

The Goldberg Opportunity:

A Chance for Human Rights-based Statecraft in Israel

The
International
Fact-finding
Mission

13



Solutions for Applying the Recommendations of the Commission
for Regulating Bedouin Settlement in the Naqab/ Negev

Habitat International Coalition - Housing and Land Rights Network



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Habitat International Coalition



Housing and Land Rights Network



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Abbreviations

ACRI	Association for Civil Rights in Israel
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
COHRE	Centre on Housing Rights and Eviction
ESCR	economic, social and cultural rights
GA	General Assembly
GCR	Goldberg Commission Report
Gol	Government of Israel
HIC	Habitat International Coalition
HLRN	Housing and Land Rights Network
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFFM	International Fact-finding Mission to the Naqab
ILA	Israel Lands Authority
ILC	Israel Lands Council
JA	Jewish Agency for (the Land of) Israel
JNF	Jewish National Fund
MoE	Ministry of Education
MoF	Ministry of Finance
MoH	Ministry of Health
MoHC	Ministry of Housing and Construction
Mol	Ministry of the Interior
NIS	new Israeli shekel
OHCHR	Office of the High Commissioner for Human Rights
RCUV	Regional Council of the Unrecognized Villages in the Naqab
U.N.T.S.	United Nations Treaty Series
UN	United Nations
WZO	World Zionist Organization

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Introduction and Summary of Findings

Since the proclamation of the State of Israel in 1948, official dealings with the indigenous inhabitants of the southern Naqab region¹ have been contentious. State policies over decades have involved large-scale evictions, displacement, destruction of houses and villages, severe building prohibitions, depletion of the communities' cultivated areas and livestock, and outright land dispossession. Israeli planning and development of the area have favored more-regularized forms of settlements with statutory plans, catering to the influx of Jewish immigrants. In recent years, the indigenous Bedouin Arab villagers and internally displaced persons (IDPs) have become more resilient in resisting pressures to leave their present homes to join government-planned townships. This resilience is manifest in greater community organization and persistent rebuilding of their government-demolished structures.

Some 45 of these villages remain “unrecognized”; that is, omitted from any Israeli statutory plans. The two sides—the state and these indigenous communities—are locked in opposition, faced off in an asymmetrical struggle that coincides with an aggressive development push by the Government of Israel (GoI) and state

¹ Originally, *al-Naqab*, in Arabic; in Hebrew, *ha Negev*.

agencies to remove the “unrecognized” villages and expand contiguous Jewish settlements, “judaizing” the region and taking over the land of the indigenous citizens.

Following a series of Knesset Commission hearings on the issues, on 28 October 2007, the Gol executive requested from the Ministry of Housing and Construction (MoHC) to establish a commission that would submit to the government recommendations on ways to regulate the Bedouin villages in the Naqab, the largest territorial region making up the State of Israel, in which the Bedouins are settled on 2.5% of the area.

On 23 December 2007, the Minister of Housing and Construction nominated the members of the “Commission for Regulating Bedouin Settlement in the Negev,” with Israel’s former Chief Justice Eliezer Goldberg at its head. Its membership included Gol officials, legal experts and two members of the Arab Bedouin community, but no resident or representative of the unrecognized villages. The members of the Commission were:

1. Eliezer Goldberg, Supreme Court judge (retired), chair;
2. Bilha Givon, director of Bar Kayma Negev/Sustainable Development for the Negev;
3. Yoram Bar Sela, lawyer and expert on land issues;
4. Faisal al-Huzayil, deputy mayor of the Bedouin township Rahat;
5. Ahmad al-Asad, municipal head of the Bedouin town of Laqiya;
6. Dudu Cohen, Ministry of Interior in the Naqab;
7. Yossi Yishai, vice director, Ministry of Agriculture;
8. Sharon Gamshan, vice commissioner of allocations, Department of Macro-economy & Lands, Ministry of Finance.

Despite its predominantly governmental composition, the Commission saw itself as required to “balance between the position of the government and that of the Bedouins: A policy that considers the claims and needs of the Bedouin, but at the same time does not ignore the needs of the state, and its land and financial reserves.”¹ The Commission subsequently invited individuals and associations to present testimony and documentary information to inform about the issues involved and values at stake, and to develop recommendations for a solution.

The Goldberg Commission has augured a new way of dealing with the Naqab’s citizens of Bedouin heritage, part of the indigenous Palestinian people. However, some perceived its mandate as bi-

ased, since the Commission was authorized to issue recommendations for implementing what they saw as an inherently flawed policy of dispossession and discrimination. Ultimately, many concerned parties presented testimony to the Goldberg Commission, ranging from “unrecognized” residents to international organizations.

Following that long consultative process, the Gol decided on 15 July 2008 to establish the Authority for Resolving the Bedouin Settlement in al-Naqab. The Goldberg Commission issued its recommendations to government in October 2008.

Then Prime Minister Ehud Olmert’s administration expressed keen interest in the outcomes and established an interministerial Commission² to take the recommendations forward.

Many in the Bedouin community saw the Goldberg Commission as yet another commission among many that have aimed to confiscate land, and not as an opportunity to revisit the inadequate land claims process, nor as a mechanism for resolving long-outstanding disputes. Such disputes have caused much resentment and confined Bedouin communities to a life of perpetual dispossession and poverty, in part because of the high level of distrust and long experience with government-appointed commissions. Meanwhile, outstanding ownership claims by Arab Bedouin currently cover about 776,000 dunams (77.6 hectares) of land in the Naqab.³

“Unrecognized” Villages

Between 1948 and 1966, Israel imposed a military administration on Palestinians living within its side of the 1948–49 Armistice Line and designated 85% of the Naqab as “state land.” All Arab Bedouin habitation was retroactively termed illegal, based on the pretence that these villages do not exist within the official planning regime. Consequently, they are excluded from current plans and remain officially unrecognized, with few exceptions. Under Israeli planning criteria, those villages and settlements, therefore, do not receive public services and remain subject to demolition and appropriation into regional plans under Jewish Agency criteria; (i.e., for housing and development to the exclusive benefit of “Jewish nationals”).

The International Fact-finding Mission

The International Fact-finding Mission to the Naqab/Negev (IFFM), with its present report, is a civil response to the Goldberg process. Grounded in a common concern for respect, protection and fulfillment of the rights of the affected people, the Habitat International

Coalition’s Housing and Land Rights Network (HIC-HLRN)⁴ and its local Member, the Regional Council of Unrecognized Villages (RCUV) came together to organize an independent mission of four renowned international experts in complementary fields to assess the situation and proffer to all levels of government in Israel and to the international community practical recommendations within the framework of universal human rights criteria and other related internationally recognized norms. Those criteria constitute state obligations for Israel to apply them as a party to the relevant treaties and its membership in the community of states. The IFFM team’s approach applied that indispensable legal framework, which is not explicit in the current Israeli development policies, or the Goldberg Commission’s advisory mandate.

At a critical moment in the process, following release of the Goldberg Commission recommendations, and before the 2009-elected Israeli government responds to them, HIC-HLRN and RCUV sought to fill the gap in time, method and substance with the expertise that seeks a needed problem-solving objective and offers an expert international view. As the IFFM followed the submission of the Goldberg Commission recommendations to Gol, the present report is as much an expert evaluation of those outcomes as it is an assessment of the current situation on the ground.

The overall aim of the IFFM has been to secure the rights of the unrecognized-villages community and to face the challenges created after the establishment of the Goldberg Commission and the subsequently created Authority for Resolving al-Naqab Bedouin Settlement. This IFFM forms part of a larger effort to apply human rights criteria practically by posing policy alternatives grounded in the minimum international standards of justice, human rights and good professional practice established for forward progress and the evolution of modern statecraft.

In order to address the issues and values sufficiently and to provide the expert advice required, HIC-HLRN and RCUV invited the following prominent experts to form the investigative team:

Anthony Coon, previously head of urban planning at Strathclyde University, Glasgow (Scotland), author of *Planning under Military Occupation* (1992). Prof. Coon participated in the HIC 1993 FFM to Palestine/Israel and is coauthor (with Liz Hodgkin) of *Demolition and dispossession: the destruction of Palestinian homes*, the 1999 Amnesty International report on house demolitions in the occupied Palestinian territory;

Steve Kahanovitz works in the Cape Town office of South Africa's public interest law group the Legal Resources Centre. He has previously served as legal and national director of the LRC after many years representing clients facing an oppressive apartheid state, and more recently has been defending socioeconomic rights on behalf of the LRC's poor clients. He is a graduate of the University of Cape Town (BA); the University of the Witwatersrand (LLB) and the London School of Economics (LLM).

Miloon Kothari, former UN Special Rapporteur on Adequate Housing (2001–08) and codirector of the Center of Housing Rights and Evictions (COHRE), is a founder of Housing and Land Rights Network of Habitat International Coalition and current coordinator of HIC-HLRN South Asia Regional Programme.

Rodolfo Stavenhagen is a sociologist and a professor-researcher at El Colegio de México. A former Assistant Director General of UNESCO, Prof. Stavenhagen served as United Nations Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people (2001–08). Rodolfo Stavenhagen is author of the book *Ethnic Conflicts and the Nation State* (New York: Macmillan, 1996).

In addition, the RCUV coordinated with local community leaders to form both a Steering Committee with representation from across Israel to provide substantive and strategic guidance in the planning of the IFFM program and the follow up. RCUV also convened a local group of technical experts to serve as resource persons, advising the IFFM team on local details and nuances in addition to the findings derived from the background materials and the local site and institutional visits during the mission. This local team included the following resource persons:

Salman Abu Sitta, born in Bi'r al-Sabi' during the British Mandate of Palestine. During the 1948 War, he took refuge with his family to Gaza at the age of 10, later studying in Cairo and graduating from Cairo University's Faculty of Engineering. Continuing his post-graduate studies, Abu Sitta received his PhD in Civil Engineering from the University of London. He has spent four decades researching land and population issues in Palestine before, during and after the creation of Israel. Abu Sitta's documentation, mapping and analysis (authoring over 300 papers on the subject) have become indispensable to understanding the dynamics of land use, settlement policies and related institutions in the State of Israel. Salman Abu Sitta

has served as director of international development and construction projects and has been a member of the Palestine National Council. He also is founder and president of the Palestine Land Society (PLS) and general coordinator of the Palestinian Right of Return Congress. (Dr. Abu Sitta provided the IFFM maps and analysis.)

Khalil al-`Amūr, a teacher from the unrecognized village of al-Sīra, is among the few Naqab Bedouin who possess legal title that proves their ownership of the land. In 2007, an Israeli court ordered Mr. al-`Amur and all his neighbors in al- Sīra to vacate their homes to make way for the village’s demolition. He remained and succeeded to convince the court to review his case based on the tenure contract he held, which dated back to 1921.

Jihad al-Sana' is a lecturer at the Department of Mathematics and Computer Science, Ben-Gurion University of the Negev, Beer Sheva.² He is a resident of Laqiyya, one of the seven government-planned towns in al-Naqab.

Oren Yiftachel, professor of political geography, urban planning and public policy at Ben-Gurion University of the Negev, has been a resident of Beer Sheva since 1993. Yiftachel is one of the main critical geographers and social scientists working in Israel. Born in a northern Israel kibbutz, he lived there until the 1970s. He studied in Australia, during the 1980s, and completed doctoral and postdoctoral studies at the Technion (Haifa, Israel). Dr. Yiftachel is the founding editor of the journal *Hagar: Studies in Culture, Politics and Place*, and serves on the editorial board of *Planning Theory, Society and Space, IJMES, MERIP, Urban Studies, Journal of Planning Literature* and *Social and Cultural Geography*. He is renown for his work on critical theories of space and power, minorities and public policy, and “ethnocratic” societies and land regimes.

At the invitation of its local member, the Regional Council for the Unrecognized Villages (RCUV), Housing and Land Rights Network of the Habitat International Coalition organized the high-level fact-finding team to investigate the human rights conditions of the indigenous Bedouin communities in the Naqab. This mission follows upon the recent publication of the Goldberg Commission Report (GCR). Facing the challenges and opportunities posed by

² The place name Beer Sheva refers to the town that the Turkish administration established in 1903 with its Arabic name of Bi'r Sabi` (meaning spring no. 7). The various spellings are transliterations of the Arabic name or its hebraicized version. This report applies one of those Hebrew versions (Beer Sheva) throughout.

the Goldberg Commission, RCUV facilitated the international team's investigation with a thorough program to ensure optimum contact with the affected community and the various concerned parties, including academics, civil society organizations, professional experts and Israeli government officials.

Summary of Findings

The legal, moral and ethical framework for the mission's task is provided by the international human rights instruments adopted by the General Assembly of the United Nations, which have been ratified by the State of Israel, as well as general principles of public international law binding on Israel as a member of the international community of states.⁵ The IFFM's principle objectives were to record their findings for Israeli policy makers and the wider public, including the international community, in the form of relevant policy recommendations grounded in the aforementioned legal and ethical framework.



International Fact-finding Mission members and local support team (L-R): Oren Yiftachel, Rodolpho Stavenhagen, Miloon Kothari, Anthony Coon, Steven Kahanovitz, Jihad al-Sana', Joseph Schechla, Khalīl al-`Amūr.

The Arab community in the Naqab has been consistently in possession and use of their lands over many centuries, long predating the State of Israel's proclamation in 1948, preceding British rule and the near half-millennium of Ottoman administration. Yet, as acknowledged by the Goldberg Commission, the Arab Bedouin citizens since 1948 have endured forcible evictions, population transfers, demolition of homes and

destruction of property, confiscation of their lands and severe damage to their traditional livelihood and way of life. This has frequently turned the Bedouin into virtual “trespassers” on their own land, in the view of the relatively new state and the many later-coming Jewish settlers.⁶ That situation has caused numerous human rights violations, including dispossession and material privation, as well as severe distress and psychological trauma, especially among the women and the children.

The Mission has received direct written and oral testimonies, from residents of recognized and unrecognized villages, including community leaders, residents (elders, youth, women and others), academics, legal experts and some public officials, although most Israeli government officials declined or ignored formal invitations to meet with the fact-finding mission team. The in-country meetings and site visits have been augmented with further documentary research and consultation with counterparts through 2009 and early 2010.

Despite being Israeli “citizens” (a disadvantaged civil status in Israel, as explained in the full report), the Bedouin Arabs in al-Naqab have been especially disenfranchised as effective participants through their civil and political rights in the local political process.

Available public information indicates that two out of three Bedouins live below the poverty line, and that their access to social services such as education, health care, water, electricity and housing is among the lowest in the country, despite their greater need. By acknowledging the historical fact of the dispossession of the Bedouin of their lands, the GCR is critical of the way that government policy has handled security of tenure and claims over land ownership. The IFFM considers, however, that the recommendations proposed by the GCR remain insufficient to meet the Arab population’s multiple human rights, human needs and entitled reparations. This inadequacy derives from the GCR’s subordination to current policy assumptions. One such assumption is reflected in the GCR’s proposal to subject its recommendations to policies of the existing Beer Sheva Metropolitan Plan. The Mission considers also that the proposals in that plan may provide an option arising from current Israeli law, but would breach current international human rights obligations of the State of Israel, as well as inflict further substantial harm on the Bedouin community.

The present practice of state authorities incrementally demolishing the unrecognized villages has been ongoing for at least 25 years.

The ostensible premise has been, and continues to be the homeowner's lack of a permit. In the eight years before the IFFM began, the number of demolitions has averaged some 107 per year, and that the rate of destruction has risen alarmingly in the later years, to 400 in 2008. The total number of people rendered homeless by these demolitions has averaged 730 persons annually, with some 2,700 made homeless in 2008 alone. During 2009–10, the IFFM received information of the Gol demolishing at least 356 homes and other structures, making at least 2,300 persons homeless.

Urgent government action is required for the recognition, servicing and participatory planning and management of the so-called “unrecognized” villages. The state needs to evolve so as to recognize, respect, protect and fulfill the human rights and effective autonomy of the communities of the Naqab to sustain their lifestyles according to their choice, in the locations of their choice on their traditional-use lands.

The IFFM provides a critical view of the Goldberg recommendation, particularly challenging its assumption that (1) solutions be subordinate to standing urban plans and (2) that the collective land claims—in particular, pasture lands—remain outside any proposed solutions. However, the report also supports the Goldberg Commission's recommendations that the Gol pursue ethical solutions beyond the text of Israel's laws and policies, institutions and practices, as these constitute an essential part of the problem of continuous dispossession and conflict. The report's findings conclude with a set of 18 points of needed actions and measures for planning and development. In summary, the IFFM team recommends that:

- The state officially recognize, and plan for the 45 unrecognized villages and any other indigenous villages in the region;
- Political participation rights for the Bedouin citizens be extended from the national level to be realized also in local elections;
- The delivery of local government services be improved immediately, based on the full implementation of internationally recognized human rights principles of equality and nondiscrimination;
- A moratorium on all demolitions of homes and forced evictions, and destruction of other structures and lands be put into effect immediately;

- The Beer Sheva Metropolitan Plan be revised to avoid destruction of villages and to promote the development needs of the existing villages;
- For the solution of outstanding individual and collective land claims, a new procedure beyond existing law, as recommended by the GCR, should be established. However, this should be based on international norms and practice of possession and use of land, in order to address lacunae, shortcomings and contradictions of human rights in Israel's current legal system, policies and practices;
- Remedy through a policy of affirmative action and reparations for the losses, costs, injustice and suffering endured by Bedouin victims of violations should be implemented without delay, in accordance with international norms.

On the basis of its findings, the Mission, therefore, recommends a fundamental change in state policy toward non-Jewish citizens, generally, and the Arab and Bedouin citizens, in particular, to apply human rights principles and instruments in the determination of planning criteria and corresponding administrative procedures, as specified in the body of the report.

The state's systematic discrimination against the Bedouin and its failure so far to comply with human rights and related treaty obligations only ensure that conditions of deprivation and conflict continue. On the basis of the fundamental, internationally recognized human rights principles of equality and nondiscrimination, the rights of all citizens to education, health, water, adequate housing, work and adequate living conditions,—indeed all human rights—must be implemented. Reparations also would have to include the restoration of the affected community's good name, following a long government campaign to portray them as outlaws and trespassers.

The IFFM report attempts to offer the State of Israel an opportunity to meet the minimum requirements of a state in the international system, as well as eventually to become a democracy; i.e., a state upholding equal rights and responsibilities of all citizens.

