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BADIL was established in January 1998 and is registered with the Palestinian Authority and legally owned by the refugee community represented by a General Assembly composed of activists in Palestinian national institutions and refugee community organizations.

Production and Printing: al-Ayyam

Cover Photo: PLO Chairman and Palestinian Authority President Yaser Arafat

BADIL welcomes comments, criticism, and suggestions for al-Majdal. Please send all correspondence to the editor at resource@badil.org.

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al-Majdal is a quarterly magazine of BADIL Resource Center that aims to raise public awareness and support for a just solution to Palestinian residency and refugee issues.

www.badil.org/al-Majdal/al-Madjal.htm

**Annual Subscription:
US\$ 20
(4 issues)**

Published by

BADIL Resource Resource Center for
Palestinian Residency & Refugee Rights
PO Box 728
Bethlehem, Palestine
Tel/Fax: 972-2-274-7346
Email: info@badil.org
Web: www.badil.org

ISSN 1726-7277

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Terry Rempel

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Terry Rempel, Nihad Boqai', Muhammad Jaradat, Ingrid Jaradat Gassner

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“Jewish Nationality,” “National Institutions” and Institutionalized Dispossession

by Joseph Schechla

What is “Jewish nationality” and what does it mean for Palestinian refugees, IDPs and Palestinians still remaining in their homes and lands?

“Jewish nationality” is a concept arising from Zionist ideology that has evolved in Israeli law pertaining to civil status, but which also lies at the base of official policy and practice. “Jewish nationality” status is a key to understanding the State of Israel’s ideology and machinery for acquiring the properties and other assets of the indigenous Palestinian people. Thus, religious affiliation, as “Jewish nationality” status is the criterion for determining who benefits from the economic and cultural assets of Palestine. Consequently, it also determines who loses in the material, social, cultural and political sense. It is a far more fundamental criterion for distributing rights and privileges than military service, mere Israeli citizenship, or even temporal connection with the country. The ideological criterion of “Jewish nationality,” therefore, is the lynch pin of the Zionist colonization project.

This super citizenship status materially discriminates against the indigenous Palestinian people, particularly through the dispossession of their homes, properties, lands and national resources, whether they are citizens and residents of Israel or external refugees, forcibly removed from their assets, and the transfer of those assets to holders of “Jewish nationality.”

Israel also applies this special status extra territorially through its parastatal “national” institutions (World Zionist Organization/Jewish Agency, Jewish National Fund, and their affiliates). Those institutions have registered and operated as charities around the world, while simultaneously functioning as extensions of the State of Israel, under Israel’s *Status Law* (1952) and Covenant [with] the Zionist Executive (1952). Central to the purpose of these parastatal institutions is encouraging Jewish persons (considered as “Jewish nationals”) to emigrate to Palestine/Israel from their home countries. These institutions also collect tax-exempt contributions in those same countries for the establishment and development of Jewish settler colonies across over historic Palestine.

“Jewish nationality” as law

In addition to the consequences for Palestine, the activities of these “national” institutions also vitiate the rights of other sovereign States, inciting their Jewish citizens to emigrate and pledge allegiance to a foreign country (Israel) and extending an additional, alien civil status to them by claiming them as subjects under the legal jurisdiction of Israel. Although Israel and its “national” institutions seek to apply “Jewish nationality” extra territorially, it is not recognized as a concept of international law.⁽¹⁾

Israeli law, official institutions or records do not recognize an “Israeli nationality” status. Israel’s High Court already has confirmed that no such status exists. Whereas the State of Israel has established only Israeli *citizenship*. The only *nationality* conferring automatic status to enjoy all civil, political, economic, social and cultural rights in Israeli law is “Jewish nationality.”

Anyone considered eligible for “Jewish nationality” can realize this preferential status on the basis of:

(a) a *bona fide* claim to profess the Jewish religion (and being born of a Jewish mother) and (b) arrival in a place under the jurisdiction or effective control of Israel. By contrast, a citizen of the State of Israel who is not *bona fide* as Jewish can never hold this status, even if s/he is born within the country.

Implementing “Jewish nationality”

A practical feature of “Jewish nationality” is that Israel and its “national” (parastatal) institutions, including the World Zionist Organization/Jewish Agency (WZO/JA) and Jewish National Fund (JNF), apply this status both in developing and distributing confiscated Palestinian assets inside Israel and the occupied Palestinian territory, as well as through their extraterritorial activities. The scope of this program is vast. Mobilizing Jewish settlers/immigrants and financial resources from their operations in some 50 other countries, the “national” institutions function tax-free outside Israel, while performing as part of a foreign State (linked by the laws cited above).

