

Position Paper

Recognize Wādi an-Na‘am as an Independent Rural Settlement

Introduction

Wādi an-Na‘am is an unrecognized Bedouin village located south of Be‘er-Sheva and east of Road 40. The village has some 10,000 residents and is the largest of the unrecognized Bedouin villages in the Negev. For several decades, the residents have waged a struggle against the authorities over its future. Due to the proximity of the village to Neot Hovav local industrial council, its residents are destined to move from their place of residence. While they seek a solution that would preserve their rural-agricultural life, the only solution offered by the state is displacement to a town, whether as an independent urban settlement adjacent to the town of Šgīb as-Salām (Segev Shalom) or simply to move and become a part of that

town. Although the residents have expressed their opposition to the state institutions' intentions to relocate them to the town of Šgīb as-Salām, and even agreed to move their village away from its present location, the State of Israel insists on forcing them to move into an urban settlement.

Historical background

Following the establishment of the State of Israel, the Negev Bedouin population was concentrated in a restricted area named the Siyāj (سياج), under military administration. As part of this process, in the 1950s, the Mas'udin faction of the Al-Azazmeh clan was transferred from its historic lands in the Halutza (Halazah) region (west of Road 40) to the present area where the village of Wādi an-Na'am is located today.¹ Despite the fact that their transfer to the present site was ordered by the military administration, the residents have been living in a state of unregulated

1 Local Committee of Wādi an-Na'am, ACRI and Bimkom. *Alternatives to the location and type of the designated settlement for the residents of Wādi an-Na'am based on general planning principles for settlement*. Pp. 9–10. <http://www.acri.org.il/he/wp-content/uploads/2015/10/hit1705alternatives.pdf>

planning for over 60 years, resulting in significant damage to their basic rights, lacking any access to government services such as running water, electricity, sanitation, health and education. Moreover, due to the state's refusal to recognize the village, all its structures are considered illegal and therefore under constant threat of demolition.

In the 1970s and '80s, hazardous industrial facilities were built in the center and adjacent to the village of Wādi an-Na'am, ignoring the health and environmental implications this would have for the local residents. In the 1970s, the Neot Hovav industrial zone was established west of the village (across Route 40), containing wastewater treatment facilities, bromine industry, fertilizer industry and chemical production for agriculture.² In addition, in 1987 a power plant was established by the Israel Electricity Company in the heart of the village, between Highway 40 and the houses of the village, so that high voltage electric cables pass directly above the village houses.

2 Neot Havov local industrial council website.
<http://neot-hovav.org.il/map.php>.

Forced transfer to Šgīb as–Salām

The state and planning authorities' disregard of the village of Wādi an–Na'am, establishing a local industrial council and a power plant nearby and in the center of the village, were accompanied with attempts to evict the residents from their homes. In 1985 the Ministry of Education moved the school from Wādi an–Na'am to Šgīb as–Salām as a measure of further pressure exerted on the residents to move to the town. Following a three-month strike during which the village children did not attend school, the Ministry of Education canceled its decision and reopened the school in Wādi an–Na'am.³ In 1990, the Israel Land Administration (ILA) issued eviction orders against some eleven families in the village.⁴ Following the magistrate and regional courts' rulings to reject the residents' petition to cancel these eviction orders, the residents appealed to the Supreme Court in 1999.⁵ Towards the end of 2000, the Supreme Court accepted the parties' agreement to

3 An interview with Mousa Abu Bnia, on 31.08.2017.

4 **Israel Land Authority vs Salman Hamed Abu Amran et al.** (8101/90). Statement of claim dated 07.11.1999.

