

Adalah Position Paper

On the Israeli Government's New Decision Classifying Communities as National Priority Areas

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Adalah - The Legal Center for the Arab Minority Rights in Israel

Introduction

On 13 December 2009, the Israeli government approved Decision No. 1060, entitled “Defining Towns and Areas with National Priority.”¹ The decision classifies various regions in Israel and settlements in the occupied West Bank as National Priority Areas (NPAs). Around 40% of the residents living in the areas in Israel designated on the NPAs map are Arab citizens of Israel. While this figure appears to indicate a significant move by the Israeli government toward the more equitable division of state resources in Israel, this is not the case. Rather, the decision is likely to lead to continued neglect and discrimination against Arab towns and villages in Israel. According to the new decision, a town located within an NPA region is not automatically entitled to the enormous additional budgetary allowances and benefits previously granted to NPA towns and villages. Thus, while the new government decision declares that most Arab towns and villages in Israel are included in the NPAs map, it also stipulates that **individual ministers have exclusive discretion** to decide which towns located within an NPA region will actually receive benefits and additional funding and to determine the composition and duration of the benefits.

This position paper discusses the former classification of NPAs and Adalah’s litigation against it before the Israeli Supreme Court. It will also examine the new governmental decision on NPAs approved in December 2009 and the new NPA Law. The paper then analyzes why the new decision violates the law by contradicting the Supreme Court’s ruling in the High Follow-Up Committee case and failing to ensure a more equitable allocation of state resources and special budget allowances to NPAs, as it declares.

It is Adalah’s position that the new governmental decision is illegal. Firstly, it contradicts and bypasses the Israeli Supreme Court’s ruling in the *High Follow-Up Committee* case.² Secondly, as Adalah has argued before the Supreme Court over the last decade, the designation of NPAs must be set forth in clear legislation and equitable criteria based on socio-economic need. It is also Adalah’s position that the allocation of massive state resources to Jewish settlements in the occupied West Bank is illegal and indicates aggressive settlement development and expansion, in blatant defiance of international law. The government’s decision also contradicts the International Court of Justice’s (ICJ) advisory opinion on the illegality of the Separation Wall, which ruled that Jewish settlements in the occupied West Bank are illegal.

The former classification of National Priority Areas and Adalah's litigation

On 15 February 1998, the Israeli government approved Decision No, 3292, which defined certain towns and villages as NPA "A" and "B". In accordance with this decision, NPAs "A" received large-scale benefits, incentives and grants, while NPAs "B" received similar benefits but on a lesser scale. **Among the 553 towns and villages defined as NPAs were only four Arab villages.**

A central aspect of the litigation initiated by Adalah before the Israeli Supreme Court from 1998 on behalf of the High Follow-up Committee for Arab Citizens of Israel and the Follow-up Committee for Arab Education was a legal challenge to the incentives awarded to NPAs in the field of education. These incentives included tuition assistance, subsidies for travel expenses for teacher training, rent subsidies for teachers, payment of the employer's share in a teacher's fund for advanced training (*keren hishtalmut*), travel expenses, exemption from tuition fees for kindergarten, subsidies for matriculation examination fees, payment of higher sums for "balancing grants" to municipalities, additional classroom hours, funding for installing computers in schools, and preference in scholarships for students in higher education.

On 27 February 2006, a seven-justice panel of the Supreme Court ruled that the government's decision constituted illegal discrimination against Arab towns and villages.³ The court further ruled that such a massive distribution of state resources was beyond the government's residual authority, and that clear, explicit legislation stipulating the rules and criteria governing the classification of NPAs was needed. The court emphasized that such a law must not grant general, sweeping authority to the government or its ministers to classify towns and villages as NPAs for the distribution of benefits and budget allocations.⁴ The court ordered the state to implement its ruling within one year, i.e. by February 2007.

