

# Petition for an Order Nisi

## The Association for Civil Rights in Israel

August 2012

This is a petition for an order nisi in which the Court is requested to instruct the Respondents to show cause as to why the government decision dated 30 October 2011 concerning the establishment of a “settlement area” on the outskirts of Arad shall not be rescinded.

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### 1. Factual Background

The subject of this petition is the decision to establish new settlements<sup>1</sup> on the outskirts of the Southern city of Arad. This decision epitomizes the discriminatory planning policy against the Arab Bedouin and their villages in this area. It completely disregards the existence of these villages and the statutory town plans for their development and recognition, as well as the right to equality, dignity, and shelter of the residents of these villages. This refers to the villages Atir-Umm Al-Hieran, Tel Arad, Al-Homra, Sawa, and Al-Bat, which are located in the planned settlement area on the outskirts of Arad, as well as nearby villages that are also expected to be harmed by the implementation of this plan.

The government decision is unreasonable and constitutes a severe breach of its constitutional obligation to act impartially and safeguard the basic right of an indigenous, national minority to preserve its way of life and culture and maintain an adequate standard of living. The decision favors a potential group of residents, who do not reside in this area, over addressing the planning needs of the Bedouin villages that do exist there and the acute housing shortage of people who have lived in this region from time immemorial.

The circumstances raise many questions concerning the actual need for this decision and the underlying motivations. While some government plans designate the Bedouin residents of this area for uprooting to other towns and refuses to recognize these villages on the grounds, inter alia, of protecting a scenic and environmentally sensitive area, a government decision has been made to establish new towns in this very same location. In the absence of any substantive justification for establishing new settlements in this area, the question

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<sup>1</sup> Translator's note: in this context, "settlement" simply means a community or town.

arises of extraneous considerations and the giving of preference to Jews over Arabs in populating the new settlements planned in this decision.

On 27 October 2011, the government made Decision 3782 (hereinafter "the Government Decision") to establish a settlement area on the outskirts of Arad. According to the Government Decision, the Settlement Division of the World Zionist Organization (WZO) together with the Ministry of Construction and Housing, in coordination with various government ministries, are to create a plan to establish new settlements and expand existing ones on the outskirts of Arad. The area designated in this decision falls between the Shoket-Arad road (Route 31) to the south, the district border to the north, the towns of Meitar and Hura to the west, and the Tamar Regional Council boundaries, Arad, and proposed site of Kasif to the east. The total area of this region is approximately 180,000 dunam. The Government Decision is patently discriminatory and a product of extraneous considerations, hence it is not legal and should be rescinded. Not only does the Government Decisions not provide adequate housing to address the housing shortage of the Bedouin population, it seeks to displace them into Bedouin towns through forced urbanization, a process that could lead to the uprooting of some 40,000 people from their homes, with the possibility of establishing new settlements for the Bedouin an anomaly in this process.

The real meaning of the Government Decision can be learned from the explanatory notes that accompany it. In the opening words, this area of the Negev is referred to as a "wasteland" that the plan proposes to "make bloom". In the decision itself, the plan is said to be "within the framework of the Zionist vision **to make the Negev bloom**" (page 1 of the decision), and "**The outskirts of Arad are largely devoid of population**". According to the decision, this region includes the Jewish settlements of Shani (Livne), Har Amasa, four Bedouin farms east of Yatir and "**a sparse Bedouin dispersion**", around the hills of Tel Tzia in the Arad Valley and along Road 316 in the Yatir region (page 1 of the decision). (Emphasis added – R.A.)

It should be emphasized at the outset that some 200,000 Bedouin citizens live in this "wasteland" and the northern Negev in general, comprising approximately 25% of the Negev population. These citizens have endured systematic and ongoing government policies of discrimination, exclusion, and inequitable allocations of land resources, as will be described below.

In March 2012, as background for the government decision, the Settlement Division of the WZO prepared a "Memorandum for Preparing the Outskirts of Arad Settlement Plan – Draft" (hereinafter the "Memorandum"). This document was prepared for the head of the Settlement Division. The Memorandum contains detailed staff work about the feasibility of the Outskirts of Arad Plan, and was prepared by a broad range of planning professionals as well as representatives of the WZO and the Ministry of Construction and Housing. The Memorandum sheds light on the context of the plan and the principles that underlie it. One goal of the plan, according to the Memorandum, is "to strengthen organized Jewish settlement" (page 6 of the Memorandum).

To realize the goals of the plan and strengthen organized Jewish settlement, the Memorandum proposes creation of a new Bedouin township. In the words of the Memorandum, “one rural Bedouin settlement for the residents of the dispersion in the region, who have no recourse to one of the permanent towns...”, to be called “Outskirts of Arad 5” (pp. 12-13 of the Memorandum). It is clear from the Memorandum that those who wrote the plan wish to strengthen Jewish settlement in the region by removing the Bedouin population that currently resides in the five unrecognized villages located there, and concentrating them in one town.

This government decision continues the discriminatory planning policies, which disregard the existence of five unrecognized Bedouin villages in the area of the plan: **Atir-Umm Al-Hieran, Tel Arad, Al-Homra, Sawa, and Al-Bat**. For years, these villages have sought recognition and legal status in their location. For some of these villages, the planning authorities have even made a decision that would enable their recognition, but the decision by the same government to establish ten new settlements in that area **overturns the planning decision that would have enabled their recognition**.

## **2. Underlying Reasoning of the Government Decision**

The circumstances of this decision shed light on its real motivation. The declared goal of the decision is to provide housing for purposes of attracting new population to the region. The explanatory notes to the decision state that the decision was made as part of a process conducted by the government “to increase the supply of housing and reduce housing prices throughout the country”, and that “the proposed plan is an inalienable part of government policy and will provide additional housing to families who wish to establish their homes in a rural community in the Negev”.

Doubts about the declared goals of the decision are reinforced by the absence of rational planning considerations and economic justification for establishing new settlements in the region, the already existing planning policy, and the national and regional plans that recommend against the establishment of new settlements in metropolitan Beersheva, in general, and the outskirts of Arad, in particular, as will be explained.

The establishment of new communities inevitably weakens existing settlements and severely undermines their ability to realize the development goals and population forecasts set for them in previous plans. This is because the resources needed for establishing and developing new settlements come from the budgets used to address chronic problems in the veteran settlements. This is especially true for the suburban-urban towns in the central Negev such as Mitzpe Ramon, Yeruham, Dimona, Arad, Ofakim, and Netivot.

The planning goal of populating the current settlements in the central Negev does not seem to accord with the decision to establish a new, suburban settlement in that region, which would undermine realization of the population goals set within the past decade.

Economically, as well, the government decision to establish a new settlement area is illogical. A report published in August 2009 by the Ministry of Environmental Protection, *The*

*Establishment of New Communities in Comparison with Expanding Existing Communities – Economic Aspects*, compares the cost of establishing new settlements versus expanding old ones. This report examines a range of economic factors such as construction costs and the ongoing cost of government ministries and authorities, infrastructure providers, contractors, household expenses, and other external costs as well.

**The report clearly demonstrates the economic unfeasibility of establishing new settlements compared with strengthening existing ones.** Every new settlement created in accordance with this plan would cost three times the projected cost of expanding and strengthening a veteran settlement: NIS 1,393,131 versus NIS 450,434 per housing unit. A quick calculation indicates that rejecting the present plan and channeling the funds into creating the same number of housing units in veteran settlements would free up approximately NIS 940,000 per housing unit and a total of **NIS 1,410,000,000, which can be used to meet other needs in the region** (ibid., p. 31).

With regard to the economic feasibility of establishing new settlements, Yaron Ben Ezra, Director of the WZO Settlement Division, responded, “Settlement is not an economic matter and the decision cannot be examined through an economic lens, but in accordance with **the goal of taking possession of the land in the plan**”. “Rural settlements”, he added, “protect the area better than urban settlements, and the rural settlements in the Outskirts of Arad Plan are intended to appropriate the entire planning space, and ultimately support the urban settlements”.

All this reinforces the concern that the true motivation for the government decision was not to respond to actual housing needs in the Negev, but to force the Bedouin out of the area in which they live. This concern is buttressed by the words of Ben Ezra, who clarified that the plan has an additional goal: **“to take over the remaining territory, and thereby prevent further Bedouin incursion into any more state land or development of a Bedouin and/or Arab belt from the southern Hebron Hills toward Arad, the approach to Dimona and Yeruham, and the entire area between these and Beersheva”** (ibid., p. 6).

The government decision is in direct continuation of the discriminatory planning policy adopted toward the Negev Bedouin settlements and citizens since the establishment of Israel. Fundamental to this policy is the view that the Bedouin must be concentrated in the northeastern area of the Negev through a process of forced urbanization, while disregarding the indigenous form of Bedouin settlement, which is rural.

### **3. Legal Aspects**

#### **A. Discrimination Based on National Origin**

The government decision violates the right to equality, dignity, and the principles of distributive justice in the allocation of land resources. Beyond its disregard for the existence of Arab settlements and residents on the outskirts of Arad, the government decision should be understood in the context of the other policies and decisions it made against the Bedouin settlements in the region, policies and decisions that target the Arab settlements for

evacuation and uprooting and have recently led to the revocation of the planning recommendations to recognize some of the villages, as described in the Factual Background section above.

In light of the existence of many rural settlements in the Negev for Jews (more than 112, as noted above), and the existence, as noted, of other Jewish settlements whose land reserves for construction and population growth are far from realized, it appears that the national origin of the Arab Bedouin in the Negev is the only consideration in this decision.

The meaning of this government decision is that the land on which the Arab Bedouin reside will not be able to serve the purpose of regulating the planning or giving official recognition to the settlements. Instead, this area will be allocated to a group of Jewish citizens – one that does not yet exist – for purposes of establishing new settlements. This means, at the very least, that the planning of new settlements for Jews is given preference over regulating the existing settlement of Arab Bedouin in the same location. Failure to regulate the existing settlement and possible evacuation of the residents would severely undermine the Bedouin right to land, housing, basic services, and human dignity. It would violate the principle of equality and is in clear contravention of the laws of this Honorable Court.

**B. Violation of the right to dignity – housing, an adequate standard of living, and preservation of their cultural character**

In addition to violating the principle of equality, the right to dignity is harmed. Feelings of humiliation, abandonment, deprivation, and being disrespected are inevitable when residents of the unrecognized villages perceive how the government, which is ignoring their existence, refuses to recognize their rural way of life and seeks to remove their settlements with plans to replace them by new rural settlements for a potential Jewish population.

**C. Lack of factual underpinning and unreasonableness**

Even though the government decision could have dire consequences for the residents of the villages located in the area of the plan, no substantive assessment based on proper factual information preceded the decision. Those who formulated the decision began by relating to the plan area as virtually an empty “wasteland”, in the words of the explanatory notes to the decision. Thus, the government ignores the thousands of residents who live in the plan area and disregards the need to safeguard their rights and arrange adequate solutions for them. The formulators of the decision did not even examine the alternative of recognizing the villages in the plan area, and certainly did not examine the repercussions of the decision on the development and recognition of the status of the Bedouin settlements, about which a final planning decision has not yet been made. In fact, they completely ignored planning procedures still pending for the area that have not yet been fully realized, both in planning terms and legally.

**D. Extraneous considerations**

The circumstances of this decision raise many questions about the need for it and the real motivation driving it: The involvement of the WZO in preparing the Memorandum and its

appointment in charge of carrying it out; the goals and principles of the plan – “strengthening organized Jewish settlement; the planned evacuation of the Bedouin who currently reside there in five unrecognized villages and their concentration into one settlement; statements made by Yaron Ben Ezra, director of the WZO Settlement Division, with regard to the goals of the plan (“to take over the remaining territory, and thereby prevent further Bedouin incursion into any more state land or development of a Bedouin and/or Arab belt from the southern Hebron Hills toward Arad, the approach to Dimona and Yeruham, and the entire area between these and Beersheva”); and the land survey, which noted the “lack of any Jewish settlement” in this area (Shiri Bass-Spector, p. 6) – all these demonstrate that what motivated the government decision was the extraneous consideration of Judaizing the area.

This conclusion is reinforced by the absence of any planning justification or economic rationale for establishing new settlements on the outskirts of Arad, as described in the factual section above Note, in particular, Ben Ezra’s reference to the economic considerations: “Settlement is not an economic matter and the decision cannot be examined through an economic lens, but in accordance with **the goal of taking possession of the land in the plan.**” All these point to the conclusion that the real purpose of the plan is not the declaration of providing housing, but rather attracting Jewish population to the region and pushing the Bedouin out.

#### **4. Summary**

The government decision severely violates the constitutional obligations of a government to practice equality, respect the rights of an indigenous national minority to preserve its way of life and culture, and ensure proper housing conditions. The decision suggests a patently unreasonable scenario in which the government favors a potential group of residents, who do not exist in the region at all, over addressing the grave housing shortage of a population that has lived there for many years. While making decisions about the establishment of new rural settlements, as noted, the government is preparing and promoting plans that deny the Bedouin residents the ability to maintain their rural life style in that area, and targeting them for uprooting and transfer to other locations.

Therefore, this Honorable Court is respectfully requested to issue an order nisi as requested and, after receipt of the reply from the Respondents, to make the order absolute.