used excessive, brutal force against many of them. Cases documented by Adalah include the following.

- Maisa Abd Elhadi was severely injured in her hip from a stun grenade fired by police during a peaceful protest in Haifa on 10 May 2021. Police refused to allow an ambulance to enter the street to provide medical treatment. During this protest, 17 people were arrested and six were injured. Adalah filed a general complaint to the Police Investigation Department (PID) ("Mahash") on 10 May 2021, and a specific complaint for Ms. Abd Elhadi on 4 July 2021 (investigation in progress).
- On 13 May 2021, Muhammad Okla, a resident of the village of Tuba-Zangariyye, was dragged from his home by police forces. He was led to the outdoor yard of the local council and left on the ground, with his hands and feet cuffed for many hours. When he asked to be released, police officers cursed and kicked him. He was brought to a

[23] The Statement of the High Follow-Up Committee is available here.

police station in the middle of the night for questioning, and refused access to a lawyer. Adalah filed a complaint to the PID on 6 September 2021 (investigation in progress).

- Four people, including three minors (TAZ, aged 17, and YM and AA, both 12 years old), were injured, one severely and hospitalized in intensive care, in Jaffa-Tel Aviv by rubber bullets fired by police in May 2021. The police fired randomly; the injured minors were not participating in the protests but merely passing by. Adalah filed a complaint to PID on 6 September 2021 (investigation in progress).

Torture and ill-treatment: Nazareth police engaged in rampant, systemic attacks and brutal beatings of PCI – protesters, minors, innocent bystanders and even attorneys – inside the city's police station. The graphic testimonies collected by Adalah tell a story of physical, verbal, and psychological abuse of PCI, and indicate that Israeli officers ran a "torture room". Most of the violent arrests of and attacks on PCI in the city were carried out by Israeli special police forces, including undercover *mista'aravim* officers posing as Palestinians. Many of the detainees were also denied urgent medical care for wounds resulting from the beatings. Some detainees appeared in court following their arrests displaying visible signs of abuse and violence, including stitches on their head, facial swelling, scratches, and extensive bruising.

- Adalah Press Release: What happened in the 'torture room' at Israel's police station in Nazareth?, 7 June 2021 (Adalah submitted complaints to senior Israeli officials on 7 June 2021 for torture and ill-treatment; investigation in progress)

Police collusion with far-right, Jewish Israeli extremists and state inaction: Organized groups of far-right, Jewish Israeli extremists, including West-Bank settlers, attacked Palestinian citizens and their property, seemingly with police collusion and protection. Adalah sent eight legal letters urging the AG to take immediate action against these groups. The letters documented internal communications between these groups, revealing organized, coordinated efforts to bring masses of armed individuals to Israeli cities with significant Palestinian populations to "kill Palestinians" and "break all their bones" (see documentation in the referenced press release, below). The AG did not take action against these groups during the period in which the attacks took place.

- Adalah Press Release: Adalah takes urgent action against organized far-right Jewish mob violence targeting Palestinian citizens, and Israeli police brutality & inaction, 15 May 2021 (includes videos and audio recordings)

State of emergency, lockdown of PCI in Lod: The Defense Minister imposed an extraordinary lockdown of the mixed Arab-Jewish city of Lod (Lydd) under a declared "state of civil emergency", and selectively enforced a curfew and other emergency directives solely against Palestinian residents, while Jewish settlers and other extremist, far-right groups attacked Palestinian residents of the city, their homes and other property.

- Adalah Press Release: Adalah demands cancellation of civil emergency declaration in Lydd (Lod) and the cessation of its selective enforcement by Israeli police against Palestinian citizens living in the city, 16 May 2021

Mass arrests of PCI: Police conducted a mass arrest operation from 23 May 2021 – codenamed "Operation Law & Order" – which primarily targeted PCI and Palestinian residents of East Jerusalem, including demonstrators, political activists, and even minors. Pursuant to this operation, Israeli security forces detained more than 2,140 people, around 91% of whom were PCI. The manner and methods of arrest used by police were designed to intimidate and sow widespread fear throughout the Palestinian public in Israel, in order to deter them from participating in demonstrations. Typically, large numbers of heavily-armed police arrived at the home of the target, in the middle of the night or in the early hours of the morning, using

threatening and humiliating language. Moreover, police used physical, verbal, and psychological abuse of Palestinians following their detention. It is overwhelmingly PCI who have been indicted for various offenses in connection with these events.

