

Mandates of the Special Rapporteur in the field of cultural rights; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the human rights of internally displaced persons; the Special Rapporteur on minority issues and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

REFERENCE:
AL ISR 6/2019

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur in the field of cultural rights; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the human rights of internally displaced persons; Special Rapporteur on minority issues and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, pursuant to Human Rights Council resolutions 37/12, 34/9, 34/5, 32/11, 34/6 and 34/35.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **plans announced by the Authority for the Development and Settlement of Bedouins in the Negev/Naqab on 28 January 2019 to forcibly evict and displace up to 36,000 Arab Bedouin citizens of Israel living in unrecognized villages in the Southern Negev/Naqab region over the coming years in order to expand military training areas and implement economic development projects.** In addition, we would like to bring to your attention **the charges against and detention of Sheikh Sayah Abu Madhi'm al-Turi, a Bedouin human and land rights defender from al-ʿArāgīb, in the Negev/Naqab region.** His detention is reportedly linked to his advocacy and work on Bedouin land claims in al-ʿArāgīb and the currently unrecognized Bedouin village in that region, which has been demolished numerous times since 2010 and whose residents have been forcibly removed.

The issue of forced evictions targeting the Bedouin minority, as well as demolitions and destruction of Bedouin property, has already been raised by Special Procedures' mandate holders in the past, through the letter ISR 10/2014 of 14 October 2014. We regret that the Government of Israel has yet to respond to this letter and to the concerns expressed therein, including with regard to the implemented planning and zoning regime, which has resulted in the issuance and enforcement of demolition orders, and restrictions imposed on Bedouins related to access to grazing lands and markets for their products.

According to the information received:

Context with regard to Bedouin land

Since the early 1950s, there has been a reclassification of Bedouin land in the Negev/Naqab region using the Absentees' Property Law of 1950 and the Land Acquisition Law of 1953. These laws provided the legal grounds for the transformation into state land of all those areas from which Bedouin populations had been removed. Bedouin land was considered a "mawat land", which meant "dead land", in accordance with the 1858 Ottoman Land Code and the 1921 British Mawat Land Ordinance. The Government of Israel later classified this land as state land by incorporation of these laws into the national legal system. The main argument was that any land, which had never been cultivated or settled by people, was considered "mawat" and belonged to the state. By 1954, the Development Authority of Israel had transferred hundreds of thousands of hectares of Bedouin land, mostly from the northwest Negev/Naqab, into the registry of Israel Lands.

Allegedly, in its assessment of the Bedouin land, the Government of Israel had relied on travel diaries written by missionaries from the 19th century, who had visited the Negev/Naqab region and who had not mentioned the Bedouin villages. Other arguments for the classification of the land as state land focused on national security and development planning.

In 1970, the Government of Israel launched a land settlement program in the north western Negev/Naqab, which offered Bedouins the opportunity to file ownership claims for their lands. A total of 3,220 claims covering 150,000 hectares of land, were filed to the Ministry of Justice, which was responsible for handling the registration of Bedouin land claims. However, the Government of Israel allowed claims only to the 76,600 hectares of land that were officially registered by state authorities.

In 1975, the Government of Israel formed a special body, known as the "Albeck Committee" (under the leadership of Plia Albeck, head of the civil department of the State Attorney's Office) to address the issue of the Bedouin land claims. In 1975, the Committee reaffirmed the Government's position that the Bedouin land was a "dead land", and therefore could be classified as state land. Nevertheless, the Committee suggested that the Government not approve evictions of the Bedouin population without compensation. The land claims negotiations were conducted by the Israel Land Authority and by 2008, only 380 land claims out of the total 3,220 had been settled. There have also been allegations that the Government of Israel had unilaterally changed the settlement compensation amount offered to the concerned Bedouin land owners several times. In 2004, in line with Government development plans for the regions of Negev/Naqab, the State Attorney's Office of the Southern District and the Israel Land Authority started submitting counter-claims on the remaining unsettled land claims, with a high success rate, due in part to the absence of some of the Bedouin claimants from the court hearings.