Historically, the two sister organizations of WZO/JA, as institutional pillars of political Zionism, have discretely divided labor, if not actual personnel or objectives. The WZO has typically mounted more overtly colonist activities (focusing primarily on projects in the OPT since 1971); while the “Enlarged” JA was established early in Zionist history (1929) to appeal to the resistant “non-Zionist” Jews, whom the Zionists saw as nonetheless useful in responding to appeals for contributions to the same colonial program, but with a less-objectionable title. The JA primarily specializes in projects inside the Green Line. Despite these and other cosmetic differences, both organizations, along with their common partner, the Jewish “National” Fund and its fund-raising affiliates, have worked hand in hand at acquiring and managing the properties and national assets of the dispossessed Palestinian people.

These institutions claim to be both public and private institutions at the same time, just as they claim to be charities extra territorially while operating as parastatal institutions in Israel/Palestine. While such structural duplicity may be sufficient legal grounds for concern, their actual functions are more serious. Each and all of the “national institutions” is dedicated to carrying out population transfer and implantation of settlers, practices that the Nuremberg Tribunal (1945) and the Rome Statute on the International Criminal Court (1998) define as crimes of war and crimes against humanity.⁽²⁾

Israelis challenging “Jewish nationality”

Recognizing the contradictions embodied in “Jewish nationality,” Jewish-Israeli citizen George Rafael Tamarin petitioned unsuccessfully to have the official registration of his *nationality* changed from “Jewish” to “Israeli.” The High Court then ruled that “there is no Israeli nation separate from the Jewish nation ... composed not only of those residing in Israel but also of Diaspora Jewry.” Then President of the High Court Justice Shimon Agranat explained that acknowledging a uniform *Israeli nationality* “would negate the very foundation upon which the State of Israel was formed.”

Nationality status in Israel is not linked to origin from, or residence in a territory, as is the norm in international law. Rather, the nature of civil status in Israeli legal system establishes theocratic criteria for the enjoyment of full rights. The Israeli *Law of Citizenship (Ezrahut)*, often mistranslated in official English editions as “Nationality Law,” only establishes a civil status, however distinct from—and inferior to—“Jewish nationality.”

In April 1999, Israeli citizen and “Jewish national” Mr. Avner Erlich, requested that the Central Elections Committee (CEC) ban the National Democratic Party (NDA) list from running in the 1999 Knesset elections. He claimed that in a May 1998 *Ha’aretz* interview that NDP candidate Dr. ‘Azmi

Bishara denied the existence of the State of Israel as the State of the Jewish people by saying: “Judaism is a religion, not a nationality; and the Jewish public around the world has no national status whatsoever ... From a historical perspective, the idea of a state of the Jews is, in my opinion, illegitimate; and if you ask me, I am not prepared to give Israel historical legitimacy.” Mr. Avner Erlich, argued that Dr. Bishara’s positions violated the 1985 amendment to *The Basic Law: The Knesset*, which provides in Section 7A that: “A list of candidates shall not participate in the elections for the Knesset if its aims or actions, expressly or implicitly (1) deny the existence of the State of Israel as the State of the Jewish people, (2) deny the democratic nature of the state, or (3) incite racism.

The CEC ultimately decided by a 21–4 majority (with one abstention) to reject Mr. Erlich’s request. He submitted a petition to the Supreme Court, which rejected Mr. Ehrlich’s petition for lack of standing. Nonetheless, the Court admonished Dr. Bishara and the NDA party that they “enjoyed the benefit of the doubt” from the CEC and came “dangerously close to the line that should not be crossed.”

NGOs Petition Israel Supreme Court to Freeze JNF Land Tenders

The Jewish National Fund (JNF) has agreed to a temporary freeze on tenders for land in the north of Israel and the Galilee after several NGOs filed petitions against discriminatory JNF practice of allocating land only to Jews.

Since 1948 large tracts of Palestinian-owned land, including refugee properties, have been confiscated or otherwise appropriated under law and taken into the possession of the state or Zionist institutions, such as the Jewish Agency and the Jewish National Fund, for exclusive use by Jews. These laws and policies have brought about state control of over 93% of the land in Israel.