5 **Salman Abu Amran et al. vs Israel Land Authority** (541/99). Court decision dated 10.03.1999.

postpone the eviction orders for three years, during which the parties – the State of Israel and the village residents – were required to find an acceptable solution.⁶ Despite the court’s decision, in 2000 The Administration for Bedouin Advancement in the Negev⁷ initiated a plan to relocate the village residents to a southern neighborhood of Šgīb as-Salām, in spite of the residents’ fierce opposition to move to an urban town. The plan was endorsed in a government resolution (No. Arab/43) promoting the District Master Plan for Be’er-Sheva Metropolis (TAMAM 4/14/49).

Danger of Neot Hovav

While the residents’ petitions to cancel the transfer plan to Šgīb as-Salām were ignored by the state, an epidemiological survey published by the Ministry of Health in 2004 led to a change in the state’s position. The survey, conducted in the area of Neot Hovav in 1995–2000, found

6 See supra note 5, court decision dated 28.08.2000.

7 The Administration for Bedouin Advancement in the Negev was mainly in charge of settling land issues with the Negev Bedouin community. Since 2014, The Authority for Development and Settlement of the Bedouin in the Negev operates instead of the Administration.

that among the Bedouins living near the local industrial council, illness and mortality rates are higher than expected.⁸ As a result, the District Planning and Construction Committee of the Southern District decided to postpone the deposit of the plan (TAMAM 4/14/49) due to its proximity to the risk zone of Neot Hovav.⁹ In addition, the committee recommended changing the government resolution (Arab/43) to relocate the residents of Wādi an-Na‘am to Šgīb as-Salām.¹⁰ The committee determined that relocating the village to the south of Šgīb as-Salām would leave the residents within the risk zone of Neot Hovav local industrial council and therefore other planning alternatives should be located in cooperation with the residents.

From 2004 to 2008, the residents of Wādi an-Na‘am, led by the local village committee, called upon state institutions to implement the decision of the district committee. The local committee emphasized the desire of

8 **Abu Afash et al. vs The National Council for Planning and Construction et al.** (1705/14), petition, article 19.

9 District Planning and Construction Committee of the Southern District, committee protocol dated 09.08.2004, article 4.

10 See supra note 9.

the residents to remain together as an independent rural settlement. Between 2008 and 2009, the discussions culminated in a partial agreement between the local committee, The Authority for Development and Settlement of the Bedouin in the Negev (formerly the Administration for Bedouin Advancement, henceforth The Authority) and the Abu Basma Regional Council¹¹ about an alternative location for the village. The various aspects of planning, health and environment were taken into consideration when determining the site for the village.

The State's reversed decision

After a mutually agreed location was found and an elementary school established in the area as part of a future service center for the village, the residents discovered that the state and its institutions had renounced the agreements. In 2009, the authorities abruptly stopped their communication with the local committee. In April 2010, the residents' fears were

¹¹ Abu Basma regional council operated between the years 2003–2012, responsible for the 11 recognized Bedouin villages of the Negev. In 2012, Abu Basma was divided into two separate regional councils – Neve Midbar and Al Qasoum.

confirmed. In a meeting held at the Regional Committee offices, the director general of the Settlement Regulation Authority announced that responsibility for the Wādi an-Na'am village was being transferred from the Abu Basma Regional Council to The Authority itself.¹² As it turned out, this decision meant a return to the former plan to relocate Wādi an-Na'am south of Šgīb as-Salām, despite the residents' objection.

The Master Plan for Be'er-Sheva Metropolis and the petition to the High Court of Justice

One of the main goals of the District Master Plan for Be'er-Sheva Metropolis (TAMAM 4/14/23) is "to provide a planning solution for the Bedouin settlement, while directing its location and establishing rules that will enable a variety of settlement forms".¹³ In November 2012, amendment No. 2 to the Plan was issued (henceforth – TAMAM 4/14/23/2), which changed the land use of the

¹² See supra note 8, article 51.