The Mission organizers repeatedly have invited relevant officials of the Israeli government to present evidence and explain policy to the IFFM team. Unhappily, no serving official accepted that invitation. However, the IFFM's report, its conclusions and recommendations are primarily intended for those Israeli officials, legislators and policy makers and implementers, to whom the IFFM team offers these findings for their urgent consideration.



The Report of the International Fact-finding Mission

The Context: Stages of Dispossession and Transfer

The Arab Bedouins traditionally have lived in historic Palestine for centuries in small clusters of habitation on semiarid lands, including privately owned plots and collectively held pasture lands. By the 20th Century's midpoint (ca. 1948), an estimated 95% of the Naqab Bedouin were settled agriculturalists, with only 5% exclusively dependent on a pastoral livelihood.⁷ Many of their settlements became villages well before the 20th Century began.

Even though the Ottoman regime considered much of the Naqab/Negev as "*mawāt*" (uncultivated), it also recognized the Bedouin tribal territories and, under certain conditions, authorized individual title for the development (cultivation) of such lands, subject to official permission and the payment of taxes.

Ottoman laws followed by the British occupation saw several registration processes take place in Palestine, but mainly in the more-fertile north (for taxation purposes), with the policy prevailing in the south such that planned collective pasture land occupation was accepted without intrusion. However, before the emergence of the State of Israel, much of the land of the Naqab was under

private ownership, under both formal and traditional title, with only some 5% of the population depending on pastoralism on collectively held lands by 1948.

Until 1946, Zionist maps omitted the Naqab from the proposed Jewish state in Palestine.⁸ However, the Jewish Agency for the Land of Israel already had established Jewish settler colonies in the Naqab during WWII, and inaugurated eleven more there on 6 October 1946. That settlement activity already presaged the eventual borders of Israel.⁹ By late 1947, the Jewish National Fund (JNF) was engaged in financing the "liberation of the Negev."¹⁰

The reports of the UN mediator for a negotiated partition of Palestine recommended the "inclusion of the whole or part of the Negev in Arab territory."¹¹ Although much of their land was split between the Arab and Jewish States recommended in General Assembly resolution 181 (1947), the residents of the Naqab/Negev soon found themselves and their territory completely dominated by Israeli forces. Transjordan's King Abdullah eventually had pledged noninterference,¹² and U.S. President Harry Truman had

supported World Zionist Organization President Chaim Weizmann's bid to include the Naqab in the new Jewish state.¹³



Remains of homes demolished in the early 1950s to prevent the return of Naqab inhabitants.

Officially on 10 March 1948, the Haganah had adopted its comprehensive Operational Plan D (Plan Dalet), which sought “the *permanent* seizure of Arab villages and the expulsion of their inhabitants” (emphasis added)¹⁴ Amid a series of battles and military operations variously code-named “Death to the Invader,”¹⁵ “Yoav,”¹⁶ “Moshe,”¹⁷ “Shmone,”¹⁸ “Assaf,”¹⁹ “Horev,”²⁰ and “Uvda,”²¹ Israeli forces consolidated their control of the Naqab in the context of Egyptian military activity and the subsequent armistice.

The ceasefire between Egypt and Israeli forces in 1948 effectively facilitated the Israeli occupation of the Naqab and southern Palestine, disengaging the interstate military confrontation, while providing no protection for the civilian population. That is despite prohibitions against territorial changes under the terms of the ceasefire. Only the Gaza Strip lay behind the Egyptian side of the 1949 Armistice Line, where by then many of the owners of Naqab lands were concentrated among the 130,000 Palestinian refugees.²² Thus, Israeli forces remained largely unopposed in their military control of the territory at the time of the State of Israel’s proclamation of independence.

In 1948, Zionist forces, with support from the World Zionist Organization/Jewish Agency for the Land of Israel (WZO/JA), conquered most of the Naqab, which the emerging State of Israel incorporated into its territory, driving out the majority of the Bedouin population. Those who remained were gathered against their will into a small, well-defined area known as the “*siyāj*” (an Arabic term for bordered area, fence or enclosure) of about 1,100 square kilometers, and were put under an Israeli military government that was lifted only in December 1966.

The eleven Arab tribes that previously were spread outside the *siyāj* were not allowed to return to their lands, orchards and villages. That was despite the evicting authorities telling them that their transfer was only temporary; and they are to this day classified as “internally evacuated,” lacking a specified “tribal territory” and having lost their traditional lands.²³ Thus, states the Commission, two classes of Bedouins were created: that of “landowners” and that of displaced “landless.” These unprecedented categories corresponded to the terms *sumrān* and *humrān*, respectively, which the Israeli authorities have used and the Bedouin consider to be artificial and constructed concepts with the purpose to dividing their community.

Remnants of those communities who took refuge elsewhere suffered marginalization where they settled around Arab towns in Israel, elsewhere in Gaza and the West Bank, or elsewhere.

In a practice also resulting in the disruption of the indigenous social fabric, Israel's concentration of Bedouin within the *siyāj* was carried out with disregard of the contours of tribal affiliations,

thereby undermining centuries-old bonds and reciprocity systems within and across clans and tribal groups.



20th Century clan, administrative and international borders in the Naqab. Source: Avinoam Meir, *As Nomadism Ends* (Boulder CO: Westview Press, 1997).

From Warfare to Lawfare

While the British Mandate authorities had upheld the legal fiction that uncultivated land belonged to the state, the State of Israel later assumed and embellished that notion as a means of acquiring lands under the color of law.²⁴ Israel's Land Rights Settlement Ordinance (1969) asserted that: "Lands, which at the time of the enactment of this law were classified as *mawāt*, will be registered in the name of the State."²⁵ Defining all land in Beer Sheva District, in addition to other areas elsewhere, to be "state land," thus, under this single Ordinance, the state seized more than 61% of Israel's claimed territory.

Already in January 1949, the new Gol had signed over one million dunams of land acquired during the conquest to the parastatal Jewish National Fund (JNF) to be held in perpetuity for "the Jewish people." In October 1950, the state similarly transferred another

1.2 million dunams to the JNF.²⁶ A JNF spokesman explained in 1951 that the transfer to JNF title “will redeem the lands and will turn them over to the Jewish people—to the *people* and not the *state*, which in the current composition of population cannot be an adequate guarantor of Jewish ownership”²⁷ (emphasis in original). Although records for the Beer Sheva District have been less precise than others in Palestine, the best estimate for the scope of titled lands that Israel acquired from refugees during the military operations in the southern region was 14,320,000 dunams (1,432 hectares).²⁸

The British Mandate government had issued an order in 1921 calling Naqab inhabitants who cultivated, revitalized and improved land to register their holdings.²⁹ For a variety of reasons, the Bedouin mostly did not do so,³⁰ and their land remained unregistered in British records. The courts of the new State of Israel ruled 27 years later that any Bedouin who passed up that 1921 land-registration opportunity and did not receive a certificate of ownership was no longer eligible to do so.³¹

In application of the Land Rights Settlement Order, in 1971, the Israeli government required the registration of all lands in the northern Negev in the name of their owners. The Bedouins were not allowed to submit claims in other regions such as, “Har Hanegev” region in the southwest of the Naqab. By 1979 the Bedouin had submitted 3,220 claims, affecting 776,856 dunams, to many of which the government submitted counterclaims. According to official sources, only 18% of all claims, made by 12% of the claimants, have been settled to date.

For the Bedouins, an Israeli government ultimatum was in force: anyone permanently settling in specially designated areas “would become a good citizen, and those unwilling to do so would have to move to Sinai or Transjordan.”³² In the early years of independence, Israel’s military forces, including the army and Border Patrol, forcibly moved the land-dependent Bedouin from place to place within the Naqab, in some cases as much as five times within a year.³³ Beginning in this period, Israeli authorities forcibly transferred and concentrated many Bedouin communities from across the Naqab in a demarcated area under military rule, concentrating them in the central part of the Naqab. This formation, still enforced today, is locally known as the “*siyāj*” (bordered area, fence, or enclosure) of about 1,100 square kilometers, which territory comprises just 2% of the Naqab/Negev.

A Policy of Dispossession and Concentration

Near the end of 1948, some Israeli officials had reached an agreement with some Negev tribes, including also some who fought alongside Zionist forces. In exchange for refraining from attacking Israeli forces or interfering in cross-border problems, “The government would recognize their rights and their ownership of the land they lived on.”³⁴ However, in practice, the State of Israel expropriated all the lands of the Bedouin whom Israel had moved elsewhere, dispossessing them on the grounds that the owners had “abandoned” their properties.³⁵

With the Bedouins’ absence from their habitations and villages, their properties became vulnerable to seizure and/or demolition. Israel’s destruction of Naqab Bedouin habitation became most intense in the 1951–53 period, and again in the late 1960s,³⁶ when Israeli forces effectively destroyed their habitat outside of the *siyāj*. Thus, the Naqab Bedouins from outside the *siyāj* faced the fate of other villages belonging to the Palestinian refugees and IDPs, ensuring them little to which to return.³⁷ [\[Click for map of village points.\]](#)

Following a decade-long phase of land confiscations and military rule, Gol sought to make the acquisitions of lands and villages permanent with a modified policy toward the Arabs in Israel, as announced by David Ben-Gurion in 1959. For the Naqab, the policy prioritized:

- (d) passage of a law to mandate settlement of the Bedouins and their transfer to permanent homes...
- (e) speedy solution of the problem of compensation to the “present absentees”³⁸ for their land;
- (f) encouraging permanent Arab migration to the mixed cities.

As for the Bedouin Arabs, the state’s complex relationship with the inhabitants of the Naqab involved more than just a matter of housing, but effectively pursued the replacement of Palestinian rural society. By the time of this 1959 policy initiative, indigenous Naqab communities already were concentrated in the *siyāj*, or elsewhere evicted as IDPs or effective refugees and stateless people in the Gaza Strip or neighboring countries. The legacy of village destruction is illustrated in the map “Village Points Inside & Outside Siyag” accompanying this report, which marks the sites of Naqab villages and habitations the Israel destroyed in order to create the infamous *siyāj*.

By 1951, fewer than 13,000 Naqab inhabitants remained of a community that numbered 70,000–90,000 in the late 1940s. Moreover, until mid-1952 the state denied the Bedouins any official identity documents. Theoretically, anyone whom a law-enforcement officer found without such ID was subject to expulsion, stateless, across the border.³⁹ That policy was applied to an unrecorded total number of Naqab Bedouins. However, as late as 1953, the United Nations reported the expulsion of about 7,000 Negev Bedouin that year alone, into neighboring Jordan, the Gaza Strip and the Sinai.⁴⁰

The transfer and prolonged demolition process have involved the depopulation and destruction of at least 84 indigenous habitations, including many well-established villages. (Details of the cartographic process are found in Annex III of this IFFM report.) In the meantime, the Israeli state had transferred most land in the Naqab/Negev under JNF, Israeli Lands Administration or Israel Lands Authority (ILA) control.

Under the Gol's post-1959 policy, the state's attempts to claim the land legally met Bedouin counterclaims until 1974, when the government adopted the recommendation to freeze all legal proceedings and provide some degree of compensation for the dispossessed properties.⁴¹ The Ministry of Justice recommended that the Bedouin maintain possession of 20% of the land and be compensated for the remaining 80% at a rate of NIS 2,000 shekels per dunam.⁴² The Galilee and Naqab Bedouin rejected these proposals, as they were still claiming and even seeking to register their actual lands. But this pursuit only eroded the indigenous community's faith in Israeli law. Faith plummeted further with the precedent-setting 1984 decision of High Court Judge Avraham Halima such that, by definition, no Bedouin, jointly or severally, have any connection, and can have no connection, to traditional-use lands and corresponding rights.⁴³ In that ruling relating to 16 cases, known also as "the Hawashla precedent," the High Court accepted the state's premise that the Bedouin had no valid claim to ownership of Naqab lands.⁴⁴

After the cancellation of military rule in 1966, most of the Bedouin continued living in the closed area (*siyāj*), despite the fact that transferred communities remained in precarious, squalid conditions where they were moved, and usually on lands that actually belonged to other indigenous Bedouin communities. Some locations, as in the case of Wadi Na'im, have become environmentally degraded and are not humanly habitable. Their rights to freedom of movement and residence remain foreclosed.



Wadi al-Na`im, Beer Sheva District.

The State of Israel accorded the Naqab Bedouin population the secondary status of Israeli citizenship (*ezrahūt*) in 1954. Since then, they grew rapidly in number and reached a total population of over 172,000 by 2007. Given their high birth rates in recent decades, over 60% of the Negev Bedouin are children and youth.

“Illegal” building, required by the needs of a growing population and in the absence of any viable alternative, has reached “enormous” proportions. Official data indicate that the number of illegal constructions has reached 50,000, and 1,500 to 2,000 illegal buildings are added each year. The predominant response of the state is to demolish homes classified as “illegal.” (See “Demolition” below.)

Initially, Israeli authorities recognized two villages to become centers for concentrating the Bedouin population. In 1980, they added a further three. At the end of the 1980s, planning authorities recognized another two, and post-2008 developments see this number growing toward 17. However, the RCUV calls for all 45 to be recognized.

In the absence of recognition, thousands of people living in those unrecognized villages are denied a vote at the municipal level and, accordingly, have no substantive role on local government. The consequence is that, while the Bedouins may have a certain right to vote as “citizens,” they fall into the inferior-rights category of those persons in Israel without “Jewish nationality.” Thus, land-

use, development and planning laws and institutions exclude them. (See Nationality, Citizenship and Israel's Development Organizations below.) They have very little influence at a local level to ensure delivery of health, education, water and other local government services.

Prior to 1984, the government had managed to conclude compromise arrangements for only 115,000 dunums of land. (See *The Land Dispute* below.) Israeli state authorities subsequently expropriated around 60,000 dunams of land in the Tel Malhata region with the construction of the U.S.-funded Nevatim Airport project that was to compensate Israel strategically for bases in the Egyptian Sinai returned under the Israel-Egypt Peace Treaty (1979). This led to further displacement of communities, including to new locations inside Israel. Such was the case for the Bedouin living on the outskirts of Kafr Qasim and other Arab towns inside Israel. In the case of the Jahhalīn, east of Jerusalem, Gol forcibly has evicted those Naqab natives and maintained a constant threat of demolition there to this date, while the expanding Jewish settler colony of Ma`aleh Edumim nearby seeks the Jahhalīn's removal with court approval.⁴⁵

From 1968 through the 1990s, Gol planned and built seven townships to absorb the Bedouin into urban-style townships (Tel Sheva, Rahat, Kusaife, `Arara, Hura, Segev Shalom, and Laqiyya). Israeli planners have referred to these new planned Bedouin settlements as *rekūzīm* (concentrations). Settling there requires the resident to disavow any land claim, as well as accept terms excluding any right of land ownership in the township. While construction and expansion of these townships have continued, they lack basic services available to other citizens having the advantaged status of "Jewish nationals." Most lack infrastructure such as public transport and adequate education services, and job opportunities are rare. Simultaneously, the Gol policy—with the cooperation of the judiciary—has focused on the demolition of Bedouin homes and other structures and the eviction of their residents in some 45 remaining villages.

Thus, the state has offered nontransferable land-occupation rights (not ownership) to Arab Bedouin citizens in seven recognized townships. This contrasts significantly with some 104 Jewish villages that the government, state and parastatal institutions have established over the same period.

In the midst of this township resettlement process, in 1986 and again in 1989, the interministerial Markovitch Commission

proffered a scheme to eliminate the “illegal” buildings in the Arab community across the country. The Markovitch plan called for the demolition of more than 11,000 Arab houses built after the Planning and Construction Law (1965), which the Commission selected as the statutory criterion for classifying them as illegal. Implementing the recommendations, Gol policy and planning law made all of those unlicensed Arab buildings illegal and subject to official destruction. That applies for 45 entire communities in the Naqab—and a greater number in the Galilee—that have come to be known as the “unrecognized villages.”

Nationality, Citizenship and Israel’s Development Organizations

The State of Israel maintains a unique system of dual-tiered civil status. It provides “Israeli citizenship” based on four criteria (birth, residency, marriage and immigration), as long as claimants of residency and citizenship are not members of a legally defined class of Arab and other neighboring nationalities categorized as “enemies of the state.”⁴⁶ However, as restricted as access to Israeli citizenship may be, that status alone does not ensure equal treatment with all other citizens and, in fact, forecloses a bundle of their economic, social and cultural rights.

Meanwhile, Israel law establishes and maintains a civil status superior to Israeli citizenship, classified as “Jewish nationality.” That status, available by way of descent from a Jewish mother or highly restricted conversion to the Jewish faith, entitles eligible persons to claim “Jewish nationality” and enter areas controlled by Israel to claim rights and privileges explicitly denied to non-Jewish citizens, IDPs and refugees—indeed, the entire indigenous people—of historic Palestine.

The Israeli High Court has affirmed this fact of institutionalized discrimination on grounds of both legal judgment and state ideology. In the case of *Tamarin v. Ministry of Interior* (1970), a petitioner sought to register his nationality as “Israeli,” rather than “Jewish.” However, the Court ruled: “there is no Israeli nation separate from the Jewish nation...composed not only of those residing in Israel but also of Diaspora Jewry.” The President of the Court Justice Shimon Agranat explained that acknowledging a uniform Israeli nationality “would negate the very foundation upon which the State of Israel was formed.”⁴⁷ A more-recent legal challenge involving 38 petitioners has been before the courts since 2004, and lengthy procedures have deferred and delayed a ruling on that petition for recognition of a common “Israeli nationality.”⁴⁸

Instead, the criterion of “Jewish nationality”—that is, belonging to a Jewish “nation” (*le’om yahūdi*)—is enshrined in the charters of Israeli state agencies, World Zionist Organization/Jewish Agency for the Land of Israel (WZO/JA), Jewish National Fund (JNF) and their subsidiaries, which were established for the purpose of colonizing Palestine. (The JNF charter also applies the terms “Jewish religion, *race* or origin/descendency” [emphasis added].⁴⁹) While these parastatal institutions are organically part of the State of Israel today, as affirmed in its Status Law (1952) and Covenant with the Zionist Executive (1953, amended 1976), they claim to possess and manage 93% of all lands in Israel and Jerusalem (not counting direct and indirect holdings in the other occupied Palestinian territories), their parochial charters provide the fundamental principles referenced in much of Israeli legislation related to land use, housing, immigration and development. The Basic Law: Law of Return (1950), for example, establishes immigration for Jews as a “nationality” right not provided in the 1952 Law of Citizenship (*ezrahūt*), and effectively excludes the indigenous refugees of Palestine dispossessed since 1947, including those expelled from the Naqab, as well as all non-Jews.

