



May 2013

Joint Position Paper: Bill on the Arrangement of Bedouin Settlement in the Negev

The Association for Civil Rights in Israel (ACRI) and Bimkom – Planners for Planning Rights have been dealing for many years with the issue of Bedouin rights, in all spheres of life. During the last five years we have focused specifically upon the report produced by Justice Eliezer Goldberg and the outline for its implementation, which was prepared by a team headed by Mr. Ehud Praver. During the aforementioned period we have been in constant contact with both the Bedouin community and with all political and professional parties engaged in formulating and implementing the government's program. Our organizations, which deal with the legal and planning aspects of the program, have a critical, professional and detailed position regarding this program.

Introduction

The Bill on the Arrangement of Bedouin Settlement in the Negev, 5773-2013, is expected to be introduced to the Knesset in the near future. This bill primarily concerns the regulation of Bedouin land ownership in the Negev, and also has consequences regarding the possibilities of recognition and planning for the unrecognized villages in the Negev.

We further seek, in this document, to give a broader picture of the factual and legal situation of the Bedouin in the Negev, and of the Praver Plan (including amendments to the plan following the work of former Minister Benny Begin) regulating Bedouin settlement in the Negev, rather than only dealing with the details of the particular bill in question. This is in light of our belief that the topic cannot be discussed in a partial manner, without an understanding of the full picture and the issues currently on the table.

We hope to enable you to see the full picture from a somewhat different perspective, prior to a decision being adopted by the government and the Knesset regarding the Bedouin in the Negev. These decisions have the potential to affect the Bedouin and their relationship with the State of Israel dramatically and in the very long term.

Historical Background: Arab Bedouin in the Negev

Approximately half of the Arab population of the Negev, about 90,000 people, live in some 46 Bedouin villages. Israel refuses to recognize or to regulate planning or municipal government for most (35) of these villages. The vast majority of these villages existed before the establishment of the state; some were established during the 1950s when state authorities relocated the Bedouin population from their traditional land to a smaller area in the northeastern Negev called the Siyag region. In contrast to the public discourse in Israel, the Bedouin are not invaders, but rather the original inhabitants of the Negev who have property rights to the land they have farmed and held.

Some continue to live on the same land where they have lived since long before the establishment of the state; others are displaced people who, as mentioned above, were transferred from their historical land to the Siyag region. In this context it must be emphasized that under both the British and Ottoman rules, the Bedouin's property rights were recognized according to their customary legal systems. Land transactions were executed in accordance with this system of property rights, and Jewish settlements such as the city of Be'er Sheva were established on land purchased from the Bedouin through these formal property transactions.

After the establishment of the state, Israel began to ignore the existence of the Bedouin villages in all planning laws and master plans, and disregarded their property rights and the traditional property framework under which they have operated for hundreds of years. Although the state began a process of regulating land ownership in the 1970s, it never completed this process (in the bill in question, records of claims made in the framework of this process will be used a basis for the entire bill). Later, when the Bedouin began to claim ownership over their land, the state required them to prove ownership of the land using means that they were not able to produce (for example, a requirement to prove that they had been cultivating their land since the first half of the 19th century, and so on.) The legal construction that was established and the state's refusal to recognize the traditional Bedouin system of property rights, coupled with the state's counter-claims of land ownership, resulted in a situation whereby anyone who submitted a claim of land ownership, would inevitably lose.

It is important to note that the state's decision not to recognize the Bedouin villages makes life unbearable in these villages, whether by preventing the provision of essential services, including the connection to electricity and water grids, health, education and welfare, or through the policy of house demolition which constantly hangs over the heads of unrecognized village residents.

The state's non-recognition of the Bedouin villages constitutes a violation of basic human rights, including the right to dignity, the right to property, the rights to housing, education and health, and the right to realize these rights. Furthermore, the lack of recognition violates the right to maintain a community's cultural character.

What does the Praver Plan call for?

The Goldberg Report's implementation plan, prepared by a team led by Mr. Ehud Praver and later edited by a team led by then-Minister Begin (henceforth: "the Praver Plan"), includes two central tracks that occur simultaneously: (1) the land track and (2) the planning track regulated by the Regional Master Plan 4/14/23. We are of the opinion that both of these tracks have problematic proposals with difficult consequences for the Bedouin population of the Negev and are a flagrant violation of their human and civil rights, as will be described below in detail.

Following then-Minister Begin's work, various changes were entered into the Praver Plan, which consist of a return to the spirit of the Goldberg Report, but we are of the opinion that these are minor changes, for the most part rhetorical (such as the use of the terms "unrecognized villages" instead of "dispersal," and "recognition of as much as possible" of the villages) and similar small changes in the proposed arrangement (level of compensation, compensation for the type of land

that was not included previously, etc.). **However**, these edits do not significantly change the proposed arrangements and their basic principles, and therefore there is no real news in the edited plan.

What follows is an explanation of each of the tracks and our assessment of it –

- (1) **The land track**: The goal of this track is to regulate the ownership of Bedouin land in the Negev. The track is implemented by the bill under discussion. In general, the bill proposes an arrangement of registering claims within a defined period of time, legal recognition of claims on only one percent of the land and monetary or land compensation for the land recognized in the arrangement. The ownership arrangement directly influences the recognition arrangement and planning of the villages because it deals with land allocation – how much land? Where will it be located? What kind of land? Etc.

What is the problem with the proposed arrangement?

1. The **agreement is one-sided** and not accepted by the Bedouin population. It is an attempt to dictate an arrangement, with all its procedures, conditions, and considerations, while undermining property rights (and at least, while influencing and changing these rights). The meaning of the arrangement is the expulsion of the Bedouin population from 90% of the lands it claims.
2. **The bill does not recognize the historical rights of the Bedouin over its lands in the Negev** and completely ignores that fact that most of the Bedouin villages in the Negev are historical villages whose residents have been living on their lands since before 1948.
3. The bill determines a mechanism for implementation that would mean **demolition and evacuation of entire villages** and require the evacuation of between 30,000 people (according to the estimate of Praver's implementation headquarters) and 40,000 people (according to the estimate of the population and the undersigned organizations).
4. **The proposed arrangement is unequal and discriminatory** because it is a land and property arrangement specific to the Bedouin population only. It replaces the normal legal process of ownership clarification, applicable to the general population. The option of a legal process is open to the Bedouin; however, over the years, this option has in practice become irrelevant, because of the legal process created by the state which does not recognize ownership in accordance with traditional Bedouin law, as described below.
5. **The bill discriminates between different types of Bedouin, and between Bedouin and the rest of the population** by excluding two-thirds of the Bedouin, who claim land ownership, from receiving land compensation, and provides compensation which will amount to less than one percent of the lands claimed by the Bedouin (who claim a total of 5% of the Negev lands).
6. The proposed arrangement includes **extremely harmful and problematic sanctions**, which may undermine basic rights of individuals to whom the bill applies. *Inter alia*, the arrangement would determine that those who do not register

for the arrangement within the period of time determined by the bill will have their compensation decrease gradually until a total loss of property rights. It would also determine that when there is joint land ownership, the failure of one or several of the family members to register will damage the compensation of those who do register, etc. The bill additionally determines a period of time of five years, at the end of which the land belonging to anyone who did not cooperate will be registered as state land.

7. **The bill does not include all the areas** over which the Bedouin claim ownership. For example, areas in the western Negev out of which the Bedouin were transferred by the state are not included in the arrangement at all, and for these lands the Bedouin can only receive monetary compensation. In addition, lands west of highway 40 are not included in the arrangement.
8. In addition, the arrangement does not recognize claims of **certain types of lands**, for example, lands on various inclines.

(2) **The Planning Track:** At this time, and in practice for over a decade, the planning institutions are advancing Regional Master Plan 4/14/23 for the Be'er Sheva Metropolitan Area. According to this plan, all aspects of life in the Negev – roads, bases, infrastructure of all kinds, and settlements, including Bedouin settlement in the Negev – are meant to be regulated. This outline plan is meant to serve the Negev for the coming decades and is forward-looking.

In the Prawer Plan, infrastructure was laid to implement planning solutions, which will be conducted in the framework of the Be'er Sheva Metropolitan Area Plan. The Prawer Plan determines the basic principles according to which the Bedouin settlements should be planned, including preference for transferring the population from unrecognized villages to existing towns or to the eleven villages which were recognized by the government and unified into the Abu-Basma Regional Council (which was recently divided). After these options, preference is given to recognizing settlements contiguous with existing towns and combining them into those towns, and establishing new Bedouin towns only if there are no other options.

In addition, the plan would determine that a settlement will only be regularized if it meets the criteria determined by the plan: high population density, a contiguous built-up area and a lack of land left undeveloped, agricultural land outside of the village, a minimum size, municipal functional capacity, etc.

In addition to these principles, and subject to the Regional Master Plan, at this time, a planning team meets at the Prime Minister's Office (as differentiated from the regular planning institutions) to prepare a plan for the Bedouin settlements.

The problem with the proposed planning track:

1. First of all, this is **a discriminatory plan** – not only have special planning principles been determined for the Bedouin settlements in the Negev, which are not an integral part of regular Israeli planning law, but also the planning principles determined discriminate against the Bedouin population in the Negev compared to the Jewish population, whose rural settlements (approximately 115 Jewish settlements in the Negev, including 60 isolated farms) are not forced to meet the criteria and standards demanded of the Bedouin settlements). From the planning criteria, as well as the arrangements for land ownership proposed by the bill, it is clear that the plan is not based on an intention to recognize the locations of the unrecognized villages that have existed since before the establishment of the state, or around the time of the establishment of the state, but rather to recognize a small part of the residential clusters in the villages, if at all.
2. The plan has a **primary goal of concentrating different population groups into a pre-defined area** (the “search area” in the master plan is land zoned as “combined rural and agricultural land”), and forbids the establishment of Bedouin settlements in the areas outside of the defined zone. This enhances the suspicion of discrimination on the basis of ethnicity.
3. In addition, **the plan obligates a massive population evacuation** (from 30-40,000 people) to the search area but also within it.
4. The plan also mandates the **demolition of entire villages**, the destruction of the fabric of rural life – social, cultural, and economic – rather than recognizing it.

Integrating the two tracks undermines advancing an arrangement:

The Praver Plan integrates these two tracks with the claim that without arranging land ownership, it is not possible to go forward with planning. We are of the opinion that this is not critical, and, in fact, in the past the state has recognized unrecognized villages without an arrangement of the land ownership issue, and even decided to conduct planning processes that take into account the existing distribution of settlements, which is based on land ownership, but do not obligate their regularization. But beyond this, we claim that the bill undermines the possibility of advancing towards an arrangement agreed to by both sides, to be implemented by both the state and the Bedouin.

It is clear that recognition of Bedouin villages in the Negev and arrangement of land ownership are urgent and critical issues. The only question is, what is the best and most correct and just way to do it, in a way that will preserve the Bedouin’s rights and provide a just and equal solution, as done with regards to settlement of the rest of the Israeli population, including in the Negev. Placing the land arrangement bill as the condition without which it is impossible to solve the settlement issue and complete the planning of the villages undermines the possibility of advancing planning and recognition of the villages and the ability to find a course acceptable to both sides that solves the ownership issue, whilst recognition of the Bedouin’s affinity to their historical lands. Perhaps there is an intention to this end, through the retired Minister Begin’s work, to advance the planning processes. But in any case, there is no intention to complete them without legislating the bill in question. Either way, beginning legislation of the bill at this time, prior to any real advancement of

the planning process, significantly undermines faith and raises doubts as to the intentions of the government.

What can be done in order to recognize the Bedouin villages in the Negev and arrange the land ownership issue?

Instead of a problematic arrangement, as described above, we are of the opinion that a special effort must be made on behalf of the government to arrange land ownership while recognizing the Bedouin's historical affinity to their lands, in partnership and through dialogue with the owners of the land. A one-sided, harmful arrangement should not be dictated, in the name of protecting property rights and equality, as well as a proper and just relationship between Arab citizens of Israel in the Negev and institutions of the government and Israeli society in general.

We also propose to continue advancing the planning process in which Bedouin settlement in the Negev is regulated and unrecognized villages are recognized, while taking into account the rural and agricultural nature of the Bedouin settlements, their settlement patterns in terms of land ownership, social-familiar structures, etc. The master plan prepared by Bimkom, together with the Regional Council of Unrecognized Villages and Sidreh, can be taken as an example.

Advancement of planning and development, and their separation from the ownership issue (as opposed to the government's stance, according to which the planning processes cannot be completed without the bill under discussion being completed) is the way to create trust with the Bedouin population, ensure their basic rights to education, health and welfare, and reach a complete solution of the issue at the end of the day.

In conclusion

We call on all Members of Knesset to vote against this bill, which is not necessary to regulate Bedouin settlement in the Negev (planning processes) and only causes problems, mistrust and alienation of Bedouin citizens with regard to the government.

In addition, we call for the advancement of the planning processes, while recognizing unrecognized villages and their regularization like any other settlement in the Negev, as well as advancement of a plan agreed to by both sides in order to regulate land ownership while recognizing the Bedouin's affinity to their historical lands.

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