Evacuation plans by the Authority for the Development and Settlement of Bedouins in the Negev/Naqab

On 28 January 2019, the Minister in charge of the Authority for the Development and Settlement of the Bedouins in the Negev/Naqab announced a plan to “evacuate” approximately 36,000 members of the Bedouin population in the Negev/Naqab, who in the view of the authorities reside in irregular villages to legal settlements. According to information received the Minister in charge of the Authority has instructed the Authority “to speed up plans to absorb evacuees” in order to extend Highway 6 to the south. This will require the evacuation of some 1,000 families from the communities of Umm Batin, Tel Sheva, Bir Hamam, Abu Talul and Khashem Zane with about 5,000 affected persons to officially recognised areas for settlement in the towns of Tel Sheva, Abu Tlul and Umm Batin. In addition, approximately 5,000 members of the Bedouin minority shall be moved from Ramat Beka to Abu Tlul, Abu Qrinat and Wadi al-Na’am to make place for a weapons testing facility. Furthermore, 2,000 people are planned to be transferred in the Kamaim valley, near Arad, in order to expand the Beka’at Kana’im military firing zone, while approximately 15,000 persons shall be resettled to Wadi al-Na’am and Segev Shalom due to the construction of a new high voltage line of the Israel Electric Corporation, which will not allow them to continue to reside in the vicinity of the voltage lines for safety reasons and health risks. Finally 11,000 members of the Bedouin minority shall be evicted from unrecognized villages of al-Fura’a, al-Ghaza and al-Za’arura in order to build on Bedouin land the Sde Barir Phosphate mine. Residents have filed a petition against this last plan to the Israeli Supreme Court.

The case of the land of al-‘Arāgīb

Al-‘Arāgīb is located west of the Road 40, between Lehavim and Goral junctions, in the midst of a large forestation programme by the Jewish National Fund (JNF). According to the information received, the area has seen the creation of a number of Bedouin tribal encampments since the Ottoman years. The land was purchased by al-Turi tribe from the al-Ukbi tribe in early 20th century, and the village residents were living off the land, by growing olive trees, grapes, barley, wheat and watermelon, and grazing livestock. They were reportedly paying taxes to the Ottoman and British authorities during that time.

In 1953, the Government of Israel ordered the residents of Al-‘Arāgīb to temporarily vacate the village for six months, in order to use the land for military training purposes. However, the Bedouin residents were prevented from returning to their village after the six month period, including through the use of force by state authorities. Nevertheless, some of the Bedouin families returned to the Al-‘Arāgīb area to graze with their sheep.

In 1973, in the midst of the Government programme of Bedouin land settlement of north western Negev/Naqab, the residents of Al-‘Arāgīb filed a claim for 90 hectares of land, without success.

In 2000, the village residents resumed cultivation of the lands of Al-‘Arāgīb, but the state authorities proceeded with aerial spraying of herbicides to destroy the crops. On 22 March 2004, a petition was filed to the High Court of Justice to oppose the spraying of the fields and on 15 April 2007, the Court called on the state authorities to cease this activity.

Since 2007, the pending land claim cases in Al-‘Arāgīb are handled by the Beersheba District Court. The land claims concern eight plots of approximately 194 hectares. The claim by Sheikh Sayah Abu Madhi’ m al-Turi and his family concern approximately 86 out of the total of 194 hectares.

On 23 October 2011, the Court decided to proceed with the hearings on the land claim filed by Mr. al-Turi and his family. The Government’s position has been that the land claim by Al-‘Arāgīb Bedouins cannot be heard by the Court because the expropriation of these eight plots was conducted on the basis of security and development needs. On 30 November 2011, the State of Israel petitioned the Supreme Court requesting the right to appeal the Beersheba District Court’s decision to proceed with the hearings. However, on 30 December 2012, the Supreme Court judges decided that the hearings about the legality of the land expropriations can be held before the Beersheba District Court.

On 26 February 2019, the first expert witnesses were heard by the Beersheba District Court and the case of the legality of the expropriation by the Israeli authorities of the eight plots is still ongoing.

Demolitions of Al-‘Arāgīb and prosecution of Sheikh Sayah Abu Madhi’ m al-Turi

On 27 June 2010, the village of Al-‘Arāgīb was completely destroyed by state authorities, with the presence of the elite unit of the police (Yoav Unit), the patrol inspectors of the Office of Environmental Protection and the inspectors from the Division for Land Security of the Israel Land Authority, accompanying the machines carrying out the demolition. Since 2010, homes and livelihood structures built on this area have reportedly been demolished 140 times, with the last demolition having occurred on 7 March 2019.