The state failed to implement the decision within a year and returned to the Supreme Court to request an additional five years in which to implement the court's ruling. The state argued that instigating the changes involved entailed a lengthy process that must be carried out gradually. The state emphasized that to re-classify towns and villages as NPAs it was necessary to cut the budgets of Jewish local authorities in order to reallocate the funds to Arab authorities that had previously suffered discrimination. Adalah and the petitioners opposed the state's request and filed a motion for contempt of court, arguing that extending the date for implementation would severely exacerbate the existing discrimination between Arab and Jewish towns and villages. The Supreme Court harshly criticized the state but granted it an extension of one year. The state then demanded additional extensions, in response to which the court ordered it to fulfill its legal obligation to implement the ruling immediately.⁵

The new National Priority Areas Law

In June 2009, shortly before the enactment of the “Economic Arrangements Law”⁶ an additional section entitled the “National Priority Areas” was inserted into the legislation (“the NPA Law”). The Knesset passed the law on 14 July 2009.

The NPA Law contradicts the Supreme Court’s decision in the *High Follow-Up Committee* case. The law is general and vaguely-worded, and grants the government sweeping discretion to classify towns, villages and areas as NPAs. The law does not even define a “National Priority Area.” It does not provide a list of towns and villages that are defined as NPAs or stipulate the range of benefits to be provided to them, in which fields, or for what periods of time. The law goes further still, specifying that nothing in the legislation detracts from the authorities vested in the government or the state authorities to award benefits to an area or a specific town or village. In addition, the law allows the government to weigh the considerations set out in the law, but does not oblige it to do so. For example, the law allows the government to consider the security situation of an area, its socio-economic status, its level of service provision, its geographic location and distance from major population centers, the cost of absorbing new immigrants in the area, etc. However, the considerations listed in the law lack any explanations or details. Thus, contrary to the court’s ruling in the *High Follow-up Committee* case, the law preserves the government’s broad discretion to allocate state resources to NPAs.

Further, contrary to the court’s ruling, **the NPA Law extends the validity of past government decisions concerning NPAs until 13 January 2012, five years after the court’s order to implement its judgment.**

Criticism by Members of Knesset of the new NPA Law

The NPA Law has elicited fierce criticism from Israeli Members of Knesset (MKs).⁷ During the parliamentary debates on the law, a number of MKs argued that it contradicts and in effect bypasses the Supreme Court’s ruling in the *High Follow-Up Committee* case. However, despite this criticism the proposed legislation was enacted into law.

The MKs attacked the **generality of the law** and its lack of details regarding the selection of NPAs and the benefits they receive. For example, MK Nissan Slomiansky argued, “These criteria do not define anything... Bring everything together so that we’ll have an idea what [the areas] defined as priority areas A or B or C will receive. I don’t know how you allocate this.”⁸ MK Haim Oron emphasized, “There is no law here. There is a basket of funds that gives the government the authority to distribute huge amounts of money at its own discretion... What we have here is not criteria.”⁹

Several MKs, including the speaker of the Knesset MK Reuven Rivlin,¹⁰ argued that the lack of criteria is a troubling matter as **political forces are likely to define the classification of NPAs**. In this regard MK Shelly Yacimovich argued: “There is nothing in this law. Besides saying that the Prime Minister will do whatever he feels likes doing and will give to whomever he wants, nothing is written here in the end; nothing.”¹¹

MKs also argued that the proposed legislation circumvents the Knesset. As MK Rivlin stated, “This is a law that bypasses the Knesset... The framework law explicitly states, ‘The government will be able to act at its discretion.’”¹² Similarly, Attorney Ido Ben Yitzhak, who provided legal counsel to the Knesset’s Finance Committee, argued that, “The legislative proposal, as presently submitted here, does not

include any mechanism of oversight or control by the Knesset... The fundamental rule, which the Supreme Court has also reiterated, is that legislation must anchor the general policy and the guiding criteria in the foundation of the action and legislative objective... In this sense [it] constitutes a deviation from these models.”¹³