- Adalah Press Release: Adalah demands Israeli police end mass arrests of Palestinian citizens, 27 May 2021 (arguing illegality and collective punishment based on racial profiling)

Police arrested and detained Palestinian political leaders in Israel **for a month, an unprecedentedly-lengthy period of time for alleged speech offenses. Adalah is continuing to represent them.** Sheikh Kamal al-Khatib, an Islamic Movement leader, was arrested on 14 May in a violent Israeli police raid on his home in Kufr Kanna, that also left dozens of local residents wounded (the PID has already closed Adalah's complaint into this commando-style raid). He has been indicted for incitement under the Counter-Terrorism Law based on three Facebook posts, none of which calls for violence. Mohammad Kana'neh, a leader of Abnaa al-Balad, was arrested on 14 June and later indicted for expressing support for terror groups and incitement for a speech he gave at a demonstration in Sheikh Jarrah and for 20 old Facebook posts, in which he welcomed the release of Palestinian political prisoners and supported their fight against administrative detention.

- Adalah Press Release: Leading Palestinian Islamic figure is freed from detention for duration of his trial, 20 June 2021
- Adalah Press Release: After one month in detention for Facebook posts, Adalah frees political leader from Abnaa al-Balad, Mohammad Kana'neh; state to appeal, 15 July 2021

Police failure to prosecute Jewish Israelis in killing case: Musa Hassouna, a 31-year-old Palestinian citizen of Israel, was shot and killed on 11 May 2021 in his hometown of Lod (Lydd). The State Attorney's office first provided official information on the investigation on October 2021, following repeated requests by his family, which went unanswered by the police. The State Attorney's Office notified the family that it had decided to close the cases against all five Jewish Israeli suspects, clearing four of them of guilt, while the fifth was closed due to insufficient evidence. Hassouna's family was additionally informed that the suspects' claims of self-defense had been accepted, and thus that they would not be charged or made to stand trial. The closure of the case raises serious suspicions of a cover-up.

- Adalah Press Release: Israeli State Attorney cleared all suspects in the killing of Musa Hassouna during May 2021 violent events; Adalah seeks review of the investigatory materials, 30 November 2021

The **UN High Commissioner for Human Rights** issued a statement against the use of excessive force by Israeli police, their failure to intervene when Palestinian citizens of Israel were being attacked by ultra-right-wing Jewish groups, and inflammatory that may amount to incitement to racial and religious hatred and violence, on 15 May 2021.[24]

The **UN Special Rapporteur on Minority Issues** issued a statement strongly condemning violent attacks on Palestinian citizens of Israel on 1 June 2021.[25]

In response to the violent events of May 2021, the **UN Human Rights Council** voted in favor of a resolution to urgently establish "an ongoing independent, international commission of

[24] The statement of the High Commissioner is available here.
[25] The Statement of the Special Rapporteur on Minority Issues is available here.

inquiry" (**CoI-OPTI**) to investigate alleged violations of IHL and IHRL throughout Israel and the OPT leading up to and since 13 April 2021 in the OPT. Its broad mandate also includes investigating "all underlying root causes of recurrent tensions, instability and protraction of conflict, including systematic discrimination and repression based on national, ethnic, racial or religious identity". It will likewise be required to consider the deep connection between the constitutional anchoring of Jewish supremacy in the Jewish Nation-State Law. This unprecedented decision marks the first time that the HRC has given a mandate to a commission of inquiry to examine the root causes of these violations, including those taking place within Israel against PCI.

Adalah requests that this Committee recommend that Israel investigate all reported incidents of excessive use of force by police; of torture and ill-treatment of detained protestors; of suspected police collusion with far-right, Jewish Israeli extremists and state inaction; of the declaration of a state of emergency and selective lockdown of Palestinian citizens of Israel in Lod; the campaign of mass arrests of Palestinian citizens; the selective targeting of Palestinian citizens, including political leaders, in Israel on charges of incitement; and the police's failure to prosecute Jewish Israelis in the case of the killing of Musa Hassouna. Adalah also requests that the Committee urge Israel to uphold the rights to freedom of assembly, expression and protest of PCI, and refrain from using excessive force against and selective prosecution of PCI protestors.