Israeli law defines ‘Israel lands’ to include land owned by the JNF. Close to two million dunums of the land currently owned by the JNF was transferred to it by the state in 1949 and 1953. This transfer gave a special status to the JNF under

Then Attorney General Elyakim Rubenstein attacked Dr. Bishara in articles supporting attempts to delegitimize the NDA party’s slogan: “A State for All Its Citizens.” Mr. Rubenstein has written that “Anyone who calls for changing Israel to ‘A State for All Its Citizens’ means, in reality, to change the Jewish character of the State. It is our duty to fight that wholeheartedly, without compromise.”⁽³⁾

For indigenous Palestinian citizens of Israel, ‘Adil and Iman Qa’dan of Baqa al-Gharbiyya, the High Court judgment in their favor for a place to live in a new settlement represented one symbolic step toward equal economic, social and cultural rights for Israel’s citizens without “Jewish nationality.” They sought to build their home in Jewish Agency-supported Katzir settlement, the locality of their choice. The Supreme Court ruled, four to one, that:

“The State of Israel must consider the Petitioners’ request to acquire land for themselves in the settlement of Katzir for the purpose of building their home. The State must make this consideration based on the principle of equality, and considering various relevant factors, including those factors affecting the Jewish Agency and the current residents of Katzir.”

In the breakthrough judgment, the Court applied this principle to the allocation of State land by the Jewish Agency and others. While the over-riding human rights principle of equal treatment prohibits the State from discriminating among citizens on the basis of religion or nationality; however, the parastatals “national institutions” do so as a charter-based principle.

The Court’s recognition that discrimination had taken place on the basis of “nationality” is progress indeed toward identifying the heart of the system of institutionalized discrimination that would have to be addressed in any eventual democratization of the State of Israel, in the longer term, and the defence of the national as well as individual rights of the Palestinian Arab citizens of Israel, in the interim. However, the ruling in the Qa’dan case does not apply to other citizens, nor does it call for disestablishing nationality-based discrimination in general or the need for the Jewish Agency and other organizations to reform their institutionalized discrimination against non-Jews, in general, or indigenous Palestinian citizens, in particular. Despite their 2000 litigation victory, the Qa’adans have not yet been able to access a plot in Katzir to build their home to this day.

Israel's Interior Ministry maintains a list of 137 nationalities for enumeration purposes, but none is recognized as legal status for enjoying rights in the country. Of all these descriptive nationalities, "Israeli" is *not* one of them. Repeating the challenge that the State establish a nondiscriminatory civil status applied to all citizens, 38 prominent Israelis petitioned the High Court in December 2003. The group, represented by Attorney Yoela Har-Shefi, is headed by Professor Uzi Ornan, of the Hebrew University and the Technion. Other participating intellectuals, academics and scientists include Shulamit Aloni, Uri and Rahel Avneri, Yehoshua Sobol, Gavriel Solomon, Yigal Eilam, Meron Benvenisti, Yehoshua Porat and Oren Yiftachel. Also in the group is singer Alon Olearchik, formerly of the army Nahal entertainment group and the Israeli rock band Caveret. His mother is Christian and father Jewish; therefore, he is not Jewish and cannot hold "Jewish nationality." Adil Qa'adan also has joined this group to obtain a nationality status registered as "Israeli."⁴ In September 2004, the High Court remanded the case to the district court, in an apparent move to buy time and exhaust the petitioners by bogging down the lower courts with this constitutional question. The State response has been most revealing, claiming that the petitioners' appeal "undermines the very logic of the State as Jewish."

Thus, the State's position has validated the premise that Jewish and democratic are logically incompatible criteria. This is unfortunate, particularly because it should not be taken that the "Jewish" nature of the "nationality" discrimination is inherently anti-democratic, but the discriminatory and dispossessing function of an exclusive "nationality" that makes it so.

Challenging the "national institutions"

The Zionist national institutions contain three fundamental contradictions from a moral and legal standpoint: (1) they institutionalize a form of material discrimination against the indigenous people of Palestine on the basis of an ideologically grounded "nationality," (2) they are dedicated to operations constituting violations enumerated in the Nuremberg Tribunal and Rome Statute on the International Criminal Court and (3) they are organically linked to the State and Government of Israel as the constitutive authority that governs them, while claiming to be tax-exempt charities.

The paradox within this last contradiction was the subject of administrative hearings before the United States Department of Justice in 1969–70. The Department found that, since the Zionist Organization/Jewish Agency were subject to effective Government of Israel control, neither they nor their foreign principal were the private voluntary organizations that they claimed to be.⁵ This situation persists now under a "reconstituted" registration; however, the functions remain the same.

