

AMNESTY INTERNATIONAL BRIEFING

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Israel: Knesset urged not to pass law that would forcibly evict tens of thousands of Negev/Naqab Bedouin

Amnesty International has twice written to ministers in the Israeli government to express serious concerns regarding the proposed "Law for Regularizing Bedouin Habitation in the Negev - 2012" and urged the government not to propose the law and to grant legal status and security of tenure to the excluded Bedouin communities in the Negev/Naqab. The organization is now urging members of the Knesset not to pass the law, which the Ministerial Committee on Legislation is due to consider on 21 April 2013 and in the coming weeks.

The draft law is based on the government's decision of 11 September 2011 (Decision Number 3707) to adopt the recommendations of the committee led by Ehud Praver for the implementation of the 2008 Report on Regularizing Bedouin Habitation in the Negev, which was prepared by a committee headed by former Justice Eliezer Goldberg. The recommendations of the Praver committee were submitted to the government on 31 May 2011 and later amended by Major General Ya'akov Amidror, head of the National Security Council. Subsequently, Minister Benny Begin issued a report (the Begin report) on the consultations held with regards to the proposed law. This report was approved by the Israeli cabinet on 27 January 2013.

Amnesty International wrote to Minister Benny Begin on 27 August 2012 and to Prime Minister Benjamin Netanyahu on 10 February 2013. No response had been received by the time this briefing was published. The new Israeli government formed after elections held on 22 January 2013 has the mandate to propose the draft law to the new Knesset.

Neither the draft law nor the Begin report specify where the excluded Bedouin communities will be relocated to, but maps that are appended to the texts delimit an area in the northeast of the Negev/Naqab in which all Bedouin settlement is to be concentrated. Human rights organisations, Bedouin rights organisations, and a statement on 11 September 2011 by the then Director General of the Prime Minister's office, Eyal Gabai, estimate the number of people displaced by the government's plan – including by forced evictions – to be 30,000, but it could be higher.

The proposed law: a violation of international law, including the prohibition on non-discrimination

The proposed law, which explicitly provides less protection of Bedouin rights compared to other Israeli citizens, including other Negev/Naqab residents, is inherently discriminatory. If passed and implemented, the draft law will violate the affected Bedouin's rights to an adequate standard of living, including the right to adequate housing, and to non-discrimination, as guaranteed under Article 11 and 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). This Covenant has been ratified by Israel, and obliges the Israeli authorities to ensure the enjoyment of these rights for all those under their jurisdiction without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. In March 2012, in assessing Israel's fourteenth to sixteenth periodic reports under the International Convention on the Elimination of All Forms of Racial Discrimination, including Article 5(e) (iii) guaranteeing the right to housing without distinction as to race, colour, or national or ethnic

origin and to equality before the law, the Committee on the Elimination of Racial Discrimination concluded that:

"The Committee is concerned about the current situation of Bedouin communities, particularly with regard to the policy of demolitions, notably of homes and other structures, and the increasing difficulties faced by members of these communities in gaining access on a basis of equality with Jewish inhabitants to land, housing, education, employment and public health. The Committee recommends that the State party address satisfactorily the problems faced by Bedouin communities, in particular with regard to the loss of their land and access to new land. The Committee also recommends that the State party step up its efforts to ensure equal access to education, work, housing and public health in all territories under the State party's effective control. In this regard, the State party should withdraw the 2012 discriminatory proposed Law for the Regulation of the Bedouin Settlement in the Negev, which would legalize the ongoing policy of home demolitions and forced displacement of the indigenous Bedouin communities."^j

This law has been proposed against the background of years of discrimination in relation to the planning and provision of services to the Negev/Naqab Bedouin as compared to Jewish residents of the same areas. Much of this discrimination is a consequence of the omission of the Bedouin residents of excluded villages from regional Master Plans, despite the fact that many of these villages have existed in their current locations for decades.

Lack of legal safeguards against forced evictions

Article 71 (zayn) of the draft law and in particular sub-clause 1, which limits the ability to meaningfully appeal against eviction orders, makes it impossible for the Bedouin citizens who are most likely to be affected by such orders to enjoy legal safeguards against forced evictions and in particular the right to an effective remedy. Sub-clause 2 of the same article further states that evictions will be carried out even if an appeal is filed before a court, while failing to provide for appropriate reparations that are due to evicted persons if their appeal is successful. Amnesty International is therefore concerned that the provisions of Article 71 (zayn) sub-clause 1 and 2 do not comply with the legal safeguards against forced evictions as required by international human rights standards. Under international law, access to effective legal and administrative remedy should be available at any stage of the eviction process regardless of tenure status. Appeals should also be possible after the eviction takes place, for instance if the resettlement package does not meet the needs of the relocated persons.