According to reports, there have been 2,200 demolitions of Bedouin structures in the Negev/Naqab region in 2017 alone, a 90% increase compared to 2016.

Since 2000, Sheikh Sayah Abu Madhi’ m al-Turi has been at the forefront of the Bedouin land claim in Al-‘Arāgīb, being the head of the village. In the same year state authorities issued a restraining order against Mr. al-Turi, prohibiting him from entering the area of Al-‘Arāgīb. In 2006, Mr. al-Turi filed a claim of

ownership before the Beersheba District Court over his family's land in Al-'Arāgīb, which is still pending.

In 2013, the Israeli Prosecution Unit filed two indictments against Mr. al-Turi, on allegations of trespassing under Article 447(a) of the Israel Penal Code and unlawful entry onto public land under article 5 (c) (a) of the Public Land Law of 1981. On 6 September 2017, following a four-year trial, Mr. al-Turi was convicted by the Beersheba Magistrate's Court of 19 charges of trespassing, 19 charges of unlawful entry onto public land and one charge of violation of an order issued by a public official (Article 287 (a) of the Israel Penal Code). He was sentenced to ten months imprisonment, a probation of five months and a fine of 36,000 ILS.

An appeal to the decision of the Magistrate's Court was presented on 31 January 2018. It was discussed at a hearing in the District Court on 18 June 2018. The District Court's decision was published on 28 August 2018, rejecting the appeal. A motion for leave to appeal was presented to the Supreme Court on 16 October 2018. On 20 November 2018, the Supreme Court rejected the request to appeal the decision of the Magistrate's Court.

Since 25 December 2018, Mr. al-Turi has been detained in Maasiyahu Prison, in Ramleh, near Tel-Aviv.

In addition to the criminal indictments and sentence, there has been a separate civil action filed by the State to the Beersheba Magistrate's Court against Mr. al-Turi and in 2011. The Court requested Mr. al-Turi and other defendants to cover demolition, eviction and trial costs of 360,000 ILS.

On 18 February 2019, the Beersheba Magistrate's Court stated that the previous court decisions still apply and ordered Mr. al-Turi to refrain from residing in Al-'Arāgīb, which if not respected would lead to a daily fine of 500 ILS that could gradually be increased to over 1,000 ILS per day.

Without prejudging the accuracy of the received information, we wish to express our serious concern over the Government plans announced on 28 January 2019, which would result in the eviction and resettlement of more than 36,000 members of the Bedouin minority in the Negev/Naqab, in the name of development or for the purpose of expanding military training or testing facilities. These massive population transfers suggest that not all viable alternative solutions to avoid forced evictions, a gross violation of human rights which also constitutes internal displacement, have been considered, as required under international human rights law and as outlined by General Comment No.7 to the International Covenant on Economic, Social and Cultural Rights. We recall that evictions are only acceptable under international human rights law under very strict conditions, including consideration of all possible measures to avoid relocation. If evictions cannot be avoided, participation of the affected communities in the decision

making and provision of housing, proximate in location, and of at least similar standards with services, and compensation for any loss occurred is required.

Furthermore we express our serious concern over the arrest and detention of Sheikh Sayah Abu Madhi'm al-Turi, which is reportedly linked to his advocacy and work on the Bedouin minority's land claims, including his and his family's claim over land in Al-ʿArāgīb region, which was previously expropriated by the Israeli state authorities. We note with concern that the land claim case of Mr. al-Turi is one of several thousand land claims that members of the Bedouin minority have filed since the 1970s, the majority of which have been stalled mainly due to counter claims that the Government of Israel has filed to defend the legality of expropriation of the claimed Bedouin land. It is of great concern that pending the final litigation on these cases, State authorities have embarked on an aggressive policy of intimidation of Bedouin residents in the Negev/Naqab broader area, including through alleged aerial chemical spraying of fields and grazing lands.

