

AFTER THE RIFT:

New Directions for Government Policy towards the Arab Population in Israel

An emergency report by an inter-
university research team

**Submitted to Mr. Ehud Barak,
Prime Minister of Israel**

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Law, Society and the Arab Population in Israel

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The current situation: processes and problems

The still pervasive Jewish perception of the Arab minority in Israel as constituting a “fifth-column” (potential or actual) has shaped, and continues to shape, the legal system’s treatment of the Arab minority specifically in constitutional norms, statutory law and judicial opinions. Kretchmer (1987) provides extensive documentation of the inferior status of the Arab minority in Israeli law. Over the course of the past decade, that documentation has been further validated by other academic studies, and by local and international independent reports initiated by various NGO’s. This inferior status is mainly reflected in:

- Statutory legislation explicitly discriminating between Arabs and Jews, including laws determining the status of the Jewish Agency and the Zionist Federation.
- Laws and regulations discriminating between Arabs and Jews on the basis of concepts such as “new immigrant” and “veteran soldier” (see Position Paper 5 in this report).
- Laws allowing for land expropriation and handling ‘abandoned assets’ that are mostly applied to the Arab population.
- Budgetary legislation discriminating Arabs, including smaller resource allocations for welfare, religion, education, etc.

- Principled judicial decisions, clarifying the constitutional structure of Israel as a Jewish state that tolerates equal rights to Arabs only as long as these do not affect or jeopardize its fundamental constitutional structure.
- Discriminatory practices towards Arab citizens in the criminal justice system, from police interrogation to judicial decisions.
- Police brutality and excessive use of force in containing demonstrations and breaches of order by Palestinians.

Recent research shows that the Arab citizens of Israel see a significant reform in Israeli law, as a necessary prerequisite for their greater accommodation as full citizens of the state. It also seems clear that neglect or failure to address the Palestinians' basic grievances in law may lead to greater frustration and discontent which will in turn be directed against the state and the Jewish majority.

In recent years, jurists and legal scholars emphasized the importance of Israel's "constitutional revolution", anticipating the liberal impact of broadly formulated Basic Laws and ensuing judicial interpretations thereof. Especially following the Ka'adan decision, there is a growing expectation that the incremental allocation of individual rights (for example – in the sphere of land rights) to the Arab minority would bring about greater equality, lesser discriminatory practices, and lesser subjective sense of deprivation experienced by Arabs.

This expectation seems to rest on erroneous grounds. The greater emphasis on individual civil rights cannot bring about a comprehensive change in the social and political status of the Arab population. While granting and securing basic individual civil rights is a precondition to establishing a democratic system, recognition and securing of collective interests are equally essential in any multi-national society. A society with a significant national minority cannot assuage conflicts and heal feelings of deprivation and injustice by recognizing rights on an individual basis alone. A multicultural, advanced nation must also aspire to develop a constitutional and legislative agenda that recognizes and reinforces the legitimacy of the minority's rights needs, and expectations **as a collective**.

Accordingly, the current situation is characterized by a lack of attention to the following issues:

1. Equality as a supreme principle

Despite the interpretation given to the Basic Laws, Israel sorely lacks a clear primary legislation that determines the principle of equality as a supreme basic norm, and explicitly clarifies the Arab minority's civil status as possessing equal rights.

2. Social rights

Recently performed research has elicited that the Arab minority feels a sense of collective discrimination in the social-economic sphere, for example: land appropriation, demolition of buildings, and inequality in employment. Beyond trivial declarations about equal opportunities, the minority's social and economic rights are not anchored in a law, as revealed by the methodical discrimination that it has suffered ever since the state was established. Furthermore, there is no law that is anchored in an international treaty that can improve the lot of that minority.

3. Community rights

Israel lags behind many democratic regimes in all matters pertaining to the recognition of the collective rights of weaker groups within it. Israel is not developing, through legislation and rulings, the rights awarded to an entire minority as a group (for example, in the spheres of education, language, property, cultural conservation, and political representation). Furthermore, that minority is under-represented in Israel's public life, inter alia, in the courts and the State Attorney's Office.

We find it advisable to specify several principles, and to indicate a number of areas for legal activity that urgently require a reexamination.

Recommendations for corrective policy

1. The legal system is an important arena for instilling social norms and for establishing open, definitive, public discourse. Therefore, at the core of our perspective is a recommendation of principle: encouraging the legal system (including its various extensions) to develop – in different forms – “laws and jurisprudence of reconciliation”. This recommendation is grounded on a principle resembling the one adopted by the Australian court in the Mabo decision. There, the Australian Supreme Court had begun to develop a “jurisprudence of regret”, aimed at acknowledging the historical injustice suffered by the continent’s original inhabitants during the European colonizing period. The importance of this approach lies in the willingness to come to terms with the past as an integral part of the effort to establish a more just present and future. The Ka’adan decision, in which the right of the Arab appellant to purchase a house in the exclusively Jewish settlement of Katzir was affirmed, clearly illustrates a still pervasive and unequivocal refusal to discuss past injustices and historical roots for present exclusionary legal situations and structures. The almost principled refusal to address the historical sources of present discontent (first and foremost as a result of massive land appropriations since 1948) is a major obstacle in the way of a developing a reconciliatory, affirmative approach in law. Therefore, two central directions of action are recommended:

- Encouraging the courts to develop a jurisprudence that acknowledges past structural injustices.
- Governmental planning towards establishing quasi-judicial forums and commissions along models developed at other conflict-ridden or ethnically divided countries.