The Israel Lands Law (“The People’s Land”) (1960) establishes that lands will be managed, distributed and developed in accord with the principles of the JNF and its discriminatory charter. The Israel Land Administration, also established in 1960, rested on four “cornerstones”: Basic Law: Israel Lands (1960), Lands Law (1960), the Israel Land Administration Law (1960), and the Covenant between the State of Israel and the Zionist Executive (World Zionist Organization/Jewish Agency and Jewish National Fund). The Israel Land Council (ILC) determines ILA policy, with the Vice Prime Minister, Minister of Industry, Trade, Labor and Communications as its chairman, while the 22-member Council is comprised of 12 government ministry representatives and ten representing the JNF and its conditions of Jewish-only beneficiaries.

Recent legislation in the form of the Israel Lands Authority Law, Amendment 7 (2009) and a 2010 amendment of the British Mandate-era Land Ordinance (Acquisition for Public Purposes) (1943) introduced tactical adjustments to the land tenure system in Israel during the period of this review. The 2009 amendment authorizes more powers to the JNF in its special status and role in land management. It also establishes the Israel Lands Authority (ILA) (no longer “Israel Lands Administration”) with increased powers, provides for the granting of private ownership of lands, and sets approval criteria for the transfer of state lands and

Development Authority lands to the JNF. The 2010 amendment "makes sure" that lands expropriated for "public use" do not "revert" to original owners and now can be transferred to a third party (likely the JNF). The 2010 legislation also circumvents the Israeli Supreme Court's precedent-setting judgment in the 2001 Karsik case,⁵⁰ which obliged authorities to return confiscated land in the event it has not been used for the purpose for which it was confiscated.

According to the amendments, the JNF will continue to hold large representation in the Israel Lands Authority with six of 13 members (which also can function with just ten members). That ensures JNF's continued key role ensuring discrimination against indigenous Palestinians in the development of policies and programs affecting 93% of lands in Israel.

These recent amendments allow the state and the JNF to exchange lands, in order to facilitate "development" through the privatization of lands owned by the JNF in urban areas. Such a swap would have the state receive JNF land in urban areas that could be privatized, while the JNF would receive 50–60,000 dunams of land in the Galilee and the Naqab, where the indigenous population of Palestinian citizens of Israel remain most concentrated.

As in the past, the JNF agrees that the new Israel Land Authority will manage its lands, whereas ILA is committed to do so consistent with "the principles of the JNF in regards to its lands" (Article 2). In addition, the JNF has committed to contribute 100 million NIS (€20.5 million) from its own sources to further development of the Naqab.

The amendments enable further circumvention of legal oversight and legislate against the equality in land use rights. As the JNF's charter excludes non-Jews from benefiting from its land or services, any such transfer of public land to the JNF prevents citizens' equal access to land. In other words, the state will be able more readily to "judaize" more land and discriminate against its non-Jewish citizens in the Naqab and Galilee—and elsewhere—by transferring these lands to the JNF.

The new 2010 law appears to prevent—or severely impede—Palestinian citizens of Israel from ever reclaiming their confiscated land. It forecloses such a citizen's right to demand the return of the confiscated land in the event it has not been used for the public purpose for which it was originally confiscated, if that ownership

has been transferred to a third party, or if more than 25 years have passed since its confiscation. Well over 25 years have passed since the confiscation of the vast majority of Palestinian land, including lands in the Naqab, while the ownership of large tracts of land has been transferred to third parties, including Zionist institutions such as the Jewish National Fund.

The ILA rationalizes its policy of restricting bids for JNF-owned lands to Jews only by citing the Covenant between the state and the JNF (1961). Under that agreement, the ILA is obliged to respect the objectives of the JNF, which include the acquisition of land "for the purpose of settling Jews."⁵¹ Thus, JNF serves as the state's subcontractor for discrimination based on a constructed "Jewish nationality," and not Israeli citizenship.

This legal and institutional framework ensures that housing, land, immigration and development rights and values are exclusively for "Jewish nationals" to enjoy.⁵² Most indigenous inhabitants of Israeli controlled areas are not Jewish, including the "unrecognized" village residents and citizens in the Naqab.

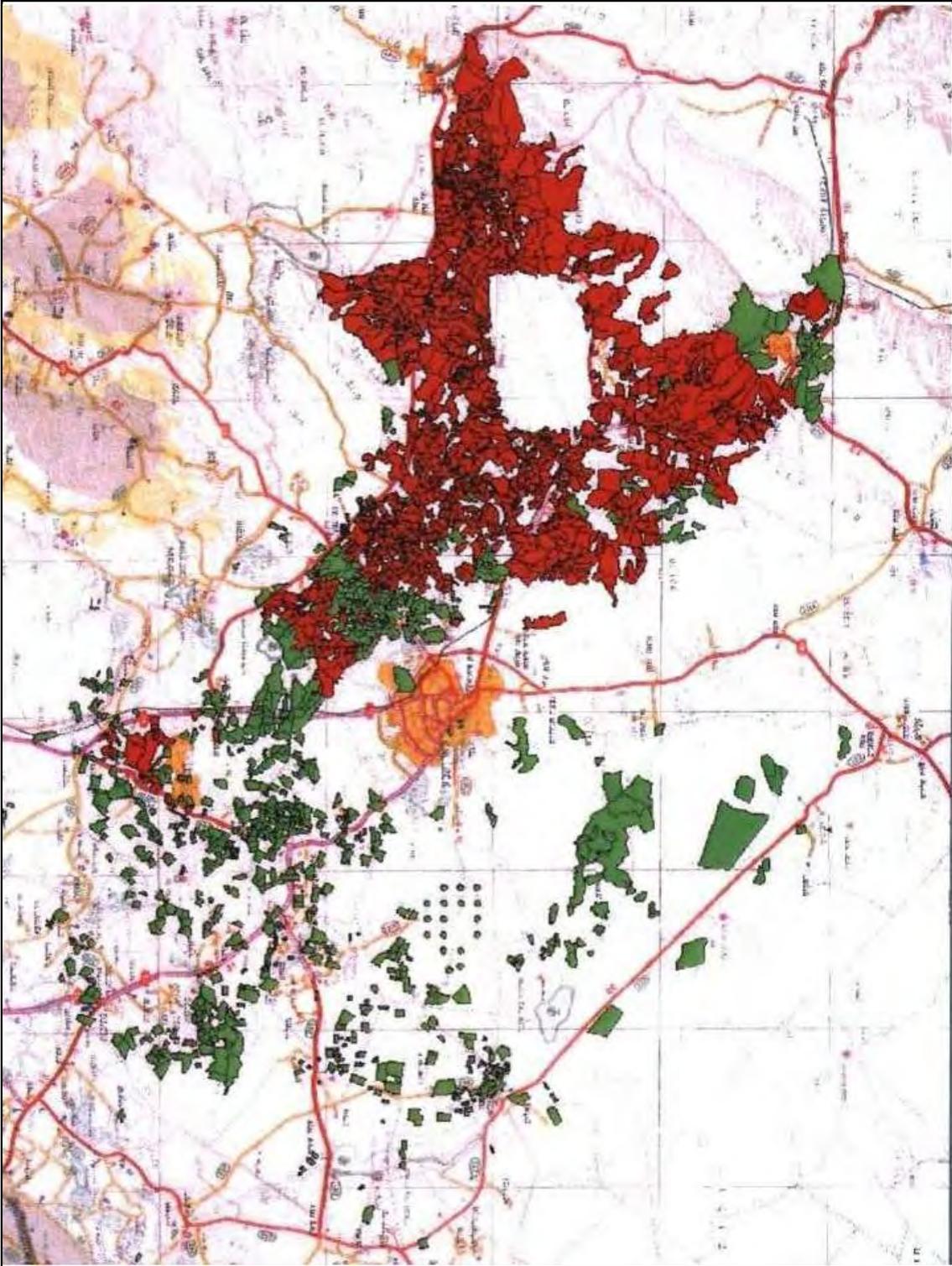
The same state agencies that are the sources of the concept and administrative expression of "Jewish nationality" have recruited Jewish persons and their financial contributions to carry out population transfer of Jewish settlers to replace the indigenous Palestinian people in Israel and the occupied Palestinian territories from bases in some 50 other countries.⁵³ The WZO/JA, JNF and their affiliates coincidentally are the same organizations currently pursuing development of the Naqab region for exclusive Jewish settlement to ensure an "ethnic" Jewish demographic domination of the region with tax-exempt donations solicited from the countries in which WZO/JA, JNF and affiliated organizations have registered to operate as "charitable associations."

The JNF's "Blueprint Negev"⁵⁴ looms as an example of such an Israeli parastatal program with both private and Israeli government financing. It favors Jewish settlers' implantation and development in the ancestral lands and properties of the indigenous Naqab population, which is still living marginally among them and holding mere citizenship in Israel, having no recognized "nationality" in the Jewish state.

The denial of "nationality" status does not actually appear explicitly in the text of a single Israeli law, but in the implicit subordination to the discriminatory principles of the parastatal organizations carrying out essential functions of the state. Israeli planning criteria

for official recognition of villages are not published, but many long-standing and populous Arab villages in the Naqab remain “unrecognized,” while Jewish settlements notably smaller than the minimum population criterion are “recognized” with all services, rights and privileges. With such a double standard operating as criteria for official recognition of a settlement in Israel, it is clear that the operative criterion denying the Arab villages their statutory status and corresponding access to rights, including public services, is their lack of “Jewish nationality.”⁵⁵ Those disadvantaged communities remain “unrecognized” in nationality and in planning criteria as a fundamental obstacle to their sustainability and development.

Principle Areas of Current Land Disputes (in red)



The Land Dispute

To place the current land dispute into perspective, the Bedouins currently claim a land area of 697,572 dunams, or 5.4% of the entire 12,918,000-dunam Naqab region.⁵⁶ British Mandate data indicate that Bedouins had been using 12,600,000 dunams of land in the Naqab before 1948.⁵⁷ The combined Bedouin population currently holds only 240,000 dunams (or 1.8% of the land), of which 180,000 dunams are held by the residents of the unrecognized villages. In other words, the residents of the villages live on 1.3% of the land in the Naqab, while they constitute 14.2% of the Negev region's citizens of Israel.⁵⁸ The 76,000 residents of the unrecognized villages are predicted to grow in number, while the state has provided no official criteria for the recognition of an indigenous presence within a “Jewish national” plan.⁵⁹

The Bedouin community prior to the creation of the State of Israel numbered approximately 90 000; after the 1948 war with the dispersal of many of the Bedouin to other territories, some 12,000 remained. Evidence attests that there are now approximately 160,000 to 200,000 Bedouin in the Naqab, and it is only from among these current residents of Israel that claims have been lodged in the Israeli land claims process for the return of land. Already, Bedouin owners lodged 3,220 claims by the cut-off date in 1979, and today very few have been processed in full. No judicial land-claim awards have been made, and only a small number of claims have been settled.

In application of the Land Rights Settlement Order, in 1971, the Israeli government required the registration of all lands in the northern Negev in the name of their owners. The Bedouins wanted to submit claims on 1.5 million dunams, but the state refused claims on 600,000 dunams of the 1.5 million. Of the 600,000 dunams, the state registered 200,000 dunams as “state land.” The state had claimed that that land cannot be claimed by Bedouins because it is mountainous. Therefore, the state allowed claims registered on only 900,000 remaining dunams. That is the amount that is subject to potential agreements. Until now, agreements have been reached on 250,000 dunams claimed, while at least 650,000 remain under dispute. According to the Goldberg Commission, about 571,186 dunams, or somewhat more as estimated by the Bedouin Administration, are the subject of 2,749 outstanding claims.⁶⁰

Land to be allocated significantly falls within a limited area of the *siyāj*, notwithstanding the fact that many of the Bedouin claims relate to land outside of it, and the most viable of that foreclosed

land lies in the western Negev, where we now understand that the state intends to process no claims. These claims also arise from a world of a rural economy with roots in a nomadic lifestyle to which the state and its officials are alien.

While witnesses before us often spoke longingly of those pastoral days, fewer people appear to be involved in a pastoral lifestyle. The chief shepherd witness before us acknowledged that a very significant reduction of the number of people involved in livestock raising was primarily due to dispossession of land.⁶¹ Those claimants would persist in their claims for land, in the first place, because it is their land rightfully and, secondly, because the Beer Sheva Metropolitan Plan (in which they deliberately were not consulted) makes no provision for them to continue in their chosen lifestyle.

With the establishment of the Netzarim Airport, even less land is available for the realization of all sort of land claims, fewer areas with water wells available (we were given evidence where the water wells had been destroyed, blocked, etc.) and the continual transfer of people (not necessarily of their own volition) to a quasiurbanized life in unrecognized villages. Thus, it appears that, if the authority needs to ensure areas potentially available for Bedouins to use and possess in a traditional lifestyle, they must accept the reality that, over time, more land has been lost rather than gained for this purpose, as claims were to a restricted area, and the GCR still persists in linking land grants in the *siyāj* to claimants relinquishing their rights to their lands in the western Naqab.

The scenario provided by ongoing policies and the GCR shows a displaced community whose rightful claims are not being realized. They now live in a legal vacuum caused primarily by the nonrecognition of the unrecognized villages, which are not planned, where they have no democratic franchise, but where people do exist and the state cannot simply wish them away.

Their existence, their right to exist and remain, and the realization of their other rights as citizens must include resolving the issue of their land with security of tenure. If all of the current villages were recognized and their inhabitants were allowed to realize their civil rights (e.g., local franchise and the capability to access information, move freely, associate, organize, participate in public life and express themselves) in these areas, rights to education, health and social welfare, etc., could be realized more readily on an equal basis with other citizens. Then they would be able to

enjoy the full rights of citizenship, as understood in the sense of modern governance and statecraft.

The government established seven permanent Bedouin townships between 1969 and 1999. The Goldberg Commission has concluded that the policy of “comprehensive urbanization,” which was formulated without the Bedouin being in any way involved or consulted, has failed, because planners established the municipal boundaries (“blue lines”) without any resolution of the land issues. Almost half of the total land area of the seven towns is the subject of land claims.

The total of eleven Negev concentration townships are intended eventually to house some 120,000 indigenous Arab citizens. For comparative purposes, the “national” (parastatal) institutions have planned, built and fully serviced over 180 Israeli settlements in the Naqab to accommodate 280,000 Jews. Significantly, the townships—the first ever built or authorized for Arab citizens since the creation of the state—first were suggested in the earlier Markowitz Commission report some 25 years ago. This form of development for the Arab citizens comes not in response to needed housing improvements, but with the purpose and condition that they surrender their land tenure.

Demolition

The present practice of state authorities incrementally demolishing the unrecognized villages has been ongoing for at least 25 years.⁶² The ostensible premise has been, and continues to be the homeowner’s “lack of a permit.” Great numbers of demolitions in the eight years before the IFFM are shown in the table below. It can be seen that, over this period, the number has averaged some 107 per year and that the rate of demolition has risen alarmingly in the later years, to 400 in 2008. The total number of people rendered homeless by these demolitions has averaged 730 persons annually, with some 2,700 made homeless in 2008 alone.⁶³

Under such euphemisms as “Blueprint Negev,” the “Development Plan for the Negev” and “safeguarding the land,” state authorities have accelerated demolitions of Arab Bedouin citizens’ housing since the IFFM field visit in 2009. Figures in the preceding table are illustrative of that phenomenon, reported by the RCUV prior to 2009. During 2009–10, the IFFM received information of the Gol demolishing at least 356 homes and other structures, making at least 2,300 persons homeless. (See Annex IV.)

The problem is far greater than this, however. Many houses are demolished by the owners themselves (to avoid a criminal charge and a hefty fine). The number of these is estimated to be similar to the number demolished by the authorities.

No apparent pattern emerges from these demolitions. The fluctuations over time depend on political conditions,⁶⁴ and the choice of houses to be demolished also may depend on political or ideologically symbolic factors.

Data obtained by Israel's *Haaretz* newspaper actually puts these composite figures much higher. The daily has reported that Gol demolished 225 structures in 2008, 254 structures in 2009, and that Gol claims it will triple these numbers for 2010, with an expected 700 structures to be destroyed and 9,000 dunams of land to be deep plowed to prevent construction.⁶⁵

The number of houses with demolition orders (some with more than one) currently totals well over 10,000.⁶⁶ In several villages such as al-Qrain, which the international team visited, the Israeli authorities have served *all* the houses with demolition orders.

Government sources indicate that 1,500⁶⁸ additional "illegal" structures are built each year, and that the total number of "illegal" structures is 50,000.⁶⁹ According to other government figures, 45,000 "illegal" Bedouin structures in the Naqab today are subject to demolition, whether or not they have standing demolition orders against them.⁷⁰ These figures may well include houses built before the planning law became operational, many of which have demolition orders. Nonetheless, with 10,000 reported Naqab demolition orders pending, the actual government demolition campaign is far outpaced by the indigenous people's residential stamp on their own territory, as well as other territories to which Israeli state agents have evicted them since 1948.

House Demolitions in Unrecognized Villages, 2001–08	
Year	Number ⁶⁷
2001	8
2002	23
2003	63
2004	23
2005	15
2006	96
2007	227
2008	400
Total	855

Besides the tremendous material damage the demolition of homes causes anguish, great financial loss and is a threat to health, particularly of children of the affected family. The deplorable standards of housing in the unrecognized villages are very substantially due to the threat of demolition: Houses are built and rebuilt furtively, using cheap materials and often avoiding the use of "permanent" materials (i.e., masonry and timber) that are more likely to be demolished. Houses are small, with high levels of overcrowding.

As early as the 1950's, dispersed Bedouins began to reform communities (known as "*pzūra*," or "scatterings," in Hebrew) and today official sources count 62,500 people in these unrecognized villages. Their makeshift constructions built of stone, corrugated iron and tin, as well as tents, are considered as "illegal," because they occur outside of established planning zone and mechanisms, and without building permits.