Arbitrary or unlawful interference with private life and protection of family (arts. 2, 7, 12, 14, 17, 23, 26 and 27)

List of Issues 22 (d). Forcible displacement and dispossession of Palestinian Bedouins in the Naqab (Negev)

The State of Israel pursues two main policies against Palestinian Bedouin citizens of Israel living in the Naqab (Negev): denying land rights and labelling them trespassers; and attempting to forcibly displace and urbanize Bedouin communities, by concentrating them into a limited number of urban and semi-urban townships and recognized villages. Approximately 270,000 Bedouin citizens today live in three types of settlements in the Naqab: seven government-planned urban townships, 11 recognized villages, and 35 unrecognized villages, home to around 90,000 people living in harsh, impoverished conditions.

Most unrecognized villages contain little or no health or educational facilities, no basic infrastructure, including connections to the national electricity grid, paved roads, or sewage systems. These villages also lack adequate connections to the water network. Denial of basic services forms an integral part of the Israel's policy of forced displacement. In making living conditions in the unrecognized villages so difficult, Israel aims to coerce their inhabitants to abandon their ancestral land and relocate to the cramped state-established townships and to the small number of recognized villages.

In January 2019, the Bedouin Authority announced a plan to evict 36,000 Bedouin residents for the purpose of pursuing 'economic development projects' and expanding military training zones. These so-called 'development plans' have all been deliberately located on, or near, Bedouin village land. Not only do these plans directly induce displacement of the Bedouin, but the affected communities are excluded from the potential benefits these plans may bring, in the form of access to roads, railways and industrial parks, etc.

The plan also provided for the establishment of "temporary housing" or refugee displacement camps for the evacuated residents of the unrecognized villages. Following strong objections

from CSOs, including Adalah, the plan was withdrawn. In 2021, however, the Bedouin Authority revived the plan, before shelving it once again; however, Adalah expects that the plan will go ahead in the future in some form. Other methods that Israel uses to forcibly displace the Bedouin include filing eviction lawsuits against entire communities, issuing demolition orders against homes, and creating unlivable conditions in Bedouin villages that are deprived access to basic infrastructure and services, from water and electricity, to schools and healthcare.

- ***Adalah's Report to The UN Special Rapporteur on the Right to Adequate Housing NGO Report Re: Spatial Segregation in Israel*, submitted 3 June 2021 (updated December 2021)**

The UN **Committee on Economic, Social and Cultural Rights** recommended in 2019 that Israel, "Immediately stop the eviction of Bedouin people living in unrecognized villages from their homes and ancestral lands and recognize their villages … Improve living conditions and infrastructure in all Bedouin residential localities in the Negev area … [and] Step up its efforts to resolve the pending land ownership claims in a timely, transparent and effective manner" (E/C.12/ISR/CO/4 2019, paras. 20-21).

The UN **Committee on the Elimination of Racial Discrimination** in 2020 voiced its concern over house demolitions and the ongoing transfer of Bedouin communities to temporary locations, and recommended that Israel, "Stop house demolitions and the eviction of Bedouin people from their homes and ancestral lands … Recognize their villages … [and] Take all necessary measures to improve their living conditions" (CERD/C/ISR/CO/17-19, paras. 28-29).

Adalah requests that this Committee strong reaffirm its previous recommendations (CCPR/C/ISR/CO/4, para. 9), and call on Israel to stop the eviction and forced displacement of the Bedouin in the Naqab from their land, halt the demolition of their homes, and improve living conditions in all Bedouin localities, recognized and unrecognized, in fulfilment of its obligations under international human rights law.

Discriminatory housing policies against Palestinian citizens of Israel generally

Israeli laws, policies, and practices create and maintain spatial segregation within the Green Line between Palestinian citizens of Israel and Israeli Jews. Since its establishment, Israel has passed numerous laws expropriating and seizing lands owned by Palestinians and Arab towns and villages, with 93 percent of total land now controlled by the State of Israel and major Zionist organizations. Judaization of the land-space is a guiding principle of state land policy, with the creation of 600 new Jewish towns and villages, particularly in areas with Palestinian majority, in order to entrench control over the land and its use. In contrast, the State of Israel has not created nor permitted the establishment of a single new Palestinian city, town or village in Israel except in specific and rare instances where the State established localities in which to relocate Palestinian citizens whom it forcibly displaced. Adalah's 2021 report to the UN Special Rapporteur on the right to adequate housing has additional information on the widespread and systematic policy of housing segregation, as well as the role of quasi-state Zionist organizations – namely, World Zionist Organization (WZO), Jewish Agency (JA), and Jewish National Fund (JNF) – in establishing and enforcing this segregation.