2(a) Position Paper No. 1 of this Report determines that Israel Land Administration, including its legal organs, consistently discriminates against the Arabs (by means of land appropriations, land allocations, preventing settlement, demolishing buildings, and in demarcating municipal space). The problem’s origin and core is the massive transfer of land owned or possessed by Arabs, to formal state ownership. This process took place, in various forms, throughout the two decades since 1948. During that time, the state assumed control over 40-60% of the lands possessed by Palestinians who remained in Israel after 1948. The process, through which Arab citizens of Israel lost

their land remains an unhealed wound, a key factor in the sense of alienation and deprivation experienced by the Arab minority in Israel. A body of law should be developed in order to sever the affinity between the term "state lands" and the term "land of the Jewish people", turning state owned lands to a public property truly owned by all its citizens. Concurrently, concrete steps must be taken towards acknowledging the injustice and developing mechanisms to rectify it. In particular:

- Establishing mechanisms to compensate for past land appropriations.
- Establishing affirmative, preferential mechanisms in the allocation of land for public use and public development.
- Effecting wide-ranging reforms in the status of the Jewish Agency and the JNF.
- Effecting wide-scale reform in the status and role of the Administrator-General of Abandoned Assets.

2(b) Special attention must be urgently directed to the Bedouin population, especially those Bedouins residing in the Negev in so-called "unrecognized settlements" (see position papers 1,2,3,5 in this report). The Bedouin residents of such settlements are denied basic social services and public utilities and are treated under the provisions of the Law of Planning and Construction as individual law-breakers who built "illegal" houses. This without any regard to the historical roots of the problem, the collective nature of the Bedouin plight, and the Bedouin claims of ownership and possession of land. The result is that legal treatment of the issue of Bedouin land rights is not performed in the realm of theory, principles and values. Rather, it is effected through court deliberations of individual cases of planing and building violations. Our recommendation is to immediately suspend enforcement of the Law of Planning and Construction and to embark upon an alternative route of action aiming at solving the issue at the collective level.

3. To date, little attention has been paid to the issue of inequality between Arabs and Jews in the court system. Comprehensive research (see for example Ratner 1988) reveals the inferior legal status of Arab citizens who are suspected or accused of criminal actions, and indicates that the likelihood of an Arab being convicted is significantly and consistently higher than that of a Jew. Furthermore, there is a greater likelihood for convicted Arabs to be sentenced than there is for their Jewish counterparts, and in some cases, their prospects are doubled. The findings also elicit

that the difference between the two groups - to the detriment of the Arabs – tends to increase as the stages of criminal process proceed towards convictions and sentencing.

In view of the above, we recommend:

- To develop a structured series of training courses and seminars for judges and prosecutors, with the aim of dissolving the psychological, social, and legal boundaries between Jewish and Arab citizens and in order to enhance awareness to the prevalent discrimination.
- To develop a tracking system for assessing the performance of the criminal justice system in cases involving Arab suspects and defendants. Accumulated and processed data will be published periodically. The periodical publications will be sufficiently detailed to provide a picture of the performance of specific agencies, concrete judicial instances, and geographical districts.

4. The severe and violent conflicts of October 2000, between the Israeli police and Israeli citizens from the Arab minority, left thirteen people dead, hundreds injured, and yet hundreds more detained. These incidents, in themselves, left many Arabs and Jews feeling that the life of Arabs are of lesser value than the life of Jews.

Whatever the findings of the Commission of Inquiry appointed in November 2000 to investigate these tragic events, it is abundantly clear that a breakdown has occurred in the police's capability to control demonstrations and violations of public order within the Arab community without resorting to firearms and without risking civilian life. Realizing that mass demonstrations sometimes turn violent, many democratic states train special police units as riot-police, having them specialize in crowd control, dispersal and non-violent containment of violence. The expertise of those units is measured, beyond any other criterion, by their ability to control foci of violence without using firearms, and without incurring loss of life. It is hard to accept the fact that Israel – so experienced in demonstrations by various social groups - still deploy regular military and police units to disperse demonstrations.

We recommend, therefore, an urgent allocation of resources for training highly-skilled and properly-equipped riot police units that will be able to contain demonstrations and mass disorders without using deadly firearms. Intensive training courses must be organized for police officers, in which education for civil, multinational democracy is combined with dynamic workshops. At the latter, emphasis must be given to

confronting anxiety, internal racism, and prejudice, and to explaining the nature of a multinational, multicultural society. Furthermore, we recommend that the Ministry of Internal Security gives serious consideration to the development of community police: that is, units whose composition, at both the field and command levels, reflects the character and structure of the population within which they operate.

5. Finally, we recommend various frameworks of legislation including principles of affirmative action and collective rights in the different areas specified in Position Papers 1 to 5 of this Emergency Report.