The Goldberg Commission reports the conditions there:

as the villages are unrecognized, they receive no municipal budget, they have no system of local government, and the residents do not pay municipal taxes. As they have no approved plan, they cannot receive planning permission, the state prohibits all building and all current structures are illegal. The population in these villages does not receive orderly government services, and they do not have basic infrastructure (water, electricity, sewage, roads and so forth). The water situation is deplorable; water is of poor quality and inadequate availability, and only a portion of the inhabitants are connected through private piping to the mains supply on the main roads. The rest have to bring water over long distances in containers.⁷¹

JNF Forestation against the Villages

The Jewish National Fund for the Land of Israel (JNF) manages land and other properties “redeemed” by Israel for persons of “Jewish race or descendency,” in the words of its charter. Among its methods, forestation ensures that the lands remain under Jewish possession.

Fulfilling part of the functions of state, the JNF is one of the most powerful parastatal institutions in Israel. Not only does JNF senior staff dominate the board of the ILA, the JNF’s claimed charitable status abroad has allowed it to collect tax-exempt contributions that fund its activities. The JNF forestation programs across historic Palestine have been central to ensuring that the indigenous inhabitants are prevented from returning to their homes, villages and lands. JNF planting in the Naqab has intensified with time, especially affecting three unrecognized villages just outside the edge of the *siyāj*: Twail Abū Jarwal, al-Araqīb, and Karkūr.

Forcefully removing residents in the early 1950s to allow for “army manoeuvres” with the promise of their return six months later, Israeli institutions and authorities have prevented the residents’ return ever since. After multiple displacements, some families of the Talālqa tribe decided ten years ago to join the few families remaining on the land of their original village of Twail Abū Jarwal, three miles away. The Gol responded by razing the rebuilt village to the ground “more than thirty times in the past few years.” To impede the resurrection of the village, the JNF now is planting a forest on the village lands, as it has done over the ruins of many Palestinian villages depopulated in the course of the 1948 war. Israeli police threatened the people of Twail Abū Jarwal in March 2010 that more severe force will be used to evict them for good, without providing any housing solution for them.

Most of the al-`Uqbi tribe were forced off their traditional lands in al-Araqīb and on to other Bedouin families’ lands within the *siyāj*. Many now live in the unrecognized village of al-Qrain, where all houses remain under demolition orders. Meanwhile, the inhabitants possess Ottoman-period documents proving their ownership of the land and aerial photographs from the British Mandate period showing their cultivation of the same. To prevent the original residents from returning to their lands at al-Araqīb, the JNF has been planting a forest since 1999. Its current project is to expand the “Ambassador’s Forest” to cover the original village

On 3 March 2010, MK Dov Hanin (Hadash) asked the Minister of Agriculture and Rural Development Shalom Simhon why the JNF is planting trees in the area of al-Araqīb when the land is not designated as forest land, but for agriculture. Mr. Simhon replied that, despite the land’s designation, the authorities have decided to plant a forest there, because wherever a forest has been planted, the “national” lands are “protected.”

Inhabitants of al-Qrain now risk a third dispossession as this village’s land is planned to become another JNF forest as well.

On 27 July 2010, Israeli authorities demolished the entire village of al-Araqīb, destroying about 40 homes and leaving approximately 300 Bedouin homeless. In the process, many of the residents’ cattle, trees and belongings were lost. According to police spokesman Mickey Rosenfeld, the homes were considered “illegally built” and “were destroyed in line with a court ruling issued 11 years ago [that] was never implemented.” At 05:00 AM on 10 August 2010, and for the third time in three weeks, the Israeli Land Authority (ILA) demolished the rebuilt homes of the residents of al-Araqīb. The residents had built temporary shelters after each of the demolitions, but authorities, using overwhelming force, demolished all of these shelters. After all structures were destroyed in the village, Israeli authorities confiscated all building materials and removed them from the site. By the time of this publication, this scenario has played itself out eight times.

See Yeela Ranaan, “Bulldozers, Trees and Villas: The Expulsion of the Bedouin Continues,” *Tarabut Hithabrut*, 2 November 2009, at: <http://www.tarabut.info/en/article/arakib/>; and “The Role of the Jewish National Fund in Impeding Land Rights for the Bedouin Population in the Naqab,” *Al Majdal* (winter–spring 2010), at: <http://www.badil.org/al-majdal/item/1406-ranaan-int-naqab?Impl=component&print=1>.

Development

The refusal of the Israeli government to “recognize” the original villages of the Naqab has had harmful consequences for the economic and social well-being of their communities, ensuring abysmal conditions of housing, public health, and social and economic development, as detailed below. The consequent problems are particularly painful to a community that is in the course of rapid cultural change from a seminomadic tradition to modern conditions, and having suffered abrupt dispossession, forced population transfer and military rule until 1966. Since that time, they have been excluded from exercising their individual and collective rights to assume a significant role in decision making, or even consultation on their fate.

Almost all the facilities that are available in an Israeli town are absent in indigenous Bedouin communities, including those lost by forced displacement, or available only in a few remote locations. Following appeals to the High Court, the Israeli ministries have reported building some schools and clinics. However, they are far too few, overcrowded, underequipped, in temporary buildings, insufficiently staffed and difficult to access.

The communities themselves have created basic public facilities, though even these are under threat of demolition. The authorities have failed to provide (and even prevented the provision of) utilities essential to health and survival such as electricity, water and sanitation. Some villages have paid for a one-inch water pipe connection, and for diesel-powered electrical generators, but these are poor substitutes for proper services. They are expensive, and they are, of course, subject to demolition.

One of the most frequently expressed needs—and claimed rights—of the Bedouin communities is for decent work. State policies have curtailed agriculture by evicting farmers as “trespassers” on state-claimed land, by arbitrary stock controls, by crop destruction and by cutting water supplies. At present, few opportunities exist for employment. Unemployment levels are extremely high, and training facilities are lacking. These problems are caused by (1) foreclosure of their traditional livelihood by the state’s policies of land confiscation, village demolition and targeted destruction of village crops and livestock; (2) failure to recognize and develop the villages, and (3) by the almost total lack of transport.

Wadi al-Na'im: A Village Struggling to Survive

Located between the middle of nowhere and Israel's Ramat Hovav chemical dumpsite is one of the largest unrecognized villages in the Naqab: Wadi al-Na'im. Actually Wadi al-Na'im is a site where the Israeli military ordered residents to settle upon evicting them from their home villages in western Naqab to enforce the *siyāj*. Home to a high infant mortality (at least four times higher than the Jewish sector), an absence of basic health or school services, no clean running water and an unusually high incidence of cancers and miscarriages among its fairly young population, Wadi al-Na'im is a testimony to both the ongoing plight of the Bedouin population and Israel's persistent policies of exclusion.

The members of this village all hail from the al-'Azazma tribe, one of the largest in the region, and numbers approximately 15,000 inhabitants. In this desolate landscape, among electrical high-tension towers, the persistent humming of the nearby chemical plant, and the acrid stench of chemical waste, the residents of Wadi al-Na'im have been fighting a prolonged battle with the Israeli state to access basic services. Denied building permits, the residents have had to live in makeshift homes with zinc roofs, a material that reaches summer temperatures high enough for contact with the skin to cause first, second, and even third degree burns. The Israeli Ministry of Environment recognizes this as a "dangerous, cancer-causing building material."*

The state has repeatedly attempted to evict the residents with no alternatives. In an attempt to save their own lives in light of the worsening health conditions, the residents recently even have given up their claims to the land and advocated for the state to move them to a recognized village that would accord with their ecological, cultural, social and economic needs. They remain still, with no government help and an increasingly worsening environmental and public health situation.

*Quotation from Ministry of Environment provided in Isabelle Humphries, "Dangerous Desert Games: Negev Bedouin Fight for Survival," *Islam Online*, 20 March 2003, at: http://www.islamonline.net/servlet/Satellite?c=Article_C&pagename=Zone-English-HealthScience/HSELayout&cid-1157962495445.

Public transport and adequate roads are urgently needed for the unrecognized villages and all of the Bedouin community, including those residing in the *rekūzīm*/townships. Such roads as do exist have been provided through social production (i.e., by community effort), and connections to the official road system are often sabotaged by the authorities. Some will always find work in Beer Sheva and elsewhere. However, the urgent demand is for employment within the communities and under their initiative, control and direction.

What has been occurring over the decades suggests that the state's long-term intention in “developing” the Negev actually means “de-Bedouinizing” or “de-Arabizing” the region. The shift from a pastoral seminomadic condition to the current situation of being treated as “trespassers on their own land” has denied the “unrecognized” village dwellers the basic elements of subsistence, sustainable development and meaningful livelihoods. This process has led to the creation of an ethnic underclass that is most rooted in the land and characterized by low levels of social and economic development indicators. Instead of designing creative and human rights-based solutions jointly with the Bedouin, Israeli authorities have applied arbitrary measures by which the Bedouin are instead criminalized and further excluded from the wider society.

In 2002, the Ariel Sharon prime ministership launched a new “Development Plan for the Negev,” also known as the Sharon-Livni Plan.⁷² All budget items aim at planned concentrations and destruction of Bedouin Arab villages during 2003–08, with 40% going to enforcement agencies, and no budget line allotted for construction.⁷³

At the same time, the plan provides for the establishment of dozens of vast and isolated individual settlements for exclusive Jewish use, particularly along the so-called “Wine Path” in the Naqab. These farms have been developed with the slogan “safeguarding the land.”

Planning and Policies

Planning legislation and procedures are based on the Planning and Building Law (1965), which came into force in the Negev in 1966 with the end of military rule. The Israeli planning system itself is similar to a great many other planning systems in calling for a hierarchy of plans to be prepared and approved by public bodies, and in requiring a building permit for any new construction, which would be possible only if arising from a participatory and representative planning process.

Official plans are at three scales: national, regional (district) and local, the first two being of the greatest significance in this case. There Israel does not allow for an official local or municipality-level planning authority to function in the case of the villages, so that planning scale is not relevant. The approved district plan covering most of the unrecognized villages is the 1996 Beer Sheva Metropolitan Plan, which provided for the massive influx of Jewish migrants then taking place.

The RCUV, established in 1997, successfully petitioned the High Court to revise this plan on grounds that it took no account of the views of the Bedouin population.⁷⁴ A revised plan was published in 2008,⁷⁵ but has not yet been approved. The RCUV, which was consulted during preparation, proposed that development of all the “unrecognized” villages should be included in the plan, and the revised plan itself envisaged that the Arab population would increase to 300,000 by 2020⁷⁶ (one third of the total population of the Beer Sheva region⁷⁷). However, the draft plan asserts that its proposals for housing of the “Arab sector” are subject to resolution of the land claims process.⁷⁸

The Israeli state authorities had established new townships for the Bedouin population, which Israeli planners initially called “*rekūzīm*” (concentrations). These townships emerged independently of the district plans, following government policy since 1959 to “move and concentrate” the Bedouins.⁷⁹ The 1996 Beer Sheva Plan shows the sites of the seven townships established between 1968 and 1991,⁸⁰ and the 2008 plan shows the location (but not the planning areas) of 11 additional townships,⁸¹ decisions on which had been made by that date. These new concentration points were mostly for “recognition” of parts of some hitherto unrecognized villages.

Local plans (also known as “outline” or “metropolitan” plans) normally follow district plans and precede development. They are spatially very precise. The plans normally cover only existing or proposed urban areas and are the responsibility of the local (i.e., municipal) council, failing which the Regional Council undertakes the planning, and are subject to central government approval.

According to the 1965 law, building permits are needed for all new development, and must accord with the local plan, or, if there is none, with the regional plan. However, in practice, a regional plan is unlikely to sanction development that is not the subject of a local plan. Where unpermitted development is identified, the owner may be required to obtain a permit, failing which either (a) the property may be demolished after notice is given, or (b) the owner may be required to demolish it himself, fined if he does not do so, and the authorities then demolish the property. In either case, the official reason given is normally “lack of a permit,” and the owner is charged a fee for the demolition conducted by the state.

In practice, it may be noted that many parties extensively have bypassed the 1965 law for many years in the Beer Sheva area (in both the so-called Jewish and Arab “sectors”). This circumvention of law has been achieved by both government edict and a failure to enforce the law

Multiple-eviction Cases

It is estimated that 85,000 Bedouin Israeli citizens living in unrecognized villages have suffered multiple displacement and are at risk of further displacement, with no acceptable resettlement alternatives available to them.

The fact-finding team visited the besieged unrecognized village of `Amra, located at the expanding edge of the Jewish town of Omer, where bulldozers were busy clearing and leveling the land on the `Amra side of the cyclone fencing previously separating the indigenous community from the new Jewish town. In 2000, Omer expanded its jurisdiction over the land of `Amra, but rather than accommodate the `Amra's Tarabīn al-Sana community into the municipal plan, Omer's Jewish municipal council, led by Mayor Pinhas Badash, have pressed planning authorities to remove the Bedouin from the outer edge of their exclusively Jewish community, in order to develop and market new housing plots for Omer's expansion.

For the first time in Israel's judicial history, on 6 November 2008, a court (Beer Sheva Magistrate) issued eviction orders against all residents of a village: the unrecognized Arab Bedouin village of Atīr-Umm al-Hīrān. In 1948, the Israeli army had expelled Atīr-Umm al-Hīrān's current residents from their original village in the region of Khirbet al-Huzail, Wadi Zibāla and prevented them from returning to their land, in order to make way for the Jewish settlers in “Kibbutz Shuval.” The army evicted them thereafter to Kahla and Abū Kaff. In 1956, the state forcibly evicted them for a third time to Atīr-Umm al-Hīrān, where they are living today.

In Atīr-Umm al-Hīrān, the villagers rebuilt their homes as permanent structures made from brick and cement. They made great efforts to resume their social order, which was disrupted each time they were forcibly evicted. Today, around 150 families live in the village, and its population stands at approximately 1,000 people, all members of the Abū al-Qiān clan. However, in the government's metropolitan plan in 2002, planning authorities called for the expulsion of Atīr-Umm al-Hīrān as “a problem,” and for the destruction of their village designed to enable establishment in its place of a Jewish village “Hiran.” Much of the land belonging to the al-Qiān clan already has been transferred to JNF control and forms part of its Blueprint Negev plan “Bringing Life to the Desert.”

As a result of the multiple displacements over time, the present villages—recognized or not, inside or outside the *siyāj*—are settlements housing *remnants* of communities, not necessarily of a particular tribe. Even if their land is in the *siyāj* and they are still there. They may not live now in their original land, or at least not all of it. Displacement, therefore, touches everyone.

The distinctive feature of the Israeli system is that land is controlled not just through the planning system, but through a unique land-ownership system: In the Naqab, the state claims to own well over 90% of the land through the ILA. Made the beneficiary of the discriminatory principles of the JNF by the 1953 and 1960 legislation, particularly under the Land Council, the ILA, thus, is a crucial determinant of land development decisions, including (a) the broad location and timing of major projects, and (b) the eligibility of, and allocation to citizens of individual plots. Processes (a) and (b) take place in coordination with the preparation of the appropriate (regional or local) development plans.

However, whereas the plans are public documents, the ILA's strategy and input to the plan-making process are opaque. The international team members are not aware of any map showing the purported extent of ILA lands, even though this is presumably a major input to the planning process. As noted above, the ILA is not simply a government body subject to the normal processes of democratic accountability, but is controlled by a council, half of whom are nominated by the Jewish National Fund, a parastatal institution whose charter commits it to discrimination in favor of "Jewish race or descendency."⁸² Hence a major mechanism of development management is under the control of an agency that is unaccountable to—and, as we show below, inimical to the interests of—the indigenous citizens.

The 1996 Beer Sheva Metropolitan Plan makes no provision for the development of the villages in which about 55,000 Bedouin Arab citizens then lived, and implies that these would all be erased.⁸³ The 2008 revised plan merely identifies a "search zone"⁸⁴ for new Bedouin development (which overlaps with at most 20%⁸⁵ of the unrecognized villages). The other unrecognized villages are zoned in the revised plan for either "landscape" or "forest planting," and six are threatened with erasure by construction of a planned Beer Sheva eastern by-pass highway, the path of which would erase at least six Bedouin villages. Hence, the 2008 revised plan is only a small improvement on the 1996 plan in its recognition of the Bedouin villages, but poses new and greater threats to human habitation and fails to provide for affected inhabitants' economic development.

Local statutory plans never have been prepared for any part of any of the unrecognized villages. Consequently, the basis for coordinated change and improvement in these communities, and for their orderly expansion to cope with increased population and

development needs has been lacking. Of more immediate concern is that, because no local plans exist, government authorities have issued no building permits for the Bedouin Arab citizens (not one single permit in nearly 40 years). Because they have issued no permits, state authorities instead have demolished homes and other buildings as the standard response.

On numerous occasions, the RCUV has requested the authorities to prepare local plans for the villages in accordance with the 1965 Building and Construction Law. More recently, the RCUV has submitted locally produced village plans. The planning authorities have rejected each of them.⁸⁶ In the case of the officially planned *rekūzim*//townships, local plans have been prepared, though without any participation of the concerned Arab inhabitants.

In Israel, no objective criteria exist for recognizing a village or other built-up area within statutory plans other than approval of the Jewish Agency-dominated Regional and District Planning Councils. In actual planning practice, the age of a locality does not appear to be a consideration for the typically Jewish-only Planning Councils (with their permanent-majority Jewish Agency members): Jewish built-up areas that came into existence long after the "unrecognized villages" are invariably included in the official development schemes, while long-existing Arab localities are excluded.

Nor is size a factor. All the unrecognized villages have a population well in excess of many officially recognized Jewish settlements. The contradiction lays bare the singular criterion distinguishing between a settlement's eligibility for recognition and its denial: Only "Jewish nationals"—not mere Israeli citizens—are automatically eligible and deemed "legal."

Planners in Israel refer to a common minimum of 50 families as a guide for planning.⁸⁷ However, the Jewish settlement Lavon in the jurisdiction of Misgav Regional Council, for example, for many years housed only two families (now has 60),⁸⁸ and has long been supplied with all possible public services and amenities. By contrast, the `Arab Naqab village of Tal al-Milih long has had over 2,000 residents, but is not recognized and enjoys no services corresponding to its needs.

In November 2005, the Israeli Government adopted the *Negev 2015 Plan*, with a US\$3.6 billion budget over ten years, aimed at increasing the Jewish population in the Naqab by 200,000 through up-scale development, including affluent residential neighborhood

construction, increased transportation networks and establishing high-tech companies in the area. None of the projected development includes the Bedouin villages. Those villages lack the most essential services, including water, electricity, sewage systems, transport, education and health.⁸⁹ Essentially, Bedouin villages exist in third-world conditions alongside modern Jewish settlements in a first-world state.