Moreover, MKs emphasized that the proposed legislation is **in contempt of the Supreme Court’s decision** in the *High Follow-up Committee* case. As MK Yacimovich stated, “The Supreme Court says that a norm has taken root according to which the government transfers huge sums for particular purposes or for certain sectors of the population in a way that is not in accordance with the law designed for this end. And this is the law, with no clear criteria defined by the legislature and without the Knesset, in its authority as legislator, deliberating on the transfer of these sums and issuing directives for them, or at least approving them.”¹⁴ In addition MK Ron Nachman stressed that the Supreme Court ruled that, “The Knesset should determine this in primary legislation. What does the Prime Minister’s Office wish to do today? It wants all of the authority... This is a contradiction of the court’s ruling.”¹⁵

The new government decision approved in the wake of the new NPA Law

The Classification of NPAs

The government's new decision of 13 December 2009 designated the areas to be classified as NPAs based on four criteria: a combined index defining periphery areas together with socio-economic cluster; the level of security threat; distance from an international border; and whether a community has been established within the previous five years. The decision did not specify which communities were to receive the budget benefits, but instead designated broad regions as NPAs, leaving the task of allocating specific budgetary allowances to the government and individual ministers. Thus, **the decision distinguishes between the definition of an area as an NPA and whether a specific town in this area will receive additional budget allocations.**

In addition, the following fields were marked out for NPA benefits: education including higher education; housing and urban development; employment; engineering infrastructure; and culture and sport. However, the government did not specify the components of these benefits. Here, again, it retained the power to specify particular budgetary components at its discretion. **Decisions about which towns and villages actually receive benefits, the types and duration of these benefits were left to the discretion of government ministers.** The decision does not set any date for ministers to announce the criteria according to which the additional budgetary allocations will be distributed.

The first criterion employed by the government is the **combined index** of a town or village's location in a peripheral region plus its socio-economic cluster classification. According to this index, peripheral regions that are distant from the center of Israel (that is, from Tel Aviv) are categorized as NPAs. The definition of this index is based on the view that living in the periphery limits access to services, such as centers of health, education, culture, employment, commerce, etc.

According to this combined index, the state was divided into **five regions** (of a total of the following seven regions: Jerusalem, the North, Haifa, the Center, Tel Aviv, the South, and the Jewish settlements in the West Bank). These regions were then divided into 11 districts. Of these areas, **the Be'er Sheva (Beer el-Sabe) district and northern region were designated as NPAs.** The northern region contains the districts of Safed, Kinneret, Jezreel (including Afula and Nazareth), Akka (Acre) and the Golan Heights. It was determined that Nazareth and Afula would be defined as NPAs for only three years. It was also decided that a ministerial committee would be formed to make recommendations, within 30 days, regarding the towns of Ashkelon and Modi'in Ilit and un-Walled (fenced) Jewish settlements in the West Bank. See **Appendix A** for a table displaying districts and whether they have been designated as NPAs.

Classification as an NPA is separate from the allocation of benefits

It should be stressed that the mere designation as an NPA does not mean that all the towns and villages located in this area will receive budgetary benefits. **Thus the fact that a town is located within the northern region or the Be'er Sheva district does not of itself entitle it to any supplemental state funding.**

According to the NPA Law and other legislation, individual government ministers will determine separate criteria for the allocation of benefits to individual towns and villages within the wider region defined as an NPA. Such broad discretion is liable to create and widen gaps between towns and villages within areas defined as NPAs. Indeed, this consequence was foreseen in the government decision itself, where it is noted that, "such considerations and awarding of benefits could result in a differentiation between towns or villages in the same district, or a differentiation within a town or village."¹⁶ The decision further states that, **in light of budgetary constraints, the funds will be allocated to at most 25% of the state's population that resides within the areas demarcated on the new NPAs map.**