- ***Adalah's Report to The UN Special Rapporteur on the Right to Adequate Housing NGO Report Re: Spatial Segregation in Israel*, submitted 3 June 2021 (updated December 2021)**

With the passage of the Basic Law: Israel as the Nation-State of the Jewish People, the Knesset has made the establishment and development of *Jewish* settlement a national

priority, thereby legitimizes existing mechanisms of segregation and providing constitutional backing for other discriminatory budgeting policies that prioritize the channeling of public funds to Jewish over Palestinian communities.

Adalah requests that this Committee raise serious concerns about segregation between Jewish and Palestinian citizens of Israel given the violations entailed by segregationist practices, policies and laws of Israel's obligations under international human rights law, including under the ICCPR; and urge Israel to immediately halt and reverse multiple serious and systematic violations in relation to, e.g., the Jewish Nation-State Basic Law, state empowerment of Zionist organizations to operate with quasi-state powers, the Admissions Committees Law, and chronic overcrowding in Palestinian towns and villages in Israel.

List of Issues 23: The Citizenship and Entry into Israel Law Banning Palestinian Family Unification

Israel has banned the unification of thousands of Palestinian families for almost two decades. On 31 July 2003, the Knesset enacted the Citizenship and Entry into Israel (Temporary Order) Law, also known as the Ban on Family Unification Law, which prohibited the Minister of the Interior from granting residency or citizenship status to Palestinians from the West Bank and the Gaza Strip who are married to citizens of Israel. The Law banned the unification of Palestinian families, e.g., Palestinians with Israeli citizenship married to Palestinians from the West Bank and the Gaza Strip. In an amendment to the Law, passed in 2007, the Knesset extended the ban to spouses from four "enemy states": Syria, Lebanon, Iraq, and Iran.

The Citizenship Law and Entry into Israel Law is one of most discriminatory and racist of Israel's laws. No democratic country in the world denies residency or citizenship to spouses of its own citizens on the basis of their spouses' national, racial, or ethnic affiliation, while simultaneously labeling them as enemies. The Law was designed to produce separate citizenship tracks for the spouses of Jewish Israeli citizens and of Palestinian citizens of Israel. These separate and unequal tracks were part and parcel of establishing and maintaining a system of Jewish supremacy, who was further cemented with the enactment of the Jewish Nation-State Basic Law in 2018.

While the Citizenship Law and Entry into Israel Law was originally passed as an emergency measure to remain in force for one year, the Israeli Government, with the Knesset's approval, could indefinitely extend the ban. The Government had repeatedly renewed the validity of the Law for 18 years. However, on 6 July 2021, the Knesset failed to approve the order to extend the Law. The failure to extend the Law was not due to lack of political will to remedy the human rights violations created by the law, but to the failure of competing factions within the Knesset to reach a political compromise over the law.

Despite the expiration of the racist Citizenship Law and Entry into Israel Law, and the Knesset's failure to extend it, the Ministry of Interior refuses to process unification requests for Palestinian families and to allow Palestinians families to live together. Over the past few months, Palestinians who are married to Palestinian citizens of Israel but who have not been able to obtain Israeli citizenship or residency due to the Citizenship Law – a population of more than 13,000 people – have filed requests to the Ministry of Interior for such status. The requests for citizenship or residency are not just for the spouses of Palestinian citizens of Israel, but also for their children. However, the Ministry has not granted any of these requests.

Israeli Interior Minister Ayelet Shaked has ordered the Population and Immigration Authority to ignore the expiration of the Law, and process family unification requests according to the legal situation that prevailed when the Law was still in force. Head of the Population Authority Tomer Moskowitz has admitted such, in a response letter to ongoing litigation challenging the

refusal of unification requests. Meanwhile, the Israeli Government is proposing legislation to re-instate the Citizenship Law. The Ministerial Committee for Legislation approved two new bills in January 2022, the first of which is the same as the original 2003 Temporary Order, and the second an even harsher version.