An Israeli compilation of settlements for 2006 shows 74 settlements established (for Jews) in Israel and in the occupied Palestinian territories with fewer than 200 residents, and 21 of them have even fewer than 100 inhabitants. All of those, in addition to solitary “outposts,” were erected in recent years, and all receive generous aid and full services from the government and WZO/JA.⁹⁰

At least 155 Jewish settlements in Israel are estimated to have been built without recognition in statutory plans.⁹¹ Though theoretically illegal, these small settlements enjoy all the necessary services that come with the privileged civil status of their inhabitants as “Jewish nationals,” which appears to be the singular planning criterion distinguishing them from the “unrecognized” villages and, thus, owing to their discriminatory treatment.

Political Representation

Unlike other communities in Israel, the Arab Bedouin’s relations with the state are not direct, but are mediated through special institutions that the state has set up for this purpose.⁹² Until 1966, the Bedouins were dependent on the goodwill of the military government. After a succession of other similar agencies, the Bedouin Authority was set up in 1986 within the JNF-controlled ILA to “provide services” to the Bedouin. Originally established for sorting out land claims, the Bedouin Authority has emerged as the principal government body dealing with a range of issues related to government relations with the Palestinian Bedouin community.⁹³

In practice, the Bedouin Authority is mainly concerned with dispossessing the Bedouin community of their lands and concentrating them into the townships. Other agencies with particular responsibility for implementing this policy include the largely ILA-financed “Green Patrol,” which harass Bedouins “trespassing” on land claimed by the state;⁹⁴ and the Bedouin Education Authority, which provides a service otherwise not

available, because of the absence of local councils or because the local (Jewish) Regional Planning Council has refused to provide it.

Until 2000, the local administration in most (five out of seven) of the *rekūzīm*/townships were managed by appointed Jewish officials.⁹⁵ In the case of the unrecognized villages, the state authorities recognize no local councils. In 2003,⁹⁶ state planners established the Abu Basma Regional Council to provide services to villages—or parts of villages—that had been “recognized” in 2000.

This council is different from the Jewish Regional Councils in that it has no territorial continuity. In the Jewish Regional Councils, the jurisdiction areas usually extend over thousands of dunams and typically include commercial and industrial zones that generate property-tax income and other public revenue. In contrast, Abu Basma Regional Council's area of jurisdiction is restricted to each village's built-up area only. At present the council is government appointed, as is the standard for any Israeli local council's first term. However, its members are not from the target community. The geographical area of the Abu Basma Regional Council does not cover a contiguous territory, but a series of unconnected points, and its jurisdiction has not been fixed.

According to the Regional Councils Law, after four years of an appointed council, the residents are eligible to elect their mayor and members of council, with the option for the government to request and extension of one year. On 16 November 2009, the Knesset approved the extension of the Jewish-only Abu Basma Regional Council, claiming that the residents are not ready for self-governance, and the Knesset has approved the postponement.⁹⁷

Areas of Jurisdiction and Population of the Regional Councils in the Negev*			
Regional Council	Area (dunams)	Population	Comments
Tamar	1,650,000	2,300	1,100 Arab.
Ramat-Negev	4,300,000	6,200	Regional council in Israel with most land area. 1,300 Arab.
Bnei Shimon	450,000	11,900	6,400 Arabs
Abu Basma	ca. 49,000	3,100	All residents are Arab.

*As of 31 December 2007. *Source:* Commission for Regulating Bedouin Settlement in the Negev (2008).

The community-based RCUV was established in 1997 as a representative body; however, Israeli authorities have refused to recognize the name of the RCUV (as a “regional council”). Under its guidance, elections of “village councils” by secret ballot have taken place in the unrecognized villages every five years.

Residents of the unrecognized villages never have enjoyed the right to vote for, or to stand for election to their own officially recognized local or regional councils. The lack of opportunity to realize rights or take responsibility for the welfare of their communities, and to negotiate with the government is a gross violation of the basic human rights of these communities, invoking corresponding reparation rights.

Human Consequences and Social Indicators

The Naqab Bedouin live in conditions that are reflected in the lowest social indicators in Israel. They endure the highest unemployment rate in Israel, at over 50%, with 60% of the population living under the poverty line.⁹⁸ Among the female population, only 10% of Bedouin women participate in the workforce, compared with 20% of Arab Israeli women and 80% of Jewish Israeli women.⁹⁹ The economic conditions are exacerbated by the high population growth among the Bedouin, ranked as one of the highest in the world with annual growth at 5%.¹⁰⁰ Currently, 60% of the Bedouin population is under the age of 17 and only 1.5% is over the age of 65.¹⁰¹ Infant mortality among the Bedouins is 17/1000, as compared to 4/1000 among Jews and 7/1000 among Arab citizens of Israel generally.¹⁰²

Poor social health and general hygienic conditions arise directly from the policy of neglect of the Naqab’s rural Arab communities. The lack of waste management infrastructure in the unrecognized villages has led to the accumulation of waste in and around the immediate vicinity of Bedouin residences, leading to an environment prone to insect and pest infestation. Many of the residents have been forced to burn waste, releasing toxic chemicals into the air and increasing incidence of respiratory diseases.



Unrecognized village of al-Qrain. Residents were removed in 1951 by military order for six months, but are prevent from returning until the present.

The lack of adequate and clean water supplies has led to the prevalence of various water-related diseases, including infections and dehydration. Illustratively, in 2003–2004 the annual water consumption (in cubic meters per person) in Israel was 82, while that of the unrecognized villages was 24m³.¹⁰³

An unusually high incidence of cancer and birth defects prevails in several villages located close to Israel’s major chemical industry center, Ramat Hovav.¹⁰⁴ Built *after* the Israeli government transfer of the Bedouin of those villages there in the 1950s, the chemical plant releases toxic waste into the surrounding environment in violation of international minimum standards of environmental protection.¹⁰⁵

The unrecognized villages record a high incidence of respiratory diseases and a large percentage of children hospitalized yearly. Meanwhile, the few medical clinics accessible to this population are insufficient; i.e., less than 10 clinics serving 76,000 people. The villages have no pharmacies, no health-care specialists, and ambulances rarely enter the unrecognized villages.¹⁰⁶

Adequate resources have not been invested into the educational infrastructure among the Bedouin communities of the Naqab, either in the unrecognized villages or the townships. That disadvantage has led to the highest dropout rate in Israel (37%), and the lowest scores on their matriculation exams.¹⁰⁷ Only 10% of Bedouin children complete their secondary school education,

compared with 47% of Jewish students and 44% of Palestinian students in the occupied Palestinian territories.¹⁰⁸ University education among these three groups is 0.6%, 8% and 10%, respectively.

A widespread complaint voiced by the Bedouin of the unrecognized villages is that they are the persistent victims of arbitrary eviction and demolition orders by the authorities. They live in a constant state of uncertainty and insecurity, a situation in which authorities, from the Ministry of Interior to the “Green Patrols,” knowingly harm the psychological and physical health of individuals and families, and undermine the entire community’s cultural and social integrity, vitality, autonomy and productivity .

Human pain and suffering, such as that which Arab Bedouin of the Negev experience as a result of Israel’s institutional discrimination, amount to physical and mental distress suffered from systematic injury. Actual physical injury, as well as aches, pain, temporary and permanent limitations on activity, potential shortening of life, depression, and embarrassment from social deprivation all constitute injury. These are, in legal terms, the subject of “general damages” recoverable by an injured person or persons by another’s negligence or intentional attack. In human rights terms, such categories of damages arise from violations both by omission and by commission. The monetary value of damages for such pain and suffering is subjective, as distinguished from the quantifiable criteria of medical bills, future medical bills, lost wages and foregone opportunities, called “special damages,” which can be calculated. The loss of life and limb, as a consequence of such human suffering, remain a subject for calculation by way of the methods provided in actuary sciences. As far as the IFFM Team is informed, the pain and suffering and other losses and costs arising from Israeli policies toward the Naqab Bedouin, generally, and the unrecognized villages, in particular, have not yet been calculated.

Human Rights and State Obligations

As a sovereign state in the international system, Israel is a ratifying party to most of the international human rights treaties. Those legal instruments all guarantee their application without discrimination, as rights are to be enjoyed by all humans within the jurisdiction or effective control of the state. Therefore, each right corresponds with obligations that the state has assumed to “respect, protect and fulfill” most human rights without distinction as to nationality, citizenship, residency or other status. Therefore, no human is “illegal” or without rights.

The state discharges these obligations under treaty law when it simultaneously applies seven over-riding and mutually complementary principles of application set forth in articles 1 through 3 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹⁰⁹ These include (1) ensuring self-determination of the peoples within it, (2) combating discrimination, (3) ensuring equality between the sexes, (4) effectively applying the rule of law to uphold rights, and (5) engaging in international cooperation, including effectively regulating external behavior of the state’s constituents in accordance with the rights guaranteed in the human rights treaties that it has ratified.¹¹⁰

In the particular case of economic, social and cultural rights affecting living conditions, housing and land, the implementation measures are specified in treaty law to be “progressive” and to ensure that everyone has the capability to attain and sustain a living for herself/himself and her/his family to ensure (6) “continuous improvement of living conditions.” ICESCR also requires that ratifying states (7) apply “the maximum of available resources” in the implementation of human rights, including through international cooperation.¹¹¹

Many of the elements of an adequate standard of living have been affirmed in international law through the International Labour Organisation (ILO) since 1919. However, the principal norm in the context of unrecognized villages in the Naqab arises from the human right to adequate housing, which, is a matter of principle and customary law is enshrined in Article 25 of the Universal Declaration of Human Rights (1948).¹¹² The human right to adequate housing is guaranteed by treaty in its fundamental form bearing state obligations in Article 11 of the International Covenant on Economic, Social and Cultural Rights (1966), which treaty Israel ratified in 1991.

The legal definition of the human right to adequate housing¹¹³ provides the normative content and its sources in international law, as well as clarifies state obligations and the elements of a violation. That normative content of the right and corresponding obligations defines housing “adequacy” consistent with the human right to include the following qualities:

- (a) Legal security of tenure¹¹⁴;
- (b) Access to public goods and services, materials, facilities and infrastructure¹¹⁵;

- (c) Access to environmental goods and services¹¹⁶;
- (d) Affordability¹¹⁷;
- (e) Habitability¹¹⁸;
- (f) Physical accessibility¹¹⁹;
- (g) Adequate location¹²⁰;
- (h) Cultural adequacy.¹²¹

In practice, the right to housing can be achieved only by respecting, protecting and fulfilling other complementary rights and applying corresponding state obligations that enable persons and communities to attain and sustain adequate living conditions.

Thus, the bundle of civil, cultural, economic, political and social rights are, in both theory and practice, indivisible. In addition to the qualities that affect the material dimensions of adequate housing, upholding certain other rights ensure the processes necessary for physically adequate housing. These include the human rights to:

- Self-expression, association, peaceful assembly and participation;¹²²
- Education, information and capabilities;¹²³
- Physical security and privacy;¹²⁴
- Freedom of movement and residence, *nonrefoulement* of refugees and reparations for victims of forced eviction and other gross violations;¹²⁵
- Right to security of person and privacy.¹²⁶

Respect, Protect & Fulfill

For a state, its agents and representatives to “respect” a right means to refrain from acts or omissions that lead to violation. “Protecting” a right means that the state and its constituent agents act to ensure that third parties, whether individuals or entities, respect the right and do not subject any person to a violation. For a state to “fulfill” a right is for its government and state bodies to take steps positively for all human persons to realize their rights within the state’s jurisdiction and/or affective control. The international human rights covenants of 1966 set out a formula and guiding framework for modern state performance to ensure respect, protection and fulfillment of rights as a feature of state formation and development.

In addition to these covenanted norms, the international human rights treaties of specific application also enshrine the human right to adequate housing with all other categories of human rights. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted in 1965 and which Israel ratified in 1979, requires that the state prohibit and eliminate racial discrimination and apartheid in all their forms, and “to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of...the right to own property alone as well as in association with others¹²⁷ ...[and] the right to housing...”¹²⁸

Also in 1979, Israel ratified the ILO Rural Workers' Organisations Convention No. 141 (1975), recognizing the “imperative for rural workers to be given every encouragement to develop free and viable organisations capable of protecting and furthering the interests of their members and ensuring their effective contribution to economic and social development.”

By its 1991 ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDaW), Israel has guaranteed that women “enjoy adequate living conditions particularly in relation to housing sanitation, electricity and water supply, transport and communications.”¹²⁹ That Convention also embodies the state’s binding commitment to “take into account the particular problems faced by rural women and the significant roles [that] rural women play in the economic survival of their families...”¹³⁰ In rural areas, the treaty requires that Israel “take all appropriate measures to eliminate discrimination against women in rural areas, in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right to participate in the elaboration and implementation of development planning at all levels.”¹³¹

The State of Israel and, by extension, Gol likewise have accepted the binding obligation under the Convention on the Rights of the Child (CRC) in 1991 to respect, protect and fulfill “the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.”¹³² This obligation embodies the commitment “to take appropriate measures to assist parents and others responsible for the child to implement this right and shall, in case of need, provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.”¹³³

Israel has not yet ratified several relevant international treaties establishing norms of policy and treatment toward certain vulnerable social groups, including relevant standards of remedy in the case of violation.¹³⁴ However, the 17 relevant treaties that Israel has ratified form a significant framework comprising the binding norms of statecraft in the form of treaty obligations to respect, protect and fulfill the human right to adequate housing without discrimination. (The relevant ratifications are indexed in Annex II.)

International human rights law theory maintains that a state's obligations under treaty are applicable in its domestic legal system, and that legislatures are bound to harmonize domestic laws consistent with those principles and obligations of human rights instruments. The Vienna Convention on the Law of Treaties (1969), which is substantially a codification of customary international law, provides that "a state is obliged to refrain from acts [that] would defeat the object and purposes of a treaty when it has undertaken an act expressing its consent thereto."¹³⁵ The Convention also provides that a state "may not invoke the provisions of its internal law as justification for its failure to perform a treaty."¹³⁶

The UN Committee on Economic, Social and Cultural Rights (CESCR) has repeatedly affirmed the Bedouin community's rights to their lands and the treaty-bound obligation of Israel to respect, protect and fulfill those rights.¹³⁷ More recently, the Committee on the Elimination of All Forms of Racial Discrimination (CERD), monitoring state compliance with the International Convention against All Forms of Racial Discrimination (ICERD), also has made similar observations.¹³⁸

Several other UN and international instruments plainly provide that discrimination against any group of people on grounds of ethnic identity constitutes a fundamental human rights violation and cannot be permitted. In the same vein, the General Assembly of the United Nations has adopted the UN Declaration on the Rights of Indigenous Peoples, which recognizes the right of these peoples to their own lands, territories and resources as well as their cultural identity.¹³⁹ (However, the Israeli delegation was absent from the Assembly during the vote.)

The Negev Bedouin, as a distinct indigenous people of the State of Israel, have a right to these values. They should expect from their government not only fully equal treatment as accorded to all other citizens, but also the recognition of their rights as a

historically excluded and marginalized and people, institutionally discriminated against and subject to cruel treatment within the borders of the modern state.

Recognizing Traditional Occupancy and Use as Ownership in the Modern State

The Israeli government's establishment of the Goldberg Commission in pursuit of alternative approaches to the land conflict in the Negev apparently embodies a preference for domestic conflict resolution as a measure of statecraft. That initiative coincides with an era in which many legal systems have found resolution to domestic conflicts over traditional lands with the application of constitutional and emerging international human rights norms.

For example, in the Calder case brought by the Nisga'a Indians of British Columbia, Canada, the plaintiffs argued that they possessed land rights to their traditional territory since time immemorial, and never had surrendered or lost their rights to it. In their 1973 verdict, the judges of the Canadian Supreme Court recognized the existence of Aboriginal rights to land for the first time.¹⁴⁰

In 1992, a Meriam Islander from the Torres Straits of Australia brought a case before the High Court and (posthumously) established the right of indigenous people in Australia to own their lands. In accepting his claim, the High Court recognized the existence of “native title” for the first time and overthrew the ideological concept of “terra nullius,” the legal fiction that the land had been unoccupied when the British colonizers arrived.¹⁴¹

In the Delgamuukw case (1997), brought by the Gitksan and Wet'suwet'en tribes of British Columbia, the Canadian Supreme Court found that indigenous people have a constitutional right to own their ancestral lands and to use them almost entirely as they wish. The Court confirmed that indigenous people continued to own their lands unless the government had explicitly “extinguished” their ownership, and also emphasized the importance of oral history as evidence of indigenous peoples' long ownership of their territories.¹⁴²

When the Nicaraguan government granted a logging concession over their traditional lands to a Korean company, the indigenous Sumu people of the village of Awas Tingni took their case all the way to the Inter-American Court of Human Rights. In 2001, the

Court affirmed the existence of indigenous peoples' collective rights to their land, resources, and environment, and declared that the government granting the concession violated the community's rights without either obtaining its consent or consulting with its *bona fide* representatives.¹⁴³

In 2002, a group of San Bushmen of Botswana challenged their forced removal from their ancestral hunting grounds in the Central Kalahari Game Reserve. The High Court in Botswana has ruled that more than 1,000 San Bushmen were wrongly evicted and should be allowed to return. The Court's ruling is seen as a wider test of whether governments can remove people from ancestral lands legally.¹⁴⁴

In Malaysia, the Temuan people of Bukit Tampoi village in Malaysia fought a ten-year battle to stop their land from being used for road construction of a road link to a new airport. The state had claimed that the Temuans and other "Orang Asli" (first peoples) were merely tenants on state land and, therefore, not entitled to any compensation. In 2005, Malaysia's Court of Appeal affirmed the Temuans' rights to ownership of their land, and ordered a developer, the Malaysian government and a government agency to provide substantial compensation.¹⁴⁵

South Africa's Richtersveld case resembles that of the Botswana Bushmen. In Richtersveld, 3,000 Nama people challenged the South African government in court after authorities evicted them from their diamond-rich land in the early 1900s. The South African Constitutional Court ruled, in 2007, that the Nama people had both communal land ownership and mineral rights over their traditional-use territory. The Court also affirmed that failure to respect indigenous peoples' land ownership under their own traditional law, even if it is unwritten, constitutes "racial discrimination."¹⁴⁶

The Cobell case, filed in 1996, alleged that the United States Government had mismanaged billions of dollars in income from natural resources on Native American land. The dispute actually dates back to the 1887 Dawes General Allotment Act, which seized Indian land, much of it rich in natural resources, transferring it to white-owned companies. Under the Act, the land was divided into plots and each Native family was assigned a parcel of land, a concept alien to their culture in which all land belonged to the tribe. It was supposed to involve "compensation" for the use of their land; however, disputes arose almost immediately, perpetuated as ever smaller parcels of land were inherited by new generations. That now-discredited law and policy led to the devastation of

indigenous communities in the United States. Under the 7 December 2009 Class Action Settlement Agreement, the Department of the Interior is to share \$1.4 billion of the originally claimed \$47 billion) among 300,000 members of the Blackfoot, Fort Sill Apache, Lac du Flambeau Chippewa and Winnebago tribes as compensation, and set up a \$2 billion fund to buy land from them.¹⁴⁷

The most recent ruling found the State of Kenya in violation of the Endorois people by evicting them from their land. The African Commission on Human and People's Rights Commission ruled on 4 February 2010 that the Endorois' eviction from their traditional land for tourism development violated their human rights. The Commission found that the Endorois' eviction, with minimal compensation, violated their right as an indigenous people to property, health, culture, religion, and natural resources. This was the first ruling of an international tribunal to find a violation of the right to development, to determine which peoples are indigenous in Africa, and to determine their rights to land. The Commission ordered Kenya to restore the Endorois to their historic land and to compensate them.¹⁴⁸

Traditional-use land rights and the rights of indigenous people generally under international law are partly a product of rulings arising in many legal cases around the world. Each of these cases has contributed to what is a continuously evolving area of international law. The legal developments and policies of democratic nations throughout the world have formed a common understanding of the importance of treating indigenous populations justly. This has been reflected also in the UN Declaration on the Rights of Indigenous Peoples of 2007.¹⁴⁹ Increasingly, legal challenges in pursuit of justice in land disputes in legal systems around the world are affirming the tenure of traditional-use lands of peoples whose presence predates the state. In states with systems that have not yet evolved in accordance with these international minimum standards, the solution to such land problems must be an ethical, not only a domestic black-letter statutory one, as the GCR has noted.