In addition, both the new law and the new decision authorize ministers to grant, at their own discretion, a certain type of benefit to one town and a different type to another. Similarly, they allow the government to classify a town as an NPA for a particular period of time, and to another in the same area, which fulfills all the same criteria, for a longer or shorter period. Thus, a situation will undoubtedly arise in which the government's decision will be applied differently to towns and villages that fulfill exactly the same criteria. Given the government's previous designation of NPA status almost exclusively to Jewish towns and villages, in this situation it is likely that a Jewish town will be entitled to receive certain benefits,

while an adjacent Arab town will not, even though both are located in an area defined as an NPA. This wide discretion is liable to increase inequality between Jewish and Arab towns in relation to the allocation of NPA benefits.

No Arab communities in the Triangle were classified as NPAs

As noted, according to the combined index, only the northern region and the Be'er Sheva district were defined as NPAs. All towns and villages in the Hadera district, including the Arab towns and villages in the Triangle area, were not classified as NPAs.

The government's decision to remove the Hadera district from the NPAs map was based on a calculation of the average socio-economic status of the entire district. For example, the average rate of employment in the district is 50% and the average monthly income NIS 6,112. However, a breakdown of the data within the district into Jewish and Arab localities reveals that the socio-economic situation in the Arab towns and villages is relatively poor. According to the Israeli Central Bureau of Statistics (CBS), **most Arab towns and villages in the Triangle are ranked within the lowest socio-economic clusters.**¹⁷ The CBS data further demonstrates that the Arab towns and villages have a relatively high percentage of families with four or more children; their per capita income is low; the percentage of those earning the minimum wage is high, along with the percentage of job-seekers among those aged 15+. The data also indicates that the percentage of school pupils aged 17-18 who are eligible for matriculation is very low in these towns and villages, as is the percentage of pupils who enroll in higher education. Objectively, the low socio-economic status of these towns and villages should mandate their classification as NPAs and they should receive the associated benefits and incentives. However, despite the very low

socio-economic status of these Arab towns and villages they were excluded from the NPAs map due to their geographical proximity to the center of the country (Tel Aviv). See **Appendix C**, which includes socio-economic statistics on each of the Arab towns and villages in the Triangle.

The exclusion of the Arab communities in the Triangle from the NPAs map contradicts the objective of classifying communities as NPAs. What is supposed to serve as the basis for the preferential treatment afforded to NPAs is the provision of economic and other assistance to relatively poor towns and villages to help them overcome their economic and social difficulties and bridge the gaps between them and more affluent localities.

Classifying Jewish settlements in the West Bank as NPAs

In accordance with the government's new decision Jewish settlements in the occupied West Bank were also designated as NPAs under the criterion of "level of security threat." It is Adalah's position that the allocation of massive state resources to Jewish settlements in the occupied West Bank is illegal and indicates aggressive settlement development and expansion, in blatant defiance of international law.

In addition, every Jewish settlement in the West Bank defined as a NPA is entitled to receive the associated additional budgetary grants and benefits in fields to be defined by ministers. A completely different situation applies to towns and villages located within the Green Line, where NPAs are defined at the district and regional level. Thus, within the Green Line a distinction is drawn between the definition of an area as an NPA and the allocation of an associated benefit or incentive to individual towns and villages located therein.

The inclusion of the Jewish settlements in the NPAs map is also contrary to the objective of assisting towns and villages in socio-economic need. The settlements are largely wealthy communities that rank higher on the socio-economic index than many communities in Israel, including Arab towns in the Triangle that were not designated as NPAs.