- Adalah Press Release, Israeli Ministerial Committee for Legislation approves an even harsher version of the discriminatory ban on Palestinian Family Unification Law, 24 January 2022

We note that in 2014, the Human Rights Committee concluded in its earlier periodic review of Israel that, "the Citizenship and Entry into Israel Law (Temporary Provision) should be revoked and that the State party should review its laws, practices and policies with a view to bringing them in line with its obligations under articles 23 and 26 of the Covenant" (para. 21, CCPR/C/ISR/CO/4). Other UN human rights treaty bodies have repeatedly criticized the law, and called on Israel to revoke it and to facilitate family unification:

- In 2020, the **CERD** recommended that Israel "review its legislation in order to ensure the respect of the principles of equality, non-discrimination and proportionality, and further facilitate family reunification of all citizens and permanent residents of the State party" (para. 25, CERD/C/ISR/CO/17-19). This follows the CERD's COs in 2012 in which it called on Israel to revoke the law, and to "facilitate family reunification of all citizens irrespective of their ethnicity or national or other origin" (para. 18, CERD/C/ISR/CO/14-16).
- In 2019, the **CESCR** recommended that Israel review the law "with a view to bringing it into line with its obligations under article 10 of the Covenant and to facilitating the exercise of family reunification for all citizens and permanent residents irrespective of their status or background" (para. 41, E/C.12/ISR/CO/4). This builds on the CESCR's earlier COs from 2011, in which it called on Israel "to guarantee and facilitate family reunification for all citizens and permanent residents irrespective of their status or background, and ensure the widest possible protection of, and assistance to, the family" (para. 20, E/C.12/ISR/CO/3).
- In 2017, the **CEDAW** reiterated its call on Israel from 2011 to review the law in order to facilitate family reunification of all citizens and permanent residents of Israel, and to bring the law into compliance with the CEDAW Convention, while respecting the principles of equality and proportionality (para. 41, CEDAW/C/ISR/CO/6).
- In 2013, the **CRC** expressed concern that thousands of Palestinian children are deprived of their right to live and grow up in a family environment with both of their parents or with their siblings and that thousands live under the fear of being separated because of the severe restrictions on family reunifications. The CRC also recommended that Israel revoke the law (paras. 49 and 50, CRC/C/ISR/CO/2-4).

Adalah requests this Committee recommend that Israel allow for Palestinian family unification in Israel; and refrain from re-legislating the Citizenship and Entry into Israel Law or similar discriminatory legislation.

Freedom of expression, assembly and association (arts. 19, 20, 21 and 22)

List of Issues 24 (c). Threats against and harassment of HRDs and civil society organizations

Human rights organizations and defenders and other civil society actors operating in Israel/OPT face a wide range of repressive measures by Israeli authorities and smear campaigns by right-wing organizations. The purpose of these actions is to delegitimize, de-fund, and ultimately close down many groups active in resisting the Israeli Occupation and its apartheid policies, and/or pursuing cases before the International Criminal Court (ICC).

In an unprecedented move, on 19 October 2021, Israel's Defense Minister Benny Gantz designated six prominent Palestinian human rights and civil society groups as "terrorist organizations" under Israel's domestic Counter-Terrorism (Anti-Terror) Law (2016). The six groups are: Addameer, Al-Haq, Bisan Center for Research and Development, Defence for Children International – Palestine, the Union of Agricultural Work Committees, and the Union of Palestinian Women's Committees. The Israeli military commander also outlawed all six groups under the 1945 Emergency (Defense) Regulations, declaring them "unlawful associations".

Both measures – under the Counter-Terrorism Law and the Emergency Regulations – are marred by critical due process flaws and shortcomings, falling short of international standards and amounting to significant violations of the rights of Palestinians. These include: the overbroad and vague definitions of "terrorist organization" and "unlawful association"; the vast power and discretion provided to both Israel's Defense Minister and the Israeli military commander in issuing the designations and declarations; the immediate and severe legal consequences of such designations and declarations; and the extreme difficulty in challenging these designations and declarations, resulting from the use of secret evidence and other due process violations.

In an expert opinion published in 2021, Adalah analyzes the two legal measures deployed to criminalize the activity of Palestinian human rights and civil society organizations, stop their operations, seize their assets, and levy penalties against their directors, staff, and supporters.

- **Adalah's Expert Opinion, *Israel's 2016 Counter-Terrorism Law and 1945 Emergency Regulations Regarding the Outlawing of Six Palestinian Human Rights and Civil Society Groups*, 23 November 2021**

Adalah has been representing the organizations, along with a legal team of private lawyers. On 3 February 2022, the organizations filed a procedural objection to the Military Commander of the OPT in the West Bank, against the declaration of the groups as "unlawful associations", under the 1945 Emergency (Defense) Regulations.