Attempts at Remedy

Recent years have witnessed parallel developments in the Bedouin land issue. While incitement against the Bedouin reportedly has increased within the context of pervading anti-Arab incitement,¹⁵⁰ residents of the unrecognized villages and organizations have engaged in greater political and legal action to

defend their rights, including rights to land and services. Some measures toward improving the state's provision of services for residents of unrecognized villages have been achieved as a result of court petitions as well as social advocacy undertaken by Naqab residents and various nongovernmental organizations.

Domestic Civil and Legal Advocacy

The majority of the land in the Negev is state land as defined by the Ottoman occupation and is defined by the state as *mawāt* (uncultivated). This classification, as interpreted in Israeli law, means that, unless one proves allocation of land title, a claimant of such land cannot be granted ownership. Many Bedouin ownership claims are not based on such documented claims currently recognized under Israeli law, but rather on their own tradition and the lengthy period the owners have occupied the land. Most claimants appear to have limited or no documentation.

The British occupation authorities did recognize ownership based on traditional use.¹⁵¹ By contrast, Israel chose a very narrow interpretation of the Ottoman law, and also disregarded this subsequent British norm.

Some cases regarding Negev land claims have been brought to Israeli courts. The lack of remedy for the Naqab Bedouin's losses in local tribunals and planning and development institutions has created the need to raise challenges to policy and practice at the level of the Israeli High Court. While improvements in service delivery have resulted from certain petitions on individual cases, the structural inequities remain. However, the conclusion that the Bedouin do not have ownership rights over their pasture territories was upheld by the Supreme Court after earlier decisions by the district courts.

The Association for Civil Rights in Israel (ACRI) and Adalah: The Legal Center for Arab Minority Rights in Israel have instituted claims in court, challenging many of these planning procedures that have excluded the unrecognized villages. Accordingly, claimants had to endure long, laborious legal processes so as, if successful, to receive individual remedy in the form of the delivery of a clinic, a school, a nursery school or electricity for a patient needing medical care.

These remain only partial successes at pursuing justice. The vast majority of people living in the unrecognized villages remain in a state that does not encourage sustainable development and,

therefore, they constitute the poorest towns in all of Israel. One Israeli human rights organization has described this as a “broken dialogue,” whereas the court sees a whole range of “illegal squatters,”¹⁵² while the Bedouin community see themselves as victims of forced relocations not being granted rights in the land of their birth and origin.

Despite legal battles at the High Court, the denial of services to the citizens in the unrecognized villages remains constant. The IFFM team is aware of several legal initiatives to seek remedy, where denial of, and discrimination in services have manifested as symptoms of the wider and systematic pattern of discrimination against those without “Jewish nationality” status. The investigative team acknowledges some successful attempts at remedy, even where that remedy may be only partial, not yet addressing the fundamentals of institutional discrimination.



Villagers in al-`Araqīb give testimony and show land documents confirming their ownership from Ottoman period and British Mandate.

A petition filed in December 1997 on behalf 121 Palestinian Bedouin citizens of Israel living in unrecognized villages in the Naqab against the Ministry of Health (MoH) demanded the establishment of 12 mother-and-child health clinics for Palestinian Bedouin women and children citizens of Israel have to travel for long distances in the desert to access health care facilities, provided only in Jewish localities and government-planned Arab townships. In March 1999, the Court ordered the MoH to establish

six clinics and provide public transportation to existing ones. A sixth clinic was completed in December 2001.¹⁵³

A petition before the Court in August 1999 against the Minister of Labor and Social Welfare and the government-appointed head of the Segev Shalom Local Council demanded the full resumption and increase of welfare services to 60,000 Palestinian Bedouin residents of the unrecognized villages in appropriate proportion to the needs of the population.¹⁵⁴

The Bedouin organizations and activists became central partners in the legal proceedings against the Metropolitan Plan for the South. In 2000, the Association for Civil Rights in Israel represented residents of the unrecognized villages in a petition to the High Court over exclusion of the villages from the Beer Sheva Metropolitan Plan.¹⁵⁵ The Court issued a temporary injunction, instructing the National Council for Planning and Construction to devise a new plan that would include the unrecognized Bedouin villages. This was to be done in consultation with representatives of village residents, taking into account the alternative plan submitted by RCUV.

In 2001, petitioners on behalf of Abū Tlūl, Shahbi, Wadi el-Na`im, Umm Tnān, Umm Bātin and Draijat villages charged that the Minister of National Infrastructure, the Water Commissioner, the Israeli Water Company (Mekorot), the Minister of Agriculture and Environmental Protection, and the Mol had maintained a policy of denying clean and accessible water to the residents of these villages. The state initially claimed that the villages were “illegal settlements” and that the residents were trespassers on “state land,” who were not entitled to water network connections. However, as a result of the petition, the government formed an interministerial Water Commission in October 2001 to examine the water situation in the villages. Two subsequent civil motions to the Water Commission in 2003 attempted to gain additional water access points for the residents of the unrecognized villages.¹⁵⁶

An appeal filed by Adalah challenged a ruling of the Haifa District Court (sitting as a Water Tribunal), in 2005, that denied water provision to hundreds of Palestinian Arab Bedouin families living in unrecognized Naqab villages.¹⁵⁷ The Water Commissioner’s decisions to deny the human right to water were based on the political issue of the “illegal” status of the unrecognized villages.¹⁵⁸ The court dismissed that appeal.¹⁵⁹ That dismissal led Adalah to file a civil appeal to the Supreme Court, a decision on which remains pending.¹⁶⁰

A petition to the Supreme Court in January 2004 demanded that the MoH and Ministry of Finance (MoF) allocate the physician and nurse positions needed to operate two substandard family health clinics in the Arab Bedouin townships of Laqiyya and Hura. Despite the petitioners' dissatisfaction with MoH measures, the Court decided that the petitioners received the remedy demanded, but may reserve the right to approach the Court again should the two clinics fail to provide suitable health services.¹⁶¹ Adalah filed a new petition to the Supreme Court in 2009 after the Ministry closed the established clinics in three of the unrecognized villages.¹⁶²

Another petition before the Supreme Court in July 2005 challenged the Minister of Finance for excluding five Bedouin townships from the list of localities eligible for income tax benefits. In March 2007, the state asked for an extension in order to examine the possibility of a Knesset amendment to the law forming the pretext for the discrimination.¹⁶³ The state also committed to provide proposed new benefit-allocation criteria to the Court within a September 2009 deadline, but has failed to do so. The Court has held a series of recent hearings on the subject, including the most recent in December 2009.¹⁶⁴

A High Court petition in October 2005 on behalf of children from the unrecognized village of al-Za`rura and a number of educational organizations demanded transport for the village's 280 three- and four-year-old children to preschools in neighboring villages, or to construct preschools in the village.

The MoE argued a lack of reason for making an “exception” in the case of an unrecognized village in the Naqab, as buildings in these villages are considered “illegal constructions and, thus, the implication of consenting to the petitioners' demand is lending support to illegal construction, which could damage the efforts being exerted to organize Bedouin settlement.”¹⁶⁵ In April 2006, the Supreme Court dismissed the petition, as it was unable to decide that the relevant authorities had made an extremely unreasonable decision, obliging the Court not to interfere in the matter. The Court further ruled that kindergartens cannot be constructed in al-Za`rura, because “the issue concerns a group of illegal settlements, and no plan exists to enable construction in these villages.”¹⁶⁶

In response to a demolition order issued on 3 December 2006 in “the public interest,” seven individuals in the unrecognized village of al-Qrain appealed on the grounds that they had lived on that

land for many years under orders of the Military Governor in 1952 and that the state has no right to expel them without providing alternative housing. They also refuted the state's "public-interest" claim.

The judge concluded that, although the state had proved that the houses were illegal, its premise that demolition was in the public-interest "of the highest order" was insufficient and did not warrant a demolition. The judge dismissed the case and awarded the plaintiffs NIS1,500 shekels (\$355) as compensation, but conceded that this legal opinion was his own and may change in time, or if the case is passed to another judge.

The residents of the village have requested that, if the state orders that they be moved again, they be moved as a community to an alternative location. The state has responded to this proposal in March 2007 by placing judicial demolition orders on *all* the houses of the village, but with no resettlement plan.

After long struggles on the part of the unrecognized villages and their defenders, government planners have identified six previously unrecognized villages to be recognized (Abū Qrainat, Bi'r Hadaj, Qasr al-Sīr, Darijāt, Umm Bātin, and al-Sayyid). Three newly recognized villages are to be turned into new townships. One is a yet-unnamed village for the Tarabīn tribe near Rahat (partially populated). Among them are Mawlaida, at the planning stage and yet unpopulated, and Marit, which is so-far planned on paper. Of these nine, only one has a detailed plan and building permits, and three have detailed plans, but no permits. Three other *rekūz*/township plans are awaiting statutory approval: 'Uvudat' Avdah, Abū TIūl, and al-Fūra'.

A new Metropolitan Plan for the South back in 1997 excluded the unrecognized settlements and called for removing some of the residents from their lands, and some of the Bedouin settlements stood to lose a considerable part of their territory. In response, residents of the unrecognized settlements established RCUV in May 1997, composed of heads of local village committees with the purpose of obtaining recognition for the 45 unrecognized villages.

This action, along with the interventions of additional Bedouin organizations and activists, resulted in some important achievements: First, the RCUV constituted an important factor in the 2000 breakthrough decision made by the Ehud Barak Administration, recognizing nine out of the 45 unrecognized villages and establishing Abu Basma Regional Council as the local

government for nine of the villages. In addition, the decision stipulated that the settlement of land disputes would no longer be a precondition for the receipt of governmental services. Finally, it stated that residents of the unrecognized villages were to take part in the decisions affecting them.

The recognition of the nine villages and the establishment of the corresponding Abū Basma Regional Council, however unrepresentative it remains, are seen to be major accomplishments for the movement to defend the Arab Bedouin housing rights in the Naqab. However, as noted, these are only partial solutions.

The rights of the newly recognized village inhabitants are constrained to only a portion of the land they previously used; that is, only a portion of the village. That means that village homes outside the newly recognized village outline plans are still being demolished.

International Civil and Legal Advocacy

The long absence of the judicial and policy reform necessary to institutionalize just treatment of Israel's Arab Bedouin citizens has created the need for advocacy and legal initiatives at the international level. The first notable experience at international advocacy on behalf of the unrecognized villages actually took place relatively recently in the case of the threatened demolition of Ramiya village in the Galilee in 1991.¹⁶⁷ In the foregoing period, civil organizations sprang up to defend the housing rights of the unrecognized village residents. These included the Association of Forty, established in 1988, and the Association for Support and Defense of the Bedouin Rights on Israel, founded in 1979. Civil associations in Israel such as Association for Civil Rights in Israel (ACRI), the Organization for Democratic Action, Arab Human Rights Organization (Nazareth) and, later, Adalah: The Legal Center for Arab Minority Rights in Israel and Al Beit Association for the Defence of Human Rights in Israel have joined in the public advocacy effort.

At the international level, Habitat International Coalition formed alliances with local housing rights advocacy organizations in 1991 to support efforts culminating in a collective effort to contribute to the first review of Israel's compliance under ICESCR. At the treaty body session in late 1998, 12 organizations testified before CESCR and presented information parallel to the Israeli state delegation's report. The Committee issued the first legal finding on

house demolitions and discrimination against the Bedouin and the unrecognized villages as a matter of Israel's treaty obligations.¹⁶⁸ It also issued the first findings of any UN body on institutional discrimination by way of Israel's parastatal organizations, despite 55 years of omitting the subject in the UN's political forums.

The subsequent additional and periodic review of Israel under ICESCR drew similar conclusions from the treaty-monitoring body. The submission of parallel reports of civil organizations in Israel, occupied Palestinian territories and abroad demonstrated the continuum of the state's treatment of indigenous Palestinian Arab citizens without "Jewish nationality," and particularly the Bedouin citizens, including the steady forced evictions and demolition of their homes.¹⁶⁹

When Israel appeared for the review of its implementation under the ICERD in 2007, evidence and analysis from over two dozen civil parties filled the information gap that the Israeli state delegation left in its reporting. The treaty-monitoring body concluded that, in order to meet its treaty obligations, the State of Israel must increase its efforts to ensure the equal enjoyment of economic, social and cultural rights by Israel's Arab citizens, particularly for the inhabitants of the unrecognized villages.¹⁷⁰

Additionally, associations such as Dukium, Bimkom, al-Bustan, Al Tufula Centre and the Negev Coexistence Forum, Physicians for Human Rights-Israel, and Architects and Planners for Justice have been among the civil organizations active in raising public awareness about the conditions of the Naqab Bedouin in Israel and abroad. Since 1997, RCUV has remained the local organization that directly represents the inhabitants of the unrecognized villages and advocates on their behalf.

Goldberg Commission Recognizing the Actual Situation

The land issue is central to the claims presented by the Bedouin of the "unrecognized villages." Access to land forms an essential part of their livelihood, cultural identity and their history as a distinct population long before the establishment of the State of Israel. The RCUV has placed a solution to the land question at the forefront of their negotiations with the government authorities, as they consider it vital for their survival as a community/people.



Bedouin home, al-Sirra village. All the homes in this unrecognized village are under a village-wide demolition order.

The Goldberg Commission clearly shares this perspective, when it acknowledges that “even though the Bedouin insist that they have land ownership rights in the Negev, the state refuses to recognize these claims” and, consequently, “the struggle over land rights is the dominant factor that blocks progress toward normalized settlement.”¹⁷¹

The background of this dispute is well known to all concerned parties. According to the Goldberg Commission, “the Negev Bedouin lived in almost complete freedom until 1896. The Ottoman regime was not at all interested in the Bedouin, and did not intervene in Negev life.”¹⁷²

Defining all land in Beer Sheva District, in addition to other areas elsewhere, to be “state land,” Israel’s Land Rights Settlement Ordinance (1969) claimed more than 61% of Israel’s claimed territory as “state land.” However, the Commission acknowledges that exceptions may be made if individual land title deeds from earlier times can be produced, a situation that is unlikely in the majority of land claims that have been handled so far by the authorities or the courts.¹⁷³

In application of the Land Rights Settlement Order, in 1971, the Israeli government required the registration of all lands in the northern Negev in the name of their owners. The Commission admits that about 571,186 dunams—or somewhat more, according to the Bedouin Administration—are the subject of 2,840

outstanding claims. Agreements so far have been reached on 250,000 dunams claimed, with at least 650,000 still in dispute.

Some authors refer to the Naqab Bedouins as “invisible citizens.”¹⁷⁴ The Goldberg Commission insists, however, that they are residents of the state and, indeed, its citizens. As such, they are not “transparent,” lacking status and rights.¹⁷⁵

Land Administration and Municipal Plans

A complicating factor in the pursuit of solutions for the unrecognized villages is that only a small part of the lands held by the Bedouin are within the areas of approved metropolitan plans. Their planning and development are further impeded by the fact that Israeli authorities have allocated areas to some Bedouin communities—including residents in the planned townships and those displaced to arbitrary locations inside the *siyāj*—to lands belonging to other Bedouin communities. This situation, frustrating the rightful owners’ claim, causes further disputes and social disintegration among the Bedouin.

Bedouin claims to lands that the state has appropriated to itself without any consideration of Bedouin rights actually cover an estimated 776,856 dunams. The yet-unsettled claims amount to some 2,749, covering 592,000 dunams.¹⁷⁶ As for the claims already judged, the Goldberg Commission underlines that none of the judgments issued to date has upheld the Bedouin claimants’ ownership of the land. Testimonies of the local population and public interest organizations claim that “the Hawashla precedent,” according to the Goldberg Commission, effectively “invalidates the possibility that the Bedouin’s historical land claims will be recognized.”¹⁷⁷

On the basis of recommendations handed down by previous investigative Commissions, the Israel Land Administration since 1997 steadfastly has held to the following principles:

- No recognition of Bedouin rights over the land,
- Conditioning the payment of compensation to Arab landholders on their vacation of the land and transfer to one of the recognized settlements or townships with nontransferable land-use rights, not land ownership.

One key principle of the GCR is that:

compensation will be given only to those who vacate the area, or already have vacated it and do not live in any part of the *siyāj* area, other than on land apportioned to them in the townships set up for the Bedouin, or in areas set aside for Bedouin agriculture.¹⁷⁸

Consistent with this principle is the land policy of the state, designed to force the Bedouins into one of the established *rekūzīm*/townships, giving them no alternative except to continue to live “illegally”; that is, on “illegally” possessed land and in “illegal” housing, facing perpetual demolition and eviction without reparation. Those who opt for this alternative (the “unrecognized” Bedouin villages) already have had to pay a high cost for their decision, becoming objects and victims of forced relocation and the demolition of their self-built homes.

