

Defense appeal from the judgment handed down in the criminal trial of Sheikh Sayah Abu Mudh'm –

Main points

March 2018

1. Sheikh Sayah and his family, who are residents of the unrecognized village of al-'Araqib have led the struggle for recognition of their ownership of village lands, the rights of the Bedouin in the Negev desert and recognition of unrecognized villages for a number of years. Sheikh Sayah has led a lengthy, non-violent campaign of protests and actions in the field, public advocacy both locally and internationally and legal advocacy. As a human rights defender, Sheikh Sayah is known to the authorities, which have used their powers to harm him, restrict his activities and deter him and others from pursuing them.
2. Over the years, including after the indictment was served, Sayah Abu Mudh'm has been frequently summoned to the police station. After his interrogation sessions, Sheikh Sayah related that he was repeatedly asked to vacate the land, and when he refused, he was arrested on various suspicions, with the courts repeatedly releasing him.
3. After Sheikh Sayah appealed, the state requested that he be prohibited from entering the area of the village as a condition for staying the commencement of his imprisonment until the decision in the appeal. The court approved the request. Abu Mudh'm objected, and in a hearing in the appeal he had filed with the Beersheba District Court, the judge presiding ruled the condition was improper and irrelevant to the proceeding. The condition was revoked.
4. On December 24, 2017, the Magistrates Court convicted Sheikh Sayah Abu Mudh'm of 19 counts of invasion of public land, 19 counts of trespass and one count of failure to obey a lawful order and sentenced him to a ten-month prison term, a suspended prison term and a fine.
5. **The multiplicity and duplication of the offenses, which, in fact, refer to the same ongoing act that is the focus of the conflict (residing on the land) is an attempt to extend and broaden the indictment and secure a harsher sentence as a result.** The attempt to depict Sheikh Sayah as a “serial offender” and frame each journey back to the village after a court session or medical treatment and every time he was present in the village around a demolition as a separate instance of invasion is biased and constitutes a miscarriage of justice.
6. The indictment and the decision of the Magistrates Court remove the acts from their human and political context. The judgment makes no reference to the status of the unrecognized villages in the Negev as it is perceived in Israel, the treatment of Bedouin residents and the longstanding structural discrimination against them. The verdict presupposes a criminal motive and ignores the ideological, principled and social motivations. **The question of land ownership, and certainly the question of the “criminal act”, cannot be resolved when the political question is erased and when the defendants’ human rights, including the right to housing, property and equality in the country of their citizenship, are left out of the discussion as well.**
7. In addition to the principled arguments, the appeal claims abuse of process from the preliminary stage of the indictment, at a level sufficient to have the indictment quashed, most notably

selective enforcement focusing on Sheikh Sayah and his close relatives as well as improper use of multiple legal proceedings.

8. Not only has the court failed to recognize the extenuating circumstances and the arguments raised by the defense, but has proceeded to deliver an extremely harsh sentence which includes a lengthy prison term, despite Sheikh Sayah's advanced age, health complications, the fact that he was never suspected of violence nor alleged to have put any person in danger and despite the fact that the parole services determined he was willing and able to carry out community service.
9. The question of ownership over land in the village of al-'Araqib is pending before the Beersheba District Court, with both parties to the proceedings, the State and the a-Touri Bedouin Tribe insisting on their claim of ownership. The issue of land ownership is an issue of principle which has an impact on the ongoing struggle by the entire Bedouin community in the Negev for recognition of unrecognized villages and residents' ownership of their land.
10. The state did not wait for the question of ownership to be resolved before launching numerous legal proceedings against al-'Araqib residents, primarily Sheikh Sayah and his family. The main argument raised in the appeal in the criminal trial was that **the state was attempting to resolve the land ownership issue through criminal proceedings** which are unrelated to the question of ownership.
11. As noted, the state has launched numerous legal fronts against residents of al-'Araqib. In addition to Sheikh Sayah's criminal trial, the state has filed a civil claim against a number of al-'Araqib residents demanding compensation in the sum of 1.7 million ILS for demolitions it carried out in the village. The state has also filed an application under the Contempt of Court Ordinance against Sheikh Sayah and his family, requesting they be fined for every day they remain on village land. Finally, various al-'Araqib residents (including a minor, an elderly person and several women) have been charged with different offenses related to their presence on the land and their participation in protests during works conducted in the village by the Jewish National Fund and the state. This is an indication that **the state is using all legal tools at its disposal to deter and threaten al-'Araqib residents into relinquishing their hold on the land and create a chilling effect on residents of other villages, discouraging them from taking part in the struggle for recognition for the villages or holding on to their land.** The court acquitted the residents in the contempt case and dismissed the state's application on the grounds that the state had failed to exhaust the monetary measures available to it (as part of the administrative procedure of an eviction order in respect of land).
12. Individually, the state opted not to ask the court for a dispossession order against persons living on the land. Though eviction orders were issued in respect of the land, the latter do not constitute a decision to remove the residents from their homes. The state is aware of the fact that since the question of ownership over the land has not been resolved as of yet, it would be difficult to obtain eviction orders against residents, which is why it chose to launch criminal and civil actions against the residents.