Summary and conclusions

- The state has still failed to implement the Supreme Court's ruling in the *High Follow-Up Committee* case.
- The new NPA Law is contrary to the Supreme Court's ruling in the *High Follow-Up Committee* case because it is general and vague and grants sweeping discretion to the government to classify towns, villages and areas as NPAs. It grants exclusive discretion to ministers to determine which towns and villages will actually be allocated NPA benefits, the type of budget to be allotted, its size, scope and duration. This sweeping of authority opens the door to the political allocation of state resources and socio-economic benefits.
- The new NPA law is also contrary to the Supreme Court's ruling in the *High Follow-Up Committee* case as it constitutes an extension of the previous government decision until 13 January 2012, which the court ruled discriminatory against Arab towns and villages.
- The new governmental decision is based on arbitrary definitions, and differentiates between the designation of an area as an NPA and the entitlement of the towns and villages within it to additional budgetary allocations. Thus the mere fact that a town or village is located within an NPA does not qualify it for additional budgetary funds.
- The implementation of the government's decision in the Jewish settlements in the occupied West Bank represents aggressive settlement development and expansion, in blatant defiance of international law, including the ICJ's advisory opinion on the Wall.
- The arbitrary nature of the new decision is reflected in the fact that Jewish settlements in the occupied West Bank, illegal under international law, are also treated differently from towns and villages in Israel. Each settlement is designated as an NPA on an individual basis and this status automatically entitles it to benefits and additional budgetary allocations.
- The new governmental decision clearly discriminates against the Arab towns and villages in the Triangle. It excludes these towns and villages – ranked by the state within the lowest socio-economic clusters – from the list of NPAs because of their proximity to the center of the country. At the same time, the decision includes wealthier towns and villages, including settlements in the occupied West Bank, in the new NPAs map.
- Four years after the Supreme Court's ruling was issued in the *High Follow-Up Committee* case, and despite the enactment of the new NPA law and the new government decision regarding NPAs, it is still impossible to compile an unequivocal and specific list of communities classified as NPAs.

Footnotes

- 1 For Government Decision No. 1060 of 13 December 2009, see: <http://www.pmo.gov.il/PMO/Secretarial/Decisions/2009/12/des1060.htm>
- 2 HCJ 2773/98 and HCJ 11163/03, The High Follow-up Committee for Arab Citizens of Israel, et al. v. The Prime Minister of Israel, et al. (petition accepted 27 February 2006). The decision in English is available at: http://elyon1.court.gov.il/files_eng/03/630/111/a18/03111630.a18.pdf
- 3 Ibid.
- 4 See paragraphs 41, 45 and 60 of the ruling by Deputy Chief Justice Mishael Cheshin in the High Follow-Up Committee case.
- 5 HCJ 2773/98 and HCJ 11163/03, The High Follow-Up Committee for Arab Citizens in Israel v. The Prime Minister of Israel (decision delivered 23 November 2008).
- 6 The Economic Efficiency Law (Legislative Amendments for Implementing the Economic Plan for 2009-2010) – 2009 (hereinafter: “The Economic Arrangements Law”).
- 7 See the protocols of the discussions of the Knesset Finance Committee of 13 March 2007, 25 July 2007 and 16 June 2009. All references to Knesset protocols are in Hebrew.
- 8 Page 3 of the protocol of the Knesset Finance Committee of 25 July 2007.
- 9 Pages 7-8 of the protocol of the Knesset Finance Committee session of 25 July 2007.
- 10 Pages 5-6 of the protocol of the Knesset Finance Committee session of 13 March 2007.
- 11 Pages 14-15 of the protocol of the Knesset Finance Committee session of 25 July 2007.
- 12 Page 2 of the protocol of the Knesset Finance Committee session of 13 March 2007.
- 13 Page 21 of the protocol of the Knesset Finance Committee session of 16 June 2009.
- 14 Pages 14-15 of the protocol of the Knesset Finance Committee session of 25 July 2007
- 15 Page 6 of the protocol of the Knesset Finance Committee session of 25 July 2007.
- 16 Section 5A of Government Decision No. 1060.
- 17 Clusters 2-4 of 10 clusters (on a socio-economic scale where Cluster 1 is the lowest and Cluster 10 is the highest. See, Israeli Central Bureau of Statistics, “Characterization and Classification of Local Authorities by Socio-Economic Level of the Population in 2006,” updated 12 November 2009.