Israeli government edicts so far have established seven permanent Bedouin townships between 1969 and 1999. The Commission concludes that the policy of “comprehensive urbanization,” which was formulated without the Bedouin being in any way involved or consulted, has failed, because planners have established the municipal boundaries without any resolution of the land issues. As noted, almost half of the total land area of the townships is the subject of land claims.

According to the GCR, the towns’ unattractiveness is another potent factor explaining the failure of the urbanization process, even without the overshadowing land problem. Living conditions in the towns are far from being a real improvement over life in the unrecognized settlements and, given this situation, a “negative migration” has people leaving the towns to return to the unrecognized villages.

The Goldberg Commission Recommendations

Addressing the Problem

The Goldberg Commission, which reported in 2008 was charged by the Government to “resolve the Bedouin settlement in the Negev,” including both the outstanding Bedouin land-ownership claims and the development of the *rekūzīm*.¹⁷⁹ The GCR asserts that addressing the need to improve conditions in the unrecognized villages was not part of the Commission’s remit. There had been numerous previous reports, which the GCR notes had made “no serious impact on the issue.”¹⁸⁰

The Goldberg Commission submitted a final but, at times, confusing report in that the main section is penned by the judge and some—but not all—of the members then penned a further report. Some of these addenda concur with, and some dissent from the judge’s proposals. The report has been submitted to the Israeli government, and it is now before officials to enable new legislation to be drafted so that its recommendations can be implemented, if and when approved.

The report at a level of principle contains several significant breakthroughs previously never admitted formally by the Israeli state, namely that:

- The state practices have caused deprivation to the Bedouin Arab inhabitants of the region;
- The current claims process is inadequate and cannot work;
- Simply to demand proof of ownership in a formal sense is unwarranted, and that use and possession of land should be the basis for the proof of claims;
- Unrecognized villages marked by no budget, no taxes, no local government and thousands of illegal buildings often being (lawfully and unlawfully) demolished will require planning, recognition, and assistance to ensure that the rights of the Bedouin communities can be realized and social development achieved.
- Claims previously rejected must be reconsidered.

After making a significant breakthrough, the Goldberg report then makes certain recommendations that fail to take into account some important aspects of the problem and its solution, namely:

- If the land claims of dispossessed people are to be recognized, then they must be recognized at the place of claim and to automatically exclude all claims outside of the *siyāj*, particularly those in the western Negev, would be contrary to common international practice, and counterproductive to reaching a solution;
- While the report proposes a welcome reduction in the need to prove ownership formally, it is unclear to what extent the issue of “use and possession” will be acceptable as proof of a claim. Internationally, claims of indigenous people to their land in postcolonial states, as noted above, have seen claims being accepted in law without requiring government-officiated documentary proof of ownership.

The Goldberg Commission then further attempts to compromise the claims by offering alternative accommodation in the already-recognized and yet-to-be-recognized villages, but this is only on condition that claimants waive their right to aboriginal land. The realization of the land claims must be dealt with separately and distinctly from any rights as citizen to a place to live currently, to vote currently and to enjoy the benefits of full citizenship. The failure to allow the resolution of land claims delinked from alternative accommodation would mean a breach of the rights of the citizens to those rights as contained in ICESCR. Several witnesses have suggested that, if the political will existed, many of these issues could be dealt with administratively and, therefore, would accelerate attainment of equality before Israeli law without being restricted by the need to have the land claims settled in the interim.

The GCR makes a number of pertinent comments on current practice, namely that:

- (1) if Bedouin citizens take their claim to court, they are certain to lose their claim,
- (2) there is no practical way that the state can implement all the demolition orders,
- (3) the policy of comprehensive urbanization has failed (mainly because most of the land in the *rekūzīm* is subject to ownership claims) and
- (4) some migration is now flowing from the *rekūzīm* back to the villages.

The GCR also suggests principles for a just solution to the problem, including:

- The forcible removal of the Bedouins to the *siyāj*, and the prior existence of their original villages should be acknowledged formally;¹⁸¹
- The Bedouin should be consulted and integrated into Israeli society,¹⁸² as there is no democratic justification for treating them any differently from other citizens of the state;¹⁸³
- Ownership rights should be based on the Bedouins' historical attachment to, and traditional use of the land,¹⁸⁴ rather than on legal bonds, and without reference to the *mawāt* classification in the Ottoman land law.¹⁸⁵
- Unrecognized villages should be recognized and planned.¹⁸⁶

Adequacy of the Goldberg Recommendations

The actual proposals of Goldberg, however, fall short of the high human rights ideals, particularly in not rejecting the long-established policy of linking the resolution of land disputes with compulsory relocation to the government-planned *rekūzīm* settlements:¹⁸⁷ The Goldberg Commission's proposed procedure for handling claims actually does not resolve any of the basic outstanding issues that have led to the "historical and legal knot" that the Commission is unhappy about.

For a number of historical, cultural and practical reasons, potential claimants have not been able to prove—and are unable to prove—with "legal documents" that they have a right of ownership to the land that they have occupied before the authorities evicted them, or still occupy at present outside of established township plans. There is also no clear identification of who the "claimant" actually is: An individual, a family, a clan, a tribe, a village? The proposed settlement does not appear to take into consideration the nature of traditional land tenure among the Bedouin and, unless it does so, it may lead to further complications.

Moreover, the Commission's report is clear that the settlement would not apply to "claims for pasture land. These were lands in which the tribe only had grazing rights and the law will specifically exclude them from the Proposed Arrangement." This premise affirms "the Hawashla precedent," denying Bedouin rights to their traditional-use lands. Extensive pasture and grazing rights were an integral part of the traditional Bedouin lifestyle, which had been respected during Ottoman rule and even under the British Mandate. It was only after 1969 that the State of Israel decided unilaterally to appropriate the lands on which such collective rights had been exercised for countless generations.

If the Goldberg-proposed settlement does not include such lands, then it will do little to contribute to a land-based solution for the Bedouin's ruptured lifestyle and livelihood. At best, it will help regularize ownership and occupancy rights on small urban plots for local households in established and recognized townships.

Moreover, the Commission wants to avoid any misunderstanding regarding its proposal, stating that "registration of the ownership portion in the name of the claimant or his heirs will not grant them 'immunity' from the application of the Planning and Building Law to these lands, neither in planning nor in construction." In other words, even the limited land rights, which must be seen as human

rights in this context, still may be subordinated to planning and construction restrictions.

A similar condition is stipulated by the Commission regarding the future recognition of unrecognized settlements. In fact, to its credit, the Commission recommends “recognition, as far as possible, of all the unrecognized villages [that] have a critical mass of residents, at a level to be determined, and [that] can maintain themselves as municipal units.”¹⁸⁸ Once again, the Commission adds a condition that, in fact, denies the right to recognition (a basic human right long demanded by Negev Bedouin): that it “in no way contradicts the District Metropolitan Plan.”¹⁸⁹

Here again a human right is subordinated to the requirements of a regional planning document, which, like all other such plans, was drafted without taking into consideration the needs and rights of the Bedouin citizens. Despite its best and worthwhile intentions, the Goldberg Commission has not been able to overcome these limitations, which undermine from the start its proposed solution. An alternative perspective would require the entire overhauling of the Metropolitan Plan and similar instruments, to incorporate the human rights of the Bedouin—and also non-Bedouin—population as a pivotal element.

It would seem that the Goldberg Commission members recommend a settlement proposal that has no chance of being implemented, insofar as it does not resolve (i.e., remedy) the long-standing human rights violations to which the Negev Bedouins have been the subjected.

The RCUV, in a press statement released shortly after the presentation of the Goldberg Report’s recommendations, strongly states that recognition of the legitimate rights of Arab lands in the Negev and villages is the only just solution, based on the following essential points:

- Recognition of historical ownership rights of the Negev Arabs to their land;
- Recognition of all unrecognized villages according to the style of planning that suits the cultural and economic needs of the residents; and
- Application of equitable distribution of resources and services in all aspects of life to all citizens of Israel, regardless of ethnicity.

If the Goldberg Commission’s recommendations go the way of previous commissions, then the outlook for the Negev Bedouin is

dreary. Perhaps the difference this time is that public opinion recognizes, as does the Goldberg Commission, that this is not a problem of the Bedouin, but a problem for the Naqab, which means for the country as a whole.

The issues dealt with by the Goldberg Commission pertain not only to the field of urban and regional planning, thus, they cannot be dealt with by legal technicalities alone. They must be seen within the wider perspective of human rights, grounded in a body of international human rights instruments to which the State of Israel is a party.

While the international investigative team applauds some of the Goldberg principles, they remain concerned that the proposals for resolving land claims are too restrictive and that the twin questions of land settlement and the unrecognized villages have not yet been decoupled.

Applying the Goldberg Recommendations

Conscious of this potentially explosive situation, the Goldberg Commission concludes that “what is needed is a practical initiative, going beyond the strictly legal aspect, that will lead to a fair and implementable solution to the struggle over land and the confrontation over patterns of settlement, a solution that will renew the Bedouin’s faith in the state and its intentions.”¹⁹⁰ Furthermore, it calls for an “all-encompassing and integrated solution that will cover the land and the planning of settlement, employment and education, combined with living conditions in the different localities (those which are recognized and those which have yet to be recognized).”¹⁹¹ The GCR admonishes the government that “there is no justification for treating the Bedouin residents of these localities any differently from the way it treats all other citizens of the state.”¹⁹²

The Commission proposes a new settlement policy that would “cut through the historical and legal knot concerning the Bedouin’s right to the land,”¹⁹³ and be fair to all stakeholders. It proposes, in principle, that the state grant land ownership rights on the basis of due consideration for the Bedouin’s historical attachment to the land, and not in recognition of any post-1948 statutory bond, which the Commission considers does not exist.

In applying the Goldberg recommendations, the Israeli government would have to keep the following points in mind:

Land claims:

- All valid claims should be met by registering all the land to the claimant, not as Goldberg proposes,¹⁹⁴ partly by monetary compensation.
- Claims to land outside the *siyāj* should be considered on the same basis as land within the *siyāj*. The proposal that such claims should be compensated only by land within the *siyāj*¹⁹⁵ is arbitrary, unfair and unfeasible (and still more unsatisfactory are the requirements¹⁹⁶ that the land must include a plot within a *rekūz*, and that the claimant must move to a *rekūz*).¹⁹⁷
- Pasture land is not included,¹⁹⁸ and references¹⁹⁹ to “proven claims” suggest that the test of “historical attachment” is not to be applied to pasture land.

Villages:

- Despite the proposal that all villages should be “recognized,”²⁰⁰ the proposals imply that all land within them (other than any land claims that are accepted) should come under ILA ownership;
- The Goldberg report itself states that its proposals are subject to there being no conflict with the district plan.²⁰¹ Recognition of the villages clearly is in conflict with that plan. We see no justification for making any resolution of land claims/unrecognized villages subject to the district plan: rather it should be the other way round.

Planning:

- Rather than forming a proposed new unaccountable planning authority,²⁰² it would be better to bring planning under the control of (an expanded) Abu Basma Regional Council;
- The proposed procedures are unnecessarily complex;
- It is acceptable that, after a “blue line” is drawn around each village and the buildings within it are given permits so they can be connected to services, building outside will be dealt with in accordance to state regulations..

Conclusions and Recommendations

The persistent conflict between the State of Israel and the Naqab Bedouin is becoming seen increasingly as an intractable component of the wider Palestine-Israel conflict. In addition to the deliberations of human rights and indigenous peoples' forums, a further example of the unrecognized villages' emergence in international forums is the treatment of the unrecognized villages as a contextual issue in the recent report of the UN Fact-finding Mission on the Gaza Conflict.²⁰³

Institutional Discrimination and Cumulative Dispossession

Despite the obvious analogies, the forms of discrimination in Israel are distinct from those known in other places and times, as in apartheid South Africa, for example. South African apartheid had established civil inequality through a crucial piece of legislation: the Population Registry Act, which some authors have referred to as the system's lynchpin.²⁰⁴ That single law established a hierarchy of status on the basis of skin color, and imposed the separate of communities in accordance with that criterion. Human rights, services and privileges in Israel are granted or denied not on the basis of a single legislative act or a single physiological feature, but rather through a series of laws and institutions dedicated to the exclusive benefit of those eligible for "Jewish nationality," regardless of whether or not those putative beneficiaries are citizens of the state.

Reference is made above to the particular consequences of those forms of discrimination through the institutionalization of a superior “Jewish nationality” within the state, its extension of that status to citizens of other countries and its implementation through exclusively permitted access to land, housing and development resources to members of the eligible group. The underside of this system of divergent rights and privileges for inhabitants of Israel’s jurisdiction and areas of effective control is found well pronounced in the social and economic indicators of the Bedouin community in the Naqab/Negev, as compared to other citizens, especially “Jewish national” citizens.

However, this example—that is, within the scope of this investigation—appears to be the tip of a proverbial iceberg of institutional, locally “legalized” and policy-driven discrimination affecting the Palestinian people as a whole. Testimony received during the fact-finding mission and reports from numerous other sources indicate that similar practices and conditions prevail under Israeli administration outside of the Naqab as well. Generalized practices of discrimination, particularly carried out through the operations of the State of Israel’s WZO/JA, and JNF, Israel “national” water carrier Mekorot and affiliates have been the official practice since the founding of the State of Israel. While the geographical scope of this investigation is limited to the Naqab region, as is the remit of the Goldberg Commission, it must be recognized that the problem of institutionalized discrimination is a wider one that persists beyond the partial recommendations of the Goldberg Commission. In light of that wider challenge, this inquiry into relevant and effective measures to resolve the confrontation between the state and its indigenous citizens in the Negev could contribute models to be applied elsewhere across the state.

In such a situation of institutionalized discrimination, international norms recognize that temporary special measures²⁰⁵ may be needed to correct historic discrimination and its disadvantageous effects, among other actions to reform laws and institutions. For example, the CESCR’s General Comment No. 20 urges that

Such policies, plans and strategies should address all groups distinguished by the prohibited grounds and States parties are encouraged, amongst other possible steps, to adopt temporary special measures in order to accelerate the achievement of equality. Economic policies, such as budgetary allocations and measures to stimulate economic growth, should pay attention to the need to guarantee the effective enjoyment of the Covenant rights without discrimination. Public and private institutions should be required to develop plans of action to address non-discrimination and the State should conduct human rights education and training programmes for public officials and make such training available to judges and candidates for judicial appointments.²⁰⁶

These forms of institutionalized discrimination also have been accompanied by acts, as the GCR acknowledges, having grave material and other consequences for the Bedouin Arab community, particularly by way of dispossession, demolition and forced displacement. Such acts constitute grounds for remedy through reparations, which also find their definition and normative content in general principles of international law as developed. These include the elements of restitution, including return, resettlement and rehabilitation, compensation, satisfaction and guarantees of nonrepetition.²⁰⁷

Then the issue of land can be dealt with not as a compromise weighed against the claim for other rights of citizenship, but by citizens recognized as legal persons on an equal basis, bringing land claims that need to be separately considered. If these claims to citizenship are not recognized and implemented, then the ability of the Bedouin community to realize their own individual and collective claims are severely restricted and they will continue to live the life that they allege; i.e., that of being a “minority in their own world.” That long-standing practice or discrimination (between the rights of mere “citizens” and the rights of “Jewish nationals”) also undermines the pretext of modern citizenship in Israel and belies its self-acclamation as a democratic state.

The UN General Assembly has recognized a principle of international cooperation in cases of prolonged conflict and institutionalized discrimination within states. Already in the early 1950s, the question of apartheid in South Africa came to the General Assembly agenda despite the protestations of the South African delegation that the world body’s discussion of institutionalized discrimination inside the Union of South Africa breached the principle of state sovereignty and noninterference. Ultimately, the deliberations affirmed that a matter of domestic violations of human rights constitute a responsibility of the international community of states when that situation undermines regional peace and security.²⁰⁸

It is noted that governments administering the state with an excessive emphasis upon security concerns at the expense of other values, or pursuing statecraft through discrimination,²⁰⁹ run the risk of implementing policies intended on preserving the state, but which perpetuate conflict, erode state legitimacy and/or contain the seeds of the state’s own undoing in the longer run.²¹⁰ The IFFM poses an alternative in which the state pursues dispute resolution domestically as a function of statecraft within

international norms, while avoiding that the present conflict reach a wider-scale confrontation.

Indivisibility of Rights

This IFFM concludes that human rights law and methodology provide the criteria for legal and policy approaches toward resolving conflict and long-standing deprivation as in the case of the Naqab Bedouin. As the above section on Applicable Rights and State Obligations explains, in order to succeed, such approaches require an integrated application of rights and implementation of the states obligation to respect, protect and fulfill the complete construct of rights as indivisible and interdependent. Shortly after Israel ratified the two Human Rights Covenants, the Vienna Declaration and Programme of Action affirmed that all human rights are universal, indivisible, interdependent and interrelated. The World Conference on Human Rights at Vienna, 1993, explained that principle to mean that states in the international community “must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.”²¹¹

It is in this spirit that the fact-finding team presents its recommendations. The team recommends also that the State of Israel and Government of Israel apply the principal of the indivisibility of rights toward legal, ethical and policy solutions to the problem of discrimination toward the indigenous community in Israel.

In doing so, Gol would have to apply the principle of nondiscrimination, among the other six over-riding principles set forth under treaty law as cited above. The IFFM team recognizes that the dispossession and human suffering that the Naqab Bedouin have undergone since 1948 are outcomes of structural discrimination within the State of Israel, which establishes two separate classes of constituents: those having only the status of *ezrahūt* (citizenship) in Israel, including the indigenous population, and those holding a privileged “nationality” status as part of and acclaimed *le’om yahūdi* (“Jewish nation”). This antidemocratic feature of two tiers of civil status carries consequences throughout the state and beyond. However urgent and important is the wider remedy, the IFFM team limits its recommendations here to the immediate purpose and scope addressing only the case of the unrecognized villages of the Naqab.

The international conventions on civil and political, as well as economic, social and cultural rights cover many of the issues that

are of concern to the Negev Bedouins. The various UN treaty bodies have dealt with some of these issues in their reports on Israel, and according to international standards, the government of Israel must assume its international responsibility to protect these human rights of all of its citizens, including the Negev Bedouin.