Article 71 (dalet) of the draft law states, "despite what is stated in the [1965 Planning and Building Law], an eviction order according to this law allows the demolition of buildings even without a demolition permit" (Amnesty International's translation). This article would therefore permit the demolition of Bedouin buildings by the Israel Lands Administration or an appointed body without affording the buildings sufficient legal protections. Furthermore, Bedouin in many parts of the Negev/Naqab are treated as "trespassers" who have no security of tenure and can be removed by force according to Israel's Land Law 5729-1969, Article 2, Section 18B.

Ranking the implementation of demolitions: not a legal safeguard

Amnesty International recognizes the state's responsibility to enforce the rule of law, and in fact the organization has urged the government to ensure that Israeli laws that are enforced do conform with international human rights standards. The Begin report states "it is necessary to consider solutions to the difficulties [of establishing the rule of law], by means of offering incentives to comply with the proposed law for regularizing habitation, and in the framework of these considerations to establish a ranking of the implementation of the enforcement of demolition orders of illegal structures of Negev Bedouin" [p. 11 of the Hebrew original; Amnesty International's translation]. Ranking the implementation of demolitions of property does not constitute a sufficient legal safeguard and this statement does not address the serious concerns voiced by Amnesty International and others that demolitions of property have taken place in Bedouin villages and townships and will continue to take place under the proposed law without such legal safeguards, resulting in forced evictions.

Efforts to conduct consultations

According to General Comment 7 of the UN Committee on Economic, Social and Cultural Rights, evictions may be carried out only as a last resort, once all other feasible alternatives have been explored in genuine consultation with the affected persons. These alternatives can be proposed by those affected by them, collectively, through their elected representatives, if any, and in smaller groups and individually. Thus, the UN Committee has identified “genuine consultation” with affected persons as a fundamental safeguard against forced evictions. Genuine consultation with all affected individuals should include (a) the provision of full, accurate and timely information; (b) effective engagement and (c) the consideration of alternative proposals.

Amnesty International notes that Appendix 1 to the Begin report lists a number of non-governmental organizations, groups and specialists who were consulted in some 40 meetings, and states that a further 170 meetings took place in Bedouin encampments with individuals and small groups amounting to more than 600 persons.

Publishing records of the consultative meetings

In order for authorities to have engaged effectively, the authorities must publicize the consultation meetings and keep records of them. People must have an opportunity to view and challenge those records. Amnesty International notes that the description of the meetings in Appendix 1 of the Begin report does not meet the requirements of effective engagement, since it is not clear when and where the records of the meetings will be published, and in what manner the participants in the meetings will be able to challenge the records.

Ensuring non-discriminatory participation

The authorities must, in all cases, assess and address the needs of the most disadvantaged groups and ensure that the consultation process is non-discriminatory. The manner in which the consultative meetings ensured the effective participation of residents of the “unrecognized villages”, who are living in poverty, and of Bedouin women is unclear, if their participation was sought at all.

Providing full, accurate and timely information

In Appendices 2 to 6 of the Begin report, maps are provided that show the East Beer Sheva Master Plan TAMAM 23/14/4, the areas that are designated suitable for new Bedouin re-settlement, the areas where the Bedouins claim land around Beer Sheva, unresolved land claims in the township of Lakiya, and the relocation plan for the “unrecognized village” of Wadi Na’am. Though the maps are accompanied by a caveat that they are for illustrative purposes only, these maps do not meet the requirements for the provision of full, accurate and timely information as required by international law.

In respect of full, accurate and timely information, prior to any consultation, those affected by any proposed eviction should be given full information on (a) the proposed eviction and the reasons for it, and the intended use of the land or property following the eviction; (b) the compensation and alternative housing options that will be provided and any exclusions; (c) the alternatives to evictions that were considered by the authorities; (d) how the eviction and resettlement will be carried out, including the private and public actors who will be involved and details of their roles and responsibilities; (e) opportunities to challenge decisions or any aspects of the eviction process before administrative bodies and the courts and; (f) the objectives, method and timeline of the consultation process (including opportunities to engage with different actors who may be involved) and an opportunity for affected people to make suggestions to increase its effectiveness.