The persistence of institutionalized discrimination has been the subject of serial reviews of Israel under its treaty obligations as a party to the International Covenant on Economic, Social and Cultural Rights. In 1998, its independent treaty-monitoring body noted with grave concern that:

the Status Law of 1952 authorizes the World Zionist Organization/Jewish Agency and its subsidiaries, including the Jewish National Fund, to control most of the land in Israel, since these institutions are chartered to benefit Jews exclusively. Despite the fact that the institutions are chartered under private law, the State of Israel nevertheless has a decisive influence on their policies and thus remains responsible for their activities. A State party cannot divest itself of its obligations under the Covenant

Israeli law. The JNF enjoys a huge influence over land distribution policy in Israel. For example, half of the ILA Council, which manages 'Israel lands' and determines land policy in Israel must be nominated by the JNF. As of 2003, approximately 2.5 million dunums of land in Israel were owned by the JNF, which equates to 13 percent of the land in Israel.

On 13 October 2004, Adalah – The Legal Center for Arab Minority Rights in Israel, submitted a petition against the Israel Lands Administration (ILA), the Jewish National Fund (JNF) and the Minister of Finance (MOF), demanding the cancellation of an ILA policy and a regulation promulgated by the MOF, which effectively permits the marketing and allocation of lands through bids open only to Jews. An earlier petition as filed by the Arab Center for Alternative Planning and the Association for Civil Rights in Israel.

Source: Adalah – The Legal Center for Arab Minority Rights in Israel. See, www.adalah.org.

by privatizing governmental functions. The Committee takes the view that large-scale and systematic confiscation of Palestinian land and property by the State and the transfer of that property to these agencies constitute an institutionalized form of discrimination because these agencies by definition would deny the use of these properties to non-Jews. Thus, these practices constitute a breach of Israel's obligations under the Covenant.⁽⁶⁾

The Committee went on to urge the State party to review the status of its relationship with the World Zionist Organization/Jewish Agency and its subsidiaries, including the Jewish National Fund, with a view to remedying these problems in complying with its human rights Covenant.⁽⁷⁾ This situation went unaddressed at the time of its next review (2003), and the Committee on Economic, Social and Cultural Rights expressed particular concern about the status of "Jewish nationality", which, it observed:

is a ground for exclusive preferential treatment for persons of Jewish nationality under the Israeli Law of Return, granting them automatic citizenship and financial government benefits, thus resulting in practice in discriminatory treatment against non-Jews, in particular Palestinian refugees.⁽⁸⁾

While the institutionalized forms of discrimination inside the Green Line have gone untouched in the political bodies of the United Nations, such contradictions in practice have not escaped the attention of the neutral and legal bodies. With a view to the causes, rather than mere symptoms, of discrimination, we are confronted with "Jewish nationality" status and its implementing institutions, posing the fundamental obstacle to both democracy and nondiscrimination in the State concerned.

Joseph Schechla is coordinator of the Habitat International Coalition's Housing and Land Rights Network, based in Cairo, Egypt.

Endnotes:

(1) See, for example, letter of U.S. Assistant Secretary of State Phillips Talbot to American Council for Judaism's Executive Vice President Rabbi Elmer Berger, affirming that the United States "does not regard [Israel's extraterritorial] 'Jewish people' concept as a concept of international law." Reprinted in W. Thomas Mallison, Jr., "The Zionist-Israel Juridical Claims to Constitute the 'Jewish People' Entity and to Confer Membership in It: Appraisal in Public International Law," 32 *The George Washington Law Review* 5 (1964), p. 1075.

(2) Article 7: *Crimes against humanity*: 1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:...(d) Deportation or forcible transfer of population...*War crimes* 1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes. 2. For the purpose of this Statute, "war crimes" means: (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:...(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;...(vii) Unlawful deportation or transfer or unlawful confinement...

(3) *Adalah News Update* (14 March 2002).

(4) Moshe Gorali, "So this Jew, Arab, Georgian and Samaritan go to court...The state denies there is any such nationality as 'Israeli'," *Ha'aretz*, 28 December 2003.

(5) Sally V. Mallison and W. Thomas Mallison, *The Palestine Problem in International Law and World Order*. London: Longman, 1986, pp. 126-41.

(6) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*. UN Doc. E/C.12/1/Add.27, 4 December 1998, para. 11.

(7) *Ibid.*, para. 35.

(8) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*. UN Doc. E/C.12/1/Add.90, 23 May 2003, para. 18.