¹³ TAMAM 4/14/23, District Master Plan for Be'er-Sheva Metropolis, plan instructions: article 3.2 (2).

area south of Šgīb as-Salām to the "combined agricultural rural landscape", a change that enables the establishment of settlements in the area.¹⁴ In fact, the expansion of the town of Šgīb as-Salām was done in order to relocate the residents of three unrecognized Bedouin villages located along Route 40 south of Be'er-Sheva (Wādi an-Na'am, Wādi al-Mšaš and as-Sirr) into its territory. Although the village committee expressed its opposition to the plan, claiming that the proposed change does not allow for the establishment of a rural-agricultural village, but only the construction of urban neighborhoods, the plan was approved and accepted by the Committee for Principle Planning Issues Coordination¹⁵ (henceforth VALNATA) in November 2013.¹⁶ In a resumed discussion of the plan the committee decided to allow the establishment of educational institutions in an area defined as a combined rural agricultural landscape, prior to the approval of a

14 The National Council for Planning and Construction, protocol of council meeting dated 06.11.2012, article 4.

15 The Committee for Principle Planning Issues Coordination is a subcommittee of the National Council for Planning and Construction. The committee is authorized to discuss and decide on different matters, such as changes to master plans and objections to them.

16 The Committee for Principle Planning Issues Coordination, protocol of committee meeting dated 26.11.2013, article 3.

master plan for the planned neighborhood.¹⁷ Thus, in order to pressure the residents of the village to move to neighborhoods that would be built in the south of Šgīb as-Salām, the planning authorities approved the establishment of a school before approving the entire planned neighborhood. It is important to note that in the course of the discussion the committee (VALNATA) determined that alternatively, the establishment of an independent settlement south of Šgīb as-Salām could be considered, instead of expanding the town by establishing a new neighborhood. All these changes were made possible by the reduction of the safety zone of Neot Hovav, which defines a risk area around a perimeter inside of which it is impossible to establish settlements.¹⁸ However, these were no significant plan changes since the location and boundaries of the plan remained the same. This is an important clarification because it lies at the basis of the state's arguments in the legal proceedings, elaborated below. In July 2014, the residents of the village submitted a petition to the High Court of Justice, through the Association for Civil Rights in Israel (ACRI) and Bimkom,

17 The Committee for Principle Planning Issues Coordination, protocol of committee meeting dated 20.5.2014, article 8.

18 See supra note 17.

demanding that the plan be canceled. From the moment the petition was filed, the residents' struggle shifted from the planning arena to the legal one.

Legal proceedings

In response to the residents' petition, the state pleaded it should be dismissed as it was filed ahead of its time. The state argued that the settlement's type and geographic location will be determined later, as part of the planning process, since the changes discussed in the VALNATA enable a broad enough spatial area that could fit an independent rural settlement.¹⁹ However, an analysis of the plan done by Bimkom shows that due to the construction restriction perimeters imposed by Ramat Beka (green line on the map) and Neot Hovav (dashed orange line on the map) a very limited area designated for living will be left (area marked in diagonal black lines), which would only allow an urban settlement.²⁰

19 See supra note 8, respondents' reply dated 16.7.2014, articles 21–26.

20 See supra note 8, petitioners' reply dated 31.8.2014.

chosen was to establish a new village south of the town of Šgīb as-Salām in spite of the residents' opposition. Following the recommendation of the planning committee, the government decided to instruct the Ministry of Agriculture and Rural Development and the Authority of Regulating the Settlements to carry out work towards "the establishment of a new settlement for the Wādi an-Na'am population in the area adjacent to their location".²¹

While the planning procedures proceeded, the state complained to the High Court of Justice that the petitioners did not present alternatives other than those presented and rejected in the past. As a result, the court ordered the petitioners to present additional alternatives, and in August 2015 a detailed document was submitted by the petitioners, containing two alternatives agreed upon by the residents of the village. The preferred alternative discussed by the planning institutions and in the framework of the legal process was based on the regulation of the village in its present location. This alternative was based on reducing the risk zone of Neot Hovav and dividing the village into an area intended mainly for residential purposes and an area intended for grazing and agriculture

21 Government of Israel, Government Resolution 2452 (Bdu/4), "A new settlement south of Segev Shalom", dated 19.02.2015.

purposes.²² The logic underlying this alternative is to reduce as much as possible the number of families that would have to move from their current location, while still looking out for the residents' health by keeping them as far from safety hazards as possible.