The case of Wadi Na’am

For instance, the map of Wadi Na'am (Appendix 6 of the Begin report) raises more questions than it answers regarding the consultations on the relocation. Though the residents of Wadi Na'am are willing to relocate due to the dangerous conditions that are caused by the placing of a chemical factory and other industries in the vicinity of their village, to which they in any case moved after they were expelled from their ancestral lands in the west of the Negev/Naqab in the 1950s, they are also eager to preserve their agriculture-based lifestyle.

Residents have told Amnesty International that they explicitly object to plans for relocation to Segev Shalom, because they would not be able to continue tending livestock there. The residents also stated their preference for returning to the lands they claim in the south-western Negev/Naqab. Yet the map places them within Segev Shalom, and partly within the planned area of Ramat Khovav industrial zone, and on grounds that the map in Appendix 3 of the very same document does not designate as suitable for new rural re-settlement. This proposed re-settlement of the residents of Wadi Na'am appears to violate their rights to genuine consultation with regards to ensuring that the cultural adequacy of the form of housing proposed in the Begin report meets the community's needs, and as such their relocation could constitute a forced eviction under international law.

The UN Committee on Economic, Social and Cultural Rights has emphasised the obligation of states to provide adequate alternative housing to all those who cannot provide for themselves. Any resettlement plan and alternative housing provided must fulfil the criteria for adequacy of housing under international human rights law. The Committee has identified the following elements which are crucial to determine whether any particular form of housing can be considered to constitute 'adequate' housing under Article 11 (1) of the ICESCR: legal security of tenure; availability of services, materials, facilities and infrastructure; location; habitability; affordability; accessibility; and cultural adequacy.

The final decision on any eviction should provide a clear justification of why it needs to be carried out, the alternatives that were considered, the reasons for rejecting them and any other efforts made by the authorities to avoid evictions and minimize negative impacts. The authorities must also clarify how they have addressed any concerns raised by the affected community, and how their input has been incorporated into plans and options for resettlement and compensation and on the timing and process used for the eviction.

Ensuring effective legal remedy for evictions

To Amnesty International's knowledge, plans such as those published for Wadi Na'am have not been published for any other "unrecognized village". The Bedouin also have a right to an effective legal remedy, including access to justice and appropriate reparation, including but not limited to restitution and/or adequate compensation, as required under international law. Under international law, access to effective legal and administrative remedy should be available at any stage of the eviction process regardless of tenure status. Appeals should also be possible after the eviction takes place, for instance if the resettlement package does not meet the needs of the relocated persons. Only when these elements are guaranteed can all the Bedouin affected by evictions be reassured that the proposed law will provide just satisfaction.

Consideration of all feasible alternatives based on international law

With respect to the need to explore all feasible alternatives, Amnesty International is dismayed at the following statement in the Begin report:

"However, we also heard proposals that disregard reality and its constraints. Within the theoretical discussion of the issue of the Bedouins in the Negev in recent years, concepts such as "transitional justice" (during a change of sovereignty), property rights of semi-nomads and "indigenous rights" have been raised. These concepts are not appropriate to reality, and this discourse, as interesting and thought provoking as it is, has not so far produced a feasible

solution to the difficult problem we face, one that would be in line with the limitations of economic, legal, social and political reality.” [p. 3 of the Hebrew original]

It is unclear why any such proposals which are grounded in international human rights law applicable in Israel are considered to “not [be] appropriate to reality”.

The granting of legal status to the excluded villages, which Amnesty International, Israeli human rights organisations and community representatives have called for repeatedly, deserves serious consideration as it would offer a feasible alternative to evictions. The Begin report indicates that some of the “unrecognized villages” will be given legal status. In the cases where the argument for official recognition is rejected, the government should provide clear justifications for the decision and explain how the residents’ concerns will be addressed in the plans.

Alarming dismissal of Bedouin land claims

Articles 11 to 70 of the draft law restrict the conditions under which a Bedouin land claimant may bring a case to court to adjudicate on the ownership of the land and to receive appropriate remedy for its expropriation by the state; in particular article 69 (alef) which reads, “an ownership claimant who did not register his claim and did not submit a request to clarify his claim according to the regularization procedures within the date stipulated for submission (hereafter a late claimant), and on whose claim the court did not make a decision by the end of the regularization period, will not have a claim to ownership according to the procedures of the regulation even if he proved his right to the land in these procedures” (Amnesty International’s translation). These restrictions on ownership claims severely undermine the Bedouin’s right to an effective legal remedy, including access to justice and appropriate reparation, including but not limited to restitution and/or adequate compensation, as required under international law.