Appendix A: Below is a table displaying the districts, sub-districts and regions according to the Ministry of the Interior, and whether they have been designated as NPAs. This data served as the basis for the government's decision:

Region	District	Sub-district	% of total population in 2009	Included in the new map of NPAs?
Jerusalem	Jerusalem		12	No
North	Safad		1	Yes
	Kinneret (Tiberias)		1	Yes
	Jezreel	Afula	6 (including Nazareth)	Yes but only for 3 years
	Akka (Acre)		8	Yes
	Jezreel	Nazareth		Yes but only for 3 years
	The Golan		1	Yes
Haifa	Haifa		7	No
	Hadera		5	No
Center	Sharon		5	No
	Petah Tikva		8	No
	Ramle (Ramla)		4	No
	Rehovot		7	No
Tel Aviv	Tel Aviv	Tel Aviv	17 (including the entire district)	No
	Tel Aviv	Ramat Gan		No
	Tel Aviv	Holon		No
South	Ashkelon		6	Yes – to be decided by a ministerial committee
	Be'er Sheva		8	No
Jewish settlements	Jenin		4 (including the entire district)	Yes
	Nablus			Yes
	Tulkarem			Yes
	Ramallah			Yes
	Jericho			Yes
	Bethlehem			Yes
	Hebron			Yes

Appendix B: A comparison of Arab towns in the Triangle and Jewish settlements in the West Bank by socio-economic cluster.

Arab communities in the Triangle	Socio-economic cluster	Jewish settlements	Socio-economic cluster
Umm al-Fahem	2	Oranit	7
Baqa-Jatt	4	Alfei Menashe	8
Basmeh	2	Elkana	8
Jaljuliya	3	Efrat	6
Zimr	4	Ariel	6
Taibeh	3	Beit Aryeh	7
Tira	4	Givat Ze'ev	6
Kafr Bara	3	Har Adar	9
Kafr Qassem	3	Megilot	7
Kafr Qara	4	Ma'alei Adumim	6
Ma'alei Iron	2	Ma'alei Ephraim	5
'Arara	3	Kedumim	5
Qalansuwa	2	Karnei Shomron	5

Appendix C – Compilation of Socio-Economic Data for the Arab Communities in the Triangle

Data	Socio-economic cluster	Population	% of families with 4 children or more	Average income per capita	% of students among those aged 20-29	% eligible for matriculation among people aged 17-18	% of job seekers aged 15 and older	% earning minimum wage or less	% earning 2 times the minimum wage
Name of local authority									
Basmeh	2	7,761	37.74	1,317	6.15	50	11.59	54.63	1.27
Umm al-Fahem	2	42,211	33.76	1,321	4.91	33.29	10.74	58.64	1.36
Tal'at 'Ara – Ma'alei Iron	2	11,837	35.45	1,332	5.24	34.06	9.7	54.7	1.78
Qalansuwa	2	17,380	34.39	1,459	5.14	31.28	6.10	53.51	1.82
Jaljuliya	3	7,797	34.17	1,157	6.69	30.07	1.07	56.5	1.41
Taibeh	3	33,858	26.59	1,528	6.56	28.99	7.53	53.93	1.73
Kufr Qassem	3	17,655	32.04	1,356	6.22	36.8	0.88	54.9	1.91
Kufr Bara	3	2,639	38.46	1,558	8.41	48.54	0.66	44.06	3.72
'Arara	3	15,969	33.12	1,539	6.63	45.02	3.35	52.49	2.01
Zimr	4	5,232	31.08	1,760	8.82	47.06	5.02	47.55	2.06
Baqa-Jatt	4	31,664	29.58	1,734	6.59	45.95	2.89	49.65	2.27
Tira	4	21,109	21.74	1,665	8.28	32.27	1.83	52.33	2.13
Kufr Qara	4	14,430	30.48	1,908	10.58	36.63	2.31	50.2	2.84