The main legal arguments raised in the objection are as follows:

- **No due process:** The declarations are illegal, as they are based solely on secret evidence. The Military Commander announced that the "core of the designations" is based on classified material that would remain secret. Thus, the organizations have not been provided with any material to allow them to defend themselves, in a total denial of due process.

- **No evidence:** The military did not present evidence connecting the organizations with any illegal activities, illegitimate engagements, or misuse of funds. The groups stress that no such material has been provided because it does not exist.

- **Conflict of interest:** The objection process itself is tainted by a conflict of interest, since the decision-maker who issued the decision – the Military Commander – is the same body that will decide on the objection.

- **Violation of the rule of law**: The Military Commander operated without authority, as his use of the 1945 Emergency Regulations is conditioned upon an order of the Minister of Defense, according to a procedure that no longer exists in Israeli law, following the enactment of the 2016 Counter-Terrorism Law.

  - Adalah Press Release, Palestinian Organizations Declared as 'Unlawful Associations' by Israeli Military File Objection: Illegal Decision Devoid of Due Process, 3 Feb. 2022

Adalah requests that the Committee recommend that Israel revoke the "terrorist organization" and "unlawful association" designations of the six organizations, and allow for the normal functioning of Palestinian civil society in the West Bank, in accordance with the Covenant.

Right to take part in the conduct of public affairs (arts. 2, 25, 26 & 27)

List of Issues 27 (a). Amendment to the Election Law – 2014

On 11 March 2014, the Knesset approved a new law to raise the qualifying electoral threshold for political parties to enter the Knesset from 2 to 3.25 percent. Adalah and the Association for Civil Rights in Israel (ACRI) submitted an expert opinion to the Israeli Supreme Court in a case challenging the 2014 amendment, arguing that the amendment to increase the threshold undermined the parliamentary representation of the Palestinian Arab minority in Israel in particular, more than other groups of citizens.

There are currently two Arab or Arab-Jewish parties in the Knesset: The Joint List (*Hadash/Ta'al/Balad*) with six seats, and the United Arab List with four seats. Adalah argued in the court hearing that the increased threshold prevents the Arab parties from contesting the elections within multiple party lists that represent the broad range of their political and ideological beliefs. The amendment to raise the threshold is an instance of the Knesset majority imposing its will on the Arab minority, in violation of its political rights. Despite the discriminatory and anti-democratic effect of the 2014 amendment to the collective and individual rights of Palestinian citizens and Arab political parties, the Israeli Supreme Court upheld the law in its decision on 14 January 2015.

List of Issues 27 (b). The Expulsion Law – 2016

On 20 July 2016, the Israeli Knesset passed the so-called Expulsion Law, which allows the parliamentary body to oust publicly-elected members. According to the Law, a majority of 90 Knesset members may oust a serving Knesset member on two grounds: incitement to racism; and support for armed struggle against Israel. Adalah vehemently opposes the new law, emphasizing that it is another attempt by the government to trample on the political rights of Palestinian citizens of Israel. The Law is intended to expel Arab Knesset members who 'dare' to stray beyond the boundaries dictated to them by the Israeli Jewish majority, thus silencing the voice of the Palestinian Arab public. Adalah, along with other human rights groups, filed a

petition against the Expulsion Law. However, the Israeli Supreme Court, on 27 May 2016, upheld the law, ruling that the law applies equally to all, though it is patently clear that the only individuals who will be harmed by the law are Knesset members from minority – primarily Palestinian Arab – political parties.

List of Issues 27 (c). Expansion of grounds for disqualifying candidates from parliamentary elections

On 14 March 2017, the Israeli Knesset passed Amendment No. 46 to the Basic Law: The Knesset, which expands the grounds on which political parties and individual candidates can be disqualified from Knesset elections to include not only their goals and actions, but also their statements. Under the law, parties and individual candidates can be disqualified if their goals/actions – explicitly or implicitly – negate the existence of the State of Israel as a "Jewish and democratic state," incite to racism, or support armed struggle by a hostile state or terrorist organization against the State of Israel. The 2017 amendment makes it easier to disqualify candidates and parties from the Knesset by including statements as grounds for disqualification, which are by their nature more liable to overly-broad interpretation.

Adalah requests that this Committee recommend: the cancellation of the three aforementioned laws and that it refrain from legislating similar measures that have the effect of preventing the political participation of Palestinian citizens of Israel and their representatives in the Knesset.