The lack of remedy is aggravated by the government’s Decision 3707, paragraph 11, which appears to dismiss all Bedouin land claims out of hand without consideration of the merits of individual claims, when it states “...these arrangements all constitute proposals for giving compensation on the basis of a compromise that does not recognize property claimant rights, in order to arrive to a suitable solution to the problem in its totality. The proposal of this decision therefore constitutes a continuation of this policy and is not an exception to it. To summarize, neither the government decision nor the law that will be proposed after it recognizes the legal basis of the property claims, but rather the opposite – an arrangement that in its entirety is done without obligation and is based on the assumption of the absence of property rights” (Amnesty International’s translation).

Amnesty International is alarmed at the conspicuous absence of references to international law in both the draft law and the Begin report and fears that expediency is being promoted at the expense of a just and lasting solution based on international law:

“The demand for the realization of all of the claims of the Bedouins does not bring a solution any closer, the opposite is true, and time for an efficient and pragmatic solution of the problem is running out. Those who demand the full realization of all of the ownership claims for a minority of the Bedouins on the basis of “absolute justice” must not be allowed to deny over 100,000 Bedouin children the conditions vital for a better future that will be based on a compromise.” [p.3 of the Begin report in the Hebrew original]

“These possibilities will form the basis for a consultation process with the residents that will be conducted in the framework of the process of settlement planning. This consultation does not release the state from its obligation to conclude the planning within a reasonable time also in cases where agreements with the residents had not been reached.” [p.5 of the Begin report in the Hebrew original]

Human rights and the economic development of the Negev/Naqab

The plans for regularizing Bedouin habitation in the Negev/Naqab are justified by the government – most recently at the cabinet meeting on 27 January 2013 – as necessary, among other reasons, for the economic development of the Negev/Naqab and the Bedouin in particular. One of the arguments made is that the excluded villages are inaccessible and therefore services cannot be efficiently provided.

According to the UN Basic Principles and Guidelines on Development-based Evictions and Displacement (IV A Principle 21):

"States shall ensure that evictions only occur in exceptional circumstances. Evictions require full justification given their adverse impact on a wide range of internationally recognized human rights. Any eviction must be (a) authorized by law; (b) carried out in accordance with international human rights law; (c) undertaken solely for the purpose of promoting the general welfare; (d) reasonable and proportional; (e) regulated so as to ensure full and fair compensation and rehabilitation; and (f) carried out in accordance with the present guidelines. The protection provided by these procedural requirements applies to all vulnerable persons and affected groups, irrespective of whether they hold title to home and property under domestic law."

Furthermore, Principle 60 of the same Guidelines states:

"when eviction is unavoidable, and necessary for the promotion of the general welfare, the State must provide or ensure fair and just compensation for any losses of personal, real or other property or goods, including rights or interests in property. [...] Cash compensation should under no circumstances replace real compensation in the form of land and common property resources. Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value, or better."

The Begin report acknowledges on more than one occasion that the Bedouin have equal rights as citizens of Israel, yet there is insufficient evidence that their rights have been respected at various stages in this process.

Amnesty International is therefore once again calling on the Israeli government to:

- Drop the proposed law;
- Ensure that legal status is granted to the excluded Bedouin communities in the Negev/Naqab, the so-called "unrecognized villages";
- Give security of tenure to the residents of these villages;
- Provide adequate services to their inhabitants, including safe drinking water, electricity, sanitation, refuse disposal and emergency services;
- Suspend immediately efforts to forcibly evict and resettle the inhabitants;
- Halt all demolitions until the laws and policies governing the Bedouin in the Negev/Naqab are amended to ensure their conformity with Israel's obligations of non-discrimination under international law;
- Ensure an adequate standard of living, including housing for all residents of these villages; and
- Guarantee an effective remedy against forced evictions, including access to justice and appropriate reparation for those who have had their homes demolished and been forcibly evicted.

ENDNOTES

ⁱ Committee on the Elimination of Racial Discrimination: Concluding observations of the Committee on the Elimination of Racial Discrimination on Israel's 14th to 16th Periodic Reports, Paragraph 20, CERD/C/ISR/CO/14-16, <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.ISR.CO.14-16.pdf>.