Evidence of attempts at resolving land and other conflicts by, for example, setting up an authority for the development of the Bedouin within the structures of the ILA strike us as completely inadequate. Clearly a need remains for a structure that recognizes firstly the dignity of all people living in the Negev, ensures a franchise at local government level, that the residents enjoy equal rights in both the agricultural and commercial spheres, and enjoy equal access to public goods and services, in order to realize all socioeconomic rights and pursue social development.

All Villages Should Be Recognized and Planned

The state's nonrecognition and restrictions on building have forced the growing Bedouin population to build needed housing and other structures "illegally," in the absence of any viable alternative. These demolitions have reached enormous proportions. The choice of which unplanned construction is to be demolished is obviously arbitrary, subject to the discretion of local authorities. Such state performance does not resolve the situation, but only increases tension and conflict.

Among their conclusions, the IFFM team finds that planners and policy makers face two humane alternatives to forcibly displacing the population of the villages into the *rekūzīm*:

- A. Redeveloping them by clearing the housing and building or providing plots for the population according to a detailed neighborhood metropolitan plan, and
- B. Allowing the improvement and replacement of individual land holdings to take place on an organic basis, in the context of agreed overall principles and incorporating essential facilities such as roads, plus adjacent areas for expansion planned on modern principles.

In cases where the villagers want to be relocated to a healthier location, their wishes should be respected and met. However, in other cases, experience the world over suggests that humane option B above is the favored solution. This is especially the case where densities are not high and where there is a very high degree of community cohesion, as in these villages.

Of crucial importance is the question of land ownership: The comprehensive purchase of plots for alternative accommodation A would be time consuming and hugely contentious. Option A is invariably more costly and disruptive of family and community cohesion. It is far better to allow and empower people to improve their own land where they wish to do so, while providing an opportunity for reparation, where that is the local choice. All of this (including voluntary relocation) could be accomplished under the Planning Law, provided appropriate minimum standards are specified, appropriate local councils are in place and a consultative approach is adopted. In other words, plans should be prepared for and with the unrecognized villages.

In the light of these general principles, and generally through the urgent recognition and planning of all the currently unrecognized Bedouin villages in the Naqab, the IFFM offers the following specific recommendations.

Recommendations for Planning and Development

Drawing their findings from documentary and field investigations, applying the mission’s legal and ethical framework consistent with Israel’s binding human rights treaty obligations, the International Fact-finding Team has concluded 18 key proposals for resolving the land, housing and development conflict between the state and the Bedouin Arab citizens of Israel in the Naqab/Negev. Here below, the IFFM team offers its recommendations to the Government of Israel, its agents and subsidiaries, and to the international community, in applying the Goldberg Commission Report.

Given Israel’s treaty obligations and consistent with the standard norms and practice in the international community of states, the international investigative team urges Israeli authorities to:

1. Cease demolition of buildings in the unrecognized villages; withdraw all demolition and warning notices;
2. Recognize within the statutory plan all of the 45 villages and any other indigenous village that is not presently recognized;
3. Establish democratically elected local councils for all of the villages, and create a Regional Council—or Councils—to cover, in principle, all of the *siyāj* territory and adjacent unrecognized villages, but excluding Beer Sheva. Such council(s) would take over the functions of the Abu Basma Regional Council. An interim measure would involve the Ministry of the Interior inviting the RCUV to consult with the villages and prepare proposals for designation of local council

areas. The Ministry should consider and adopt these plans as soon as possible. The procedures and conventions of designation, and the powers, responsibilities and funding of these local councils should be in accordance with current Israeli law and practice. From this will follow the many benefits of “recognition”;

4. Undertake and sustain adequate consultation with the elected local councils and with the new Regional Council(s) for the villages, to determine which villages, or parts of villages, wish to be relocated;
5. Revise the Beer Sheva Metropolitan Plan to avoid destruction and/or forcible displacement of any of the unrecognized villages, in particular the six villages through which the bypass highway is currently proposed;
6. Revise the Beer Sheva Metropolitan Plan also to (a) determine the appropriate planning priorities for each of the presently unrecognized villages, and (b) the strategy for relocating any village requiring this;
7. Ensure that the procedures for Recommendation 5 (a) and (b) above benefit from rapid procedures that in the past have been used for new Jewish settlements, in order to reduce processing time to a minimum;
8. Prepare guidelines in consultation with the affected people for redevelopment and improvement of property on existing individual plots belonging to individuals or collectives in the Arab Bedouin community. These should define minimum standards, and their purpose would be to protect the rights and amenities of adjacent properties, and these guidelines would have validity until the approval of the local plans (see 11 below);
9. Determine and publicize a development line (“blue line”) around each village beyond which no development may take place before approval of a local plan;
10. Prepare and approve a local plan for each village within a target period of two years. The four main objectives of these plans should be:
 - To allow appropriate development of the existing plots (see 9 above);
 - To provide for expansion needs to meet current deficiencies and future needs (according to what is customary in Israel);
 - To allow for needed infrastructure and employment facilities.

- To protect and enhance agricultural resources and the environment;
12. Prepare and implement an emergency program for economic development in the new Regional Council area (see Recommendation 3). The main objectives should be providing employment opportunities (especially for women and youth), and providing training to increase skill levels, and exercise affirmative action measures in existing plants and industries, and government employment opportunities in the area, as well as public transport as an urgent priority. The economic-development program should encourage, extend and modernize the very long-established and extensive Bedouin cultivation, which long predates the foundation of the Israeli state. This aspect of the program would promote opportunities for intensive production and water supplies on a par with those for Jewish settlements. Opportunities for more traditional seasonal pasturing of livestock over the very extensive areas available for this should be provided, with full participation of the community in the management of these resources;
 13. In line with the Goldberg principle that the forcible removal of the Bedouins to the *siyāj* should be acknowledged²¹² and, in recognition of the injustices the Bedouins have suffered since then, provide state finance for program (see Recommendation 12) to be provided on a scale that meets the criteria of reparations as provided in the general principles and norms of international law through the existing mechanisms of the Higher Follow-Up Committee for Arab Citizens of Israel;
 14. Prosecute violence and destruction by the Green Patrol and other agents of the state, and any third parties, according to the law consistent with human rights treaty obligations and principles of international law;
 15. Disband the Green Patrol;
 16. Correct the state laws, policy, regulations and practices on land ownership, including through the following measures:
 - Resolve land-settlement procedures independently of any transfer of the claimant to a *rekūz*/township;
 - Settle existing land claims on the basis of the Bedouin citizens' historical attachment to, and use of the land;
 - Settle claims both within and outside the *siyāj* by the registration of the land concerned, not by monetary compensation;
 - If the state requires any such land for public purposes, follow the normal procedures for voluntarily or compulsorily purchase; such need should be determined

only after conducting a fully participatory local-level survey of the needs of the Bedouins, since they are "the concerned public";

- Establish a land trust to hold land for the benefit of the Bedouin population, including by way of restitution. All land within the villages that is not subject to an ulterior claim should be vested in this fund, as should virtually all of the undeveloped land elsewhere in the *siyāj*, as well as range land elsewhere used by the Bedouins.
18. Finally, all developments regulating Bedouin settlement to date appear to be top down. In dealing with evictions recently, the South African Constitutional Court has continually endorsed the necessity on the part of authorities to consult, mediate and engage with the affected residents.²¹³ The State of Israel should apply the same democratizing principles of practice, encouraging rights-based consent between and among representative bodies, such as the elected local and regional councils, and all citizens and inhabitants of the State of Israel.

The Mission organizers have invited relevant officials of the Israeli government to present evidence and explain policy to the IFFM team. Although no serving official accepted that invitation, the IFFM's report, its conclusions and recommendations are primarily intended for those Israeli officials, legislators and policy makers and implementers, to whom the IFFM team offers them for their urgent consideration.

ANNEXES

ANNEX I

IFFM Naqab Field Visit Program, 8–15 March 2009

Day 1: Sunday, 8 March 2009

Part One: **Background and Orientation**

8:30–9:00 **Reception and Welcome:**

RCUV Chairman Hūsain al-Rafai'a; and
HIC-HLRN Coordinator Joseph Schechla.

9:00–10:00 **Expectations from the FFM**

Ameer Makhoul (Amīr Makhūl), general director of
Ittijah—Union of Arab Community Based Associations.

10:00–11:30 **Conflict Background: “A Historical Review”**

Youssef Jabareen (Yusuf Jabarīn), lecturer in urban
planning, Technion Institute (Haifa).

11:30–13:00 **Land between Customs and Law**

“Land in the Bedouin Custom Law”, Khalīl Abū Rubai'a,
lecturer, Ben Gurion University (Beer Sheva);

“Land in the Israeli Law”, Mūrād al-Sana', advocate,
Adalah: The Law Center for Arab Minority Rights in
Israel.

13:00–14:00 Lunch

14:00–15:45 **Governmental versus Community-based Planning**

“Planning from Governmental Perspective,” Erez Tzfidia,
Planners for Planning Rights (Bimkom);

“Community-based (Insurgent) Planning,” Hubert Lawyon,
Urban Planner and Professor, Technion Institute (Haifa).

Part Two: **Field Visits and Tour**

16:15–17:30 Visit to Wādī al-Na'im (a displaced village) and meeting
Ibrahīm Abū `Affāsh, member of Local Committee;

17:30–18:45 Visit to Bi'r Hadaj (recently recognized village), meeting
the local committee and touring Jewish single-family
farms;

18:45–19:30 FFM team debriefing;

19:30 Dinner.

Day 2: Monday, 9 March 2009**Part One: Witness Accounts: Land Issues and Struggle**

8:30–12:30 “Nationality and the Role of Parastatal Institutions,”
Joseph Schechla, coordinator, HIC-HLRN;

Jābir Abū Kaff, former chairperson of the RCUV, currently a landowner and resident of Umm Bāṭin, a recently recognized village;

Ibrahīm al-Hawāshla, activist formerly with the RCUV, resident of Qasr al-Sirr unrecognized village and member of al-Hawāshla tribe, against whose petition the High Court ruled that Bedouins own no land, since their land was *mawat* (“al-Hawāshla precedent”);

Sheikh Jum`a al-Kishkhar of Tal Arad, from al-Janabīb tribe, who did not register their land in the 1970s;

Haj Salmān Abū Jlaidān, from `Abda village, living on 4K dunums in “green zone” adjacent to military area;

13:00–14:00 Lunch.

Part Two: Field Visits and Tour

14:30–15:00 Visit to `Amra (unrecognized village whose residents were displaced twice) and adjacent Jewish town, Omer;

15:30–16:15 Visit to al-Qrain, an unrecognized village of residents whom the military removed in 1951 “for six months,” but then prevented from returning until present. Meeting with `Alī Abū Shuhaita;

16:30–17:15 Visit to Sa'wa, meeting with Yūnis al-Aṭrash. Residents of this village have been battling to become part of Hūra, one of the seven government-planned towns, but government has refused thus far;

17:30–18:30 Visit to al-Sirra, unrecognized village with alternative plan. Meeting with head of the local committee Mr. Ahmad al-Nasāsra—all the homes in this village are under a village-wide demolition order;

18:30–19:15 FFM team debriefing;

19:15–20:00 Dinner at home of Khalīl al-`Amūr (al-Sirra).

Day 3: Tuesday, 10 March 2009**Part One: al-Naqab Arabs: Issues and Rights**

09:00–09:15 Recapitulation of previous day;

09:15–10:00 Wasīm Abbās, Physicians for Human Rights (Israel);

- 10:00–11:00 Gilgen More, advocate, Association of Citizen Rights in Israel;
- 11:00–12:00 “Discrimination in planning laws and procedures,” Oren Yiftachel, member of RCUV and lecturer, Ben Gurion University in the Negev (Beer Sheva);
- 12:00–13:00 Sultan Abū `Abayya, director of *Shatil*, the New Israel Fund's Empowerment and Training Center for Social Change Organizations in Israel (Beer Sheva);
- 12:30–13:30 Oren Yiftachel, member of RCUV and lecturer, Ben Gurion University in the Negev (Beer Sheva);
- 13:30–14:30 Lunch at Shaqīb al-Salām township.

Part Two: **Field Visits and Tour**

- 14:30–15:00 Transport to al-Zarūq village;
- 15:00–16:30 Visit al-Zarūq village and meet with local women;
- 16:30–17:00 Visit viewpoint in unrecognized village Khashm Zanna;
- 17:00–19:00 Rest and FFM Team debriefing (Beer Sheva);
- 19:00–18:00 Dinner.

Day 4: Wednesday, 11 March 2009

Part One: **Goldberg Commission and District Planning: An Opportunity or Discrimination?**

- 8:30–11:15 `Aqīl al-Talālqa, from Tuwayyil Abū Jarwal village;
- 11:15–13:45 Faisal al-Hūzayl, ex-mayor of Rahat, one of the seven government-planned townships, and member of the Goldberg Commission;
- Sa`īd al-Khrūmi, former head of Shaqīb al-Salām, one of the seven government-planned townships;
- Muhammad Abū Fraiha, head of Sheep Raisers Committee (Umm Mitnān).
- 13:45–14:30 Lunch

Part Two **Different ways of dispossession:**

- 14:30–15:00 Muhammad al-Nabāri, president, Hūra Local Council;
- 15:00–15:30 Ma`aiqil al-Hawāshla, al-Gharra village, witness on land counter claims;
- 15:30–17:30 Visit Old City of Bi`r al-Sabi` (Beer Sheva) with Khalīl al-Amūr;
- `Udah Abū `Ashaiba, internally displaced citizen from Beer Sheva (1948);

17:30-18:00 FFM team debriefing;

18:00-20:00 Rest and dinner.

Day 5: Thursday, 12 March 2009

Part one: **Witness Accounts from the Unrecognized Villages**

08:30–12:30 Ibrahīm al-Wukailī, RCUV vice-chairman from Bi`r Mshāsh;

Sa`īd Abū Samūr, Center for Planning and Information;

Husain Rafai`a, president, RCUV;

12:45–13:30 Lunch and travel to Beer Sheva.

Part Two: **Conference at Ben-Gurion University of the Negev in Beer Sheva**

15:00–19:00 **Problems in Planning the Pre-Planning-Law Villages:**

Miloon Kothari, FFM Team members;

Havatzelet Yahel, general prosecutor, Southern District;

Facilitator: Yitzhak Navo, professor, Ben-Gurion University;

Development Channels:

Khair al-Dīn al-Bāz, in charge of welfare and social services in Shaqīb al-Salām and the unrecognized villages;

19:00-19:30 Transport to Khashm al-Zinna;

19:30-20:00 FFM team debriefing;

20:00 Dinner at Khashm al-Zinna

Day 6: Friday, 13 March 2009

8:30–10:30 Meeting at Sidreh Association, Laqiyya village;

10:30–11:00 Transport to al-`Araqīb village;

11:00–12:30 Visit with Sheikh Sayyah al-Tūri in al-`Araqīb;

12:30–13:00 Transport to Bait Kama;

13:00–14:00 Lunch at `Adnan's Restaurant, in Bait Kama;

14:00–18:00 Visit to Khirbat Abū Ghalyūn, western Naqab with Sheikh `Udah Abū Suraihān and his son, Nasr;

18:00–18:30 Transport to dinner venue;

18:00–19:00 Meeting Knesset Member Tālib al-Sana`;

19:00–20:00 Dinner and transport to Jerusalem (Ambassador Hotel).

Day 7: Saturday, 14 March 2009

- 10:00–11:00 Meeting with Talia Sasson (Meretz Party);
- 11:00–12:15 Meeting with advocate Bana' Shogri;
- 13:00–14:00 Press conference, Ambassador Hotel;
- 14:00–15:00 IFFM Team meetings to plan the IFFM report;

Day 8: Sunday, 15 March 2009

- Final IFFM internal meetings to plan the IFFM report.
- Departures

ANNEX II

Israel's Ratification Status under Relevant International Human Rights Treaties

Treaty	Date signed	Date ratified
ILO Convention No. 11 Right of Association (Agriculture) (1921)	—	—
ILO Convention No. 29 Forced Labour (1930)		07 Jun 1955
Convention on the Prevention and Punishment of the Crime of Genocide (1948)	17 Aug 1949	9 Mar 1950
ILO Convention No. 87 Freedom of Association and Protection of the Right to Organise (1948)		28 Jan 1957
ILO Convention No. 98 Right to Organise and Collective Bargaining (1949)		28 Jan 1957
ILO Convention No. 105 Abolition of Forced Labour (1957)		10 Apr 1958
ILO Convention No. 102 Social Security (Minimum Standards) (1952)		16 Dec 1955
ILO Convention No. 111 Discrimination (Employment and Occupation) (1958)		12 Jan 1959
ILO Convention No. 117 Social Policy (Basic Aims and Standards) (1962)		15 Jan 1964
ILO Convention No. 118 Equality of Treatment (Social Security) (1962)		09 Jun 1965
International Convention on the Elimination of All Forms of Racial Discrimination (1965)	7 Mar 1966	3 Jan 1979
International Covenant on Economic, Social and Cultural Rights (1966)	19 Dec 1966	3 Oct 1991
ILO Convention No. 141 Rural Workers' Organisations (1975)		21 Jun 1979
ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries	—	—
ILO Convention No. 182 Worst Forms of Child Labour (1999)		15 Mar 2005
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008)	—	—
International Covenant on Civil and Political Rights (1966)	19 Dec 1966	3 Oct 1991
Optional Protocol to the International Covenant on Civil and Political Rights (1966)	—	—
Convention on the Nonapplicability of Statutory Limitations to War Crimes and Crimes against	—	—
International Convention on the Suppression and Punishment of the Crime of Apartheid (1973)	—	—
Convention on the Elimination of All Forms of Discrimination against Women (1979)	17 Jul 1980	3 Oct 1991
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)	22 Oct 1986	3 Oct 1991
Convention on the Rights of the Child	3 Jul 1990	3 Oct 1991
Convention on the Rights of Persons with Disabilities (2006)	30 Mar 2007	—

ANNEX III

Villages and Habitations Destroyed in Creation of the <i>Siyāj</i>		
Abū Sitta	Nijim and Muammar	al-Khālidī
1. Atawna (122x111)	81. Kaufakha	Atawneh (122x111)
2. Beli	82. al-Muharraqa	Beli
3. Ghatatwa (115x96)	83. al-Darajah	Ghatatweh (115x96)
4. Urūr	84. `Imarat Abū Isdar	Urour
5. Rawