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Mandate of the Special Rapporteur on the rights of indigenous peoples

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Excellency,

I have the honour of addressing you in my capacity as United Nations Special Rapporteur on the Rights of Indigenous Peoples, in accordance with Human Rights Council Resolution 15/14.

As you are aware, over the past year, I have been in contact with your Excellency's Government regarding the alleged ongoing demolitions of "unrecognized" Bedouin villages in the Negev desert and the relocation of their inhabitants to Government-planned villages. In light of the ongoing information received about this situation, on 1 February 2011 I sent another letter to your Government, this one detailing the concerns I had received about the situation of Bedouin in the Negev, and asking your Government to respond to a series of questions in relation to this situation. As well, on 1 September 2010, I sent another letter to your Government expressing my interest in carrying out a visit to Israel to examine the situation of Bedouin people in the Negev; to date, I have not received a response to that letter. Furthermore, in follow up to these communications, on 7 March 2011 I met in Geneva with Mr. Walid Abu-Haya of the Permanent Mission of Israel to the United Nations, and Ms. Nina Ben-Ami of the Ministry of Foreign Affairs, who informed me that my request for a visit was under consideration. I am thankful to your Government for taking the time to meet with me; I found our meeting very fruitful.

However, I regret that to date, there is no record of any reply from your Excellency's Government to my letter of 1 February 2011 and that I have not received a response to my request for a visit. Nonetheless, I consider it important, in fulfillment of the terms of my mandate, to provide observations on the situation of the Bedouin in the Negev as well as a series of recommendations that I hope will be conducive to addressing this human rights situation. I intend to include these observations in my report to the Human Rights Council.

Background

Before setting forth my observations on the situation, allow me by way of background to provide a brief summary of the information and allegations conveyed in my letter of 1 February 2011.

According to information received, the Bedouin have inhabited the area known as Negev since the seventh century, maintaining a semi-nomadic lifestyle, and engaging in subsistence farming and raising livestock. Their land use practices were governed by an intricate system of

customary land and water distribution and management. Allegedly, since 1948 the State of Israel has failed to recognize Bedouin legal entitlement to their traditional lands in the Negev, and instead most all of the lands in the Negev are officially designated as under ownership by the State. Rather than adopt a land policy that recognizes the villages established by the Bedouin in the Negev, from the 1960s to the 1980s the Government planned and created seven towns in the Negev and relocated Bedouin from their villages to these urban areas. These planned towns are Rahat, Ar'ara BaNegev, Tel Sheva, Kuseifa, Segev Shalom, Lakiya and Hura. Even though the Government has committed significant resources toward Bedouin housing and delivery of essential services to these towns, the people in the Government-created towns reportedly rank at the bottom of all the indicators used by the State to measure social and economic well being. Furthermore, the Bedouin have complained that they cannot continue to live in their traditional manner in these urban areas, given that raising crops or animals in the towns is not permitted.

Reportedly, out of approximately 155,000 Bedouin living in the Negev today, around half live in the recognized towns created by the Government and half live in 47 so-called "unrecognized villages". According to the information received, although officially unrecognized, the majority of these villages were established prior to the creation of the State of Israel, and virtually all were established prior to the creation of the Government-created towns. The unrecognized villages are denied all forms of basic infrastructure and are not allowed to build or develop in any way. Building permits may not be issued in unrecognized villages, resulting in Bedouin individuals being indicted continually for "illegal" construction and in countless Bedouin homes being subject to demolition orders. It is further alleged that, since the early 1990s, Bedouin people living in unrecognized villages throughout the Negev desert have experienced ongoing demolitions of their homes and villages by Israeli authorities. Most recently, during the course of 2010 and 2011, the Al-Arakib village has been destroyed on nine occasions, after having been rebuilt by villagers following each demolition. Reportedly, the residents were given no notice or warning about the demolitions which would have allowed them to retrieve their personal possessions and valuable items like gas stoves and water tanks. Their sources of livelihood – olive trees, poultry and sheep – were also destroyed.

Observations

In my communication to your Excellency's Government of 1 February 2011 transmitting the above information and allegations on the situation of the Bedouin in the Negev, I requested a response within 60 days. To date, no such response has been received. Having cross-checked the information received and transmitted on this situation, and in absence of a response from your Excellency's Government, I consider that in material respects the information is sufficiently credible to indicate a pressing problem that requires attention by the Government of Israel. In an ongoing spirit of constructive dialogue and cooperation, I offer the following observations, which include a series of recommendations, in the hope that they may assist your Government to address this issue.

Duty to protect Bedouin rights to land and resources in the Negev

I consider there to be strong indications that the Bedouin people have rights to certain areas of the Negev based on their longstanding land use and occupancy, under contemporary international standards. It is undisputed that the Bedouin have used and occupied lands within the Negev desert long before the establishment of the State of Israel and that they have continued through the present to inhabit the Negev, maintaining their culturally-distinctive land tenure and way of life. Yet, claims have persisted that the rights of the Bedouin to the lands they traditionally

use and occupy in the Negev have not been adequately recognized and respected by the Government of Israel, either historically or today.

The land tenure situation of the Bedouin in the Negev has been identified as a matter of concern by both the Human Rights Committee, in its review of Israel's compliance with the International Covenant on Civil and Political Rights¹, and by the Committee on the Elimination of All Forms of Racial Discrimination (CERD), in its review of Israel's compliance with the Convention on the Elimination of All Forms of Racial Discrimination². In particular, the Human Rights Committee has stated that Israel "should respect the Bedouin population's right to their ancestral land and their traditional livelihood based on agriculture" (CCPR/C/ISR/CO/3, para. 24). Similarly, CERD has recommended that Israel give "recognition of the rights of the Bedouins to own, develop, control and use their communal lands, territories and resources traditionally owned or otherwise inhabited or used by them" (CERD/C/ISR/CO/13, para. 25).

I note the United Nations Declaration on the Rights of Indigenous Peoples sheds further light on the obligations of the State in relation to the Bedouin. The difficulties of the Bedouin in maintaining their distinct cultural identities and connections to their traditional lands are akin to the problems faced by indigenous peoples worldwide. The Declaration, as evident by its terms, and various United Nations programs and mechanisms concerning indigenous peoples, including my mandate as the Special Rapporteur on the rights of indigenous peoples, are specifically relevant to those groups indigenous to a territory that are in non-dominant positions and that have suffered and continue to suffer threats to their distinct identities and basic human rights, in ways not felt by dominant sectors of society.

Accordingly, with respect to Israel's alleged failure to recognize and respect the rights of the Bedouin to lands and resources in the Negev, it bears mentioning that the United Nations Declaration on the Rights of Indigenous Peoples affirms:

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Further, I am concerned that there appears to be no effective land claim procedure which Bedouin people could invoke, prior to their removal from lands they occupy or to the demolition of the unrecognized villages. I note that, as provided by the Declaration on the Rights of Indigenous Peoples, States have an affirmative duty to establish a process for identifying and protecting indigenous land rights, and that this process should be carried out in cooperation with the indigenous peoples concerned³. Given the failure of the State to establish a mechanism

¹ CCPR/C/ISR/CO/3, para. 24 (2010).

² CERD/C/ISR/CO/13, para. 25 (2007).

³ Article 27 of the Declaration affirms that "States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including

through which the Bedouin may seek to have any existing rights to lands and resources recognized, the Bedouin people appear to have been defenceless in the face of threats to their rights to lands and resource, threats that have materialized through the alleged destruction of unrecognized Bedouin villages and forced removal of Bedouin people.

Limitations on rights to land and redress

Like other property interests, the property rights of indigenous peoples based on their traditional land and resource tenure may be subject to limitations for legitimate, non-discriminatory public purposes in accordance with the law. I would welcome information from the State of Israel regarding the justifications and legal basis for the limitations which have been imposed by the demolition of Bedouin villages, including land rights of the Bedouin.

According to the information I have received from other sources, possible explanations for the Government's demolitions of unrecognized Bedouin villages include the need to concentrate the Bedouin people into recognized towns and settlements so as to assist in the delivery of services to them. Another possible reason identified for the demolitions is to clear the way for maintaining a Jewish presence throughout the Negev, in order to off-set the high population growth of the Bedouin, which is one of the highest in the world. With respect to the first of these possible justifications, there are questions regarding the non-discriminatory application of this policy, since according to the information received Jewish settlements in the Negev are provided with essential services while Bedouin settlements of comparable sizes and populations are not. The second of these possible justifications – assisting in maintaining a Jewish presence in the Negev in order to off-set the high population growth of the Bedouin – is racially discriminatory on its face, and thus, even if it were established by law, would not constitute a legitimate limitation on Bedouin land rights in compliance with relevant international standards.

I further note that, while in general, removals of people from their traditional lands have serious implications for a wide range of human rights; these implications are greater for groups like the Bedouin, who hold bonds of deep historical and cultural significance to the lands in which they live. In this context, consent is a precondition for any forced removal according to article 10 of the United Nations Declaration on the Rights of Indigenous Peoples, which states that “[i]ndigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return”.

I have been informed that some of the past relocations of Bedouin from unrecognized villages to urban townships were, in some instances, carried out in consultation and with the consent of the affected Bedouin people. However, according to the information received, which I find to be credible, there have been several more recent cases, including the case of the Al-Arakib village, in which consent of the affected Bedouin was clearly not obtained prior to the demolition of their village.

Moreover, even if after careful analysis and bearing in mind the above standards, restrictions on the rights to land and resources of the Bedouin people is considered an option, these restrictions should only take place with adequate mitigation measures and, in the case of any removals, with the agreement of the affected Bedouin people within a participatory,

those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process”.

consensus-building process, and the opportunity to return to their traditional lands. In this connection, article 28 of the Declaration affirms the right of indigenous peoples “to redress, which can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent”, and “[u]nless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.”

In the cases that have been brought to my attention, including the case of Al-Arakib, it is alleged that no alternative lands in which the Bedouin may continue their traditional ways of live have been set aside and no monetary compensation for the removals and the land loss has been provided. Moreover, a number of reports indicate that in the course of the forced removals, the Bedouin people have suffered the destruction of personal belongings and livestock, with no compensation.

Recommendations

In light of the foregoing, I would like to make the following recommendations to the Government of Israel:

The Government should ensure that all laws and administrative practices related to lands and development align with international standards concerning the rights of indigenous peoples to land, territories and resources. To this end, the Government should undertake a comprehensive review of its land and development policies affecting the Bedouin people living in the Negev, giving due attention to the recommendations in relevant reports of the Human Rights Committee and the Committee on the Elimination of All Forms of Racial Discrimination. As part of this review, Israel should establish a mechanism to identify and protect the lands in the Negev over which the Bedouin people have legal entitlement, in accordance with relevant international standards.

Israel should immediately cease to carry out any further demolitions of Bedouin villages in the Negev or any forced relocations of Bedouin from unrecognized villages to recognized townships, unless in consultation with affected Bedouin and pursuant to their free, prior and informed consent.

Israel should establish an adequate mechanism under which affected Bedouin can apply to receive redress for any restrictions or infringements on their rights to land and resources, including such restrictions or infringements resulting from demolitions and evictions carried out. Redress should include comparable alternative lands and monetary compensation for lands, resources and other property that have been lost, and the option of return of affected groups to their traditional lands, at a future date, if possible and if they so desire.

Israel should ensure the delivery of essential services to Bedouin people, both within and outside the recognized towns. In this connection, I support and reiterate the recommendation of the Human Rights Committee that Israel should “guarantee the Bedouin population’s access to health structures, education, water and electricity, irrespective of their whereabouts on the territory of the State party” (CCPR/C/ISR/CO/3, para. 24 (2010)).

The Government should embrace a long-term vision for social and economic development of the Negev, including in the “unrecognized” Bedouin villages, bearing in mind the

historical and cultural importance of these villages to the Bedouin and to the society at large. This long-term vision for development of the Negev should enable Bedouin to become active participants in and direct beneficiaries of any development initiatives affecting the lands the Bedouin traditionally use and occupy within the Negev.

Concluding comments

Excellency, these observations and recommendations represent only an initial assessment of this situation, and I would welcome the opportunity to maintain a continued dialogue with the Government of Israel in this regard. Therefore, I would like to reiterate my interest in carrying out an on-site visit to Israel to examine in greater detail the situation of the Bedouin in the Negev, in accordance with the mandate entrusted to me by the Human Rights Council to “examine ways and means of overcoming existing obstacles to the full and effective protection of the rights of indigenous peoples [...] and to identify, exchange and promote best practices” (HRC Res. 15/14).

I invite comments by your Excellency’s Government on the above observations, particularly with regard to the steps it may take to implement the recommendations provided. As noted earlier, I intend to include these observations in my report to the Human Rights Council for its consideration. If I receive comments by your Excellency’s Government prior to 18 July 2011, I can make assurances that these will be included alongside my observations and the summary of communications in my next public report to the Council.

Please accept, Excellency, the assurances of my highest consideration.

James Anaya
Special Rapporteur on the rights of indigenous peoples