Furthermore, we wish to draw your Excellency's Government's attention to the reportedly significant number of demolitions of Bedouin livelihood structures and homes in the Negev/Naqab region, which amounted to 2,200 in 2017 alone, and which have led to forced evictions and relocations of Bedouin communities, with no guarantees for return. These enforced demolitions and evictions, some of which were allegedly carried out without sufficient prior notice, and other requirements of international human rights law as noted above, exacerbate the overall sentiment within the Bedouin minority of a continued and mounting persecution, with serious adverse effects on the rights of persons belonging to the Bedouin minority, in particular their right to security, to housing, to not being arbitrarily displaced, and to an adequate standard of living, as well as their cultural rights. Of particular concern is the irreparable damage these demolitions and evictions have on the traditional way of life of the Bedouin minority, their livelihoods, their specific forms of living and cultural practices, and their relationship to their land.

Finally, we are deeply concerned at the fact that in addition to the criminal charges against Mr. al-Turi, which were translated into a prison sentence of several months and a fine, the judicial authorities have found Mr. al-Turi liable for civil charges, requesting a full reimbursement of a significant amount of demolition and trial costs, despite the fact that the land claim case of Mr. al-Turi and his family is still pending before the Beersheba District Court.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations;

2. Please provide any information about the planned eviction of approximately 36,000 members of the Bedouin Community announced on 28 January 2019, including detailed information why measures to avoid or reduce resettlement are not possible, when and how the concerned Bedouin communities were consulted and details concerning their planned resettlement (e.g. respective resettlement action plans), the provision of long-term housing options and services provided at resettlement sites;
3. Please provide detailed information concerning the injunctions made against the resettlement plans by concerned individuals before Israeli courts and corresponding judgments.
4. Please provide any additional information with regard to the arrest, sentencing and detention of Sheikh Sayah Abu Madhi'm al-Turi, and please explain the rationale behind the legal action against him as well as his conviction and sentencing, notwithstanding the fact that his and his family's land claims are still pending before the Beer Sheva District Court;
5. Please provide updated information with regard to the land claim case of Mr. al-Turi and his family before the Beersheba District Court;
6. Please provide updated information with regard to the current status of all the reported 3,220 land claims in Negev/Naqab region, and of those in Al-'Arāgīb in particular, and please explain how the enjoyment of the rights of the persons belonging to the Bedouin minority, including their right to adequate housing and to adequate standard of living as well as their cultural rights, are fulfilled and protected;
7. Please provide information on the current number of settled Bedouin land claims, and on the measures undertaken to ensure that the concerned Bedouin claimants are provided with adequate means to follow-up on their claims before the competent judicial authorities.
8. Please provide specific information on the measures undertaken by the Government of Israel to ensure security of tenure to all those members of the Bedouin minority who have already been forcibly evicted and relocated, and whose livelihood structures and homes have been demolished;
9. Please indicate the administrative and judicial measures undertaken by the Government of Israel in order to ensure equal access to justice, including guarantees of non-repetition, compensation, and restitution, for those members of the Bedouin minority that have been forcibly evicted and whose homes and properties have been demolished.

10. Please provide information as to what steps have been undertaken to ensure that human rights defenders in Israel, including defenders of the rights of the Bedouin minority, are able to carry out their peaceful and legitimate work in a safe and enabling environment, free from any physical, judicial or other harassment.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue(s) in question.

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

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Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the following international legal norms and standards.

The right of everyone to an adequate standard of living, including housing, is protected under international law and is enshrined in article 25 of the Universal Declaration of Human Rights and article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Israel is a party since 3 October 1991. These articles must be read in conjunction with Article 2.2 of the Covenant, which provides for the exercise of any right under the Covenant without discrimination of any kind, as well as article 17 of the International Covenant on Civil and Political Rights and article 16 of the International Convention on the Rights of the Child, which provide for protection against unlawful interference or attacks against one's home. In addition, Article 5 of the International Convention on the Elimination of Racial Discrimination requires States to ensure equality before the law, including with regard to the enjoyment of the right to housing and the right to own property alone as well as in association with others.

In its General Comment No. 4, the Committee on Economic, Social and Cultural Rights has stated that the right to housing should not be interpreted in a narrow or restrictive sense by assigning to it a meaning of "merely having a roof over one's head", but it should rather be seen as the right to live somewhere in security, peace and dignity. The Committee has also underscored the State's obligation to ensure security of tenure and legal protection against forced eviction, harassment and other threats, "notwithstanding the type of tenure", including (as the Committee has stated) "owner-occupation, emergency housing and informal settlements, including occupation of land or property" (paragraphs 7 and 8). In its General Comment No.7, the Committee concluded that forced evictions are "prima facie incompatible with the requirements of the Covenant" and are performed "against the will of individuals families and/or communities" and "without the provision of, and access to, appropriate forms of legal or other protection" (General Comment No. 7, paragraphs 1 and 3). In addition, the Committee stated that forced evictions and house demolitions, as punitive measures, are also inconsistent with the norms of the Covenant and that States should provide those affected by eviction orders with legal remedies, as well as with adequate compensation for any property, both personal and real which has been affected, whereas it has also stated that "evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights" (paragraph 16). Furthermore evictions are only legitimate under international human rights law if they strictly comply with the Basic Principles and Guidelines on development-based Evictions and Displacement (A/HRC/4/18, Annex).

In her 2012 mission to Israel and the Occupied Palestinian Territories, the Special Rapporteur on the right to adequate housing raised concerns and reservations about the

planning and zoning policies and she addressed, in particular, the situation of the Bedouin minorities, including in relation to dispossession, displacement and eviction, and, limitations on access to judicial review and remedies, as well as the issue of settlements (A/HRC/22/46/Add.1).

In addition, Article 27 of the International Covenant on Civil and Political Rights, to which Israel is a party since 3 October 1991, establishes that in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities have the right, in community with the other members of their group, “to enjoy their own culture, to profess and practice their own religion, or to use their own language”.

The 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1), as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4). Article 2 further establishes that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination and provides for the effective participation of minorities in cultural, religious, social, economic and public life, as well as in decision-making processes on matters affecting them. Article 4.1 establishes that “States will take measures where required, to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law”.

We also would like to draw your Excellency’s Government attention to the recommendations of the third session of the Forum on Minority Issues on “Minorities and effective participation in economic life” (2010). Recommendations include that Governments should review, with the full and effective participation of minority groups, the extent to which minorities have equal access to land and security of land and property rights. Furthermore, the Forum on Minority Issues recommended that strategies for improving security of land rights for minorities must be based on the principle of free, prior and informed consent to actions that would have an impact on the rights of minorities.

Article 1 (1) of the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), to which Israel is a party since 3 January 1979, defines racial discrimination as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”.

Article 2 (1) of ICERD obliges States Parties to prohibit and eliminate any act or practice of racial discrimination against persons and/or groups. To this end, States must

ensure that public authorities and institutions on the national and local level act in compliance with this obligation. In accordance with article 6, States Parties must not only ensure the effective protection against racial discrimination of everyone within their jurisdiction, but also provide access to remedies and adequate reparation to victims of racial discrimination.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) establishes in article 15 that States Parties recognize the right of everyone to take part in cultural life. As stressed by the Committee on Economic, Social and Cultural Rights, article 15, paragraph 1 (a), of “the Covenant also includes the right of minorities and of persons belonging to minorities to take part in the cultural life of society, and also to conserve, promote and develop their own culture. This right entails the obligation of States parties to recognize, respect and protect minority cultures as an essential component of the identity of the States themselves. Consequently, minorities have the right to their cultural diversity, traditions, customs, religion, forms of education, languages, communication media (press, radio, television, Internet) and other manifestations of their cultural identity and membership”. (General Comment 21, para. 32).

We would also like to refer to the Guiding Principles on Internal Displacement of 1998, which establishes that every human being shall have the right to be protected against being arbitrarily displaced from his or her home, including due to serious violations of human rights, discrimination and fear of persecution (Principle 6). Guiding Principle 7 (1), establishes that “Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether”. Guiding Principle 7 (2) also stipulates that “The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated”; and Guiding Principle 7 (3) states that “ (b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation; (c) The free and informed consent of those to be displaced shall be sought; (d) The authorities concerned shall endeavor to involve those affected, particularly women, in the planning and management of their relocation; (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected. The Guiding Principles further state under Guiding Principle 9 that “States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.”

Finally, we would like to refer your Excellency’s Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration

which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.