At the discussion held by the VALNATA in November 2015, the alternative presented by the residents and the plan prepared by the Authority for Regulating the Settlement in the Negev were reviewed.²³ The committee decided that for the time being the village basis will be established in the overlapping space between the two alternatives – that of residents and that of the Authority for Regulating the Settlement in the Negev. In addition, the committee determined that if the Neot Hovav safety zone could be reduced even further, an expansion of the plan's boundaries would be made possible to suit as much as possible the alternative proposed by the residents.²⁴ During the discussion the residents' representatives warned that

22 See supra note 8, alternatives document on behalf of petitioners, August 2015, pp. 17–23.

23 See supra note 21.

24 The Committee for Principle Planning Issues Coordination, protocol of committee meeting dated 24.11.2015, article 4.

the overlapping area is too small and does not provide a satisfactory solution, arguing that planning in stages, as suggested, could create uncertainty.

State decision to forced urbanization

Although the residents were not satisfied with the decisions of the planning committees, they continued to negotiate with the state authorities in order to reduce the many planning and construction restrictions in the area, so that a larger area would become available for housing, allowing the village to stay partly at its present location.

Despite progress made in the understandings between the residents' representatives and the various government ministries, in August 2016 the government decided to return to its original plan. A government resolution passed without informing the residents, stating that a settlement will be established, one that ignores the residents' needs and desires.²⁵ Thus, in contrast to the recommendation of the VALNATA, a decision was taken without the

25 Government of Israel, Government Resolution 1825 (Sth/84), "Establishment of a new settlement for the Bedouin population in Wādi an-Na'am", dated 11.8.2016.

participation of the residents, forcing them to move to an urban town whose independence from the nearby town of Šgīb as-Salām is unclear.

The government resolution that ignored the legal procedures of the High Court of Justice brought the issue back to the planning channel. Despite pleas made by the residents' representatives to the court to halt this ruling, the court accepted the state's position and ruled that in view of the government's resolution the petition was redundant. The court claimed that: "the petitioners will be able to object to the plan that will be made [...] after it has been approved. In such a case, the rights and claims of all parties are reserved for them, but there will be no more attempts to question the original plan 4/14/23/2".²⁶ The court decision put an end to the possibility of appealing TAMAM 2/23/14/4, which allows the expansion of the area of the town of Šgīb as-Salām or the establishment of an adjacent urban settlement. In fact, the court decision left the residents of Wādi an-Na'am with the sole option of living an urban life in town.

²⁶ See supra note 8, verdict dated 5.7.2017, article 2.

Summary

A clear picture emerges from the description of the ongoing struggle of Wādi an-Na'am residents. For many years the authorities have been promoting forced urbanization of the Bedouin community, without the participation, respect for or listening to the wishes and needs of the Bedouin citizens of the state. Issuing eviction orders, house demolitions and the relocation of educational institutions to Šgīb as-Salām and its vicinity are the main measures the state and its institutions have resorted to in order to evacuate the village of Wādi an-Na'am. However, the fact that in a few planning processes, various committees and professional bodies have pointed out that the participation of the residents is crucial shows that at least some of the parties understand that a solution can only be reached by cooperation with the residents, not by coercion.

The manner in which the authorities operate vis-a-vis Wādi an-Na'am village exposes the state's repeated attempts to promote the relocation of the villagers to an urban settlement that does not meet their needs or desires for an independent rural-agricultural life. The state must abandon its failed policy, forcing the Bedouin community in the Negev to live solely in urban communities. It must recognize the villages it created

during the 1950s. Only recognition and regulation of villages with the participation of the Bedouin population will enable life based on equality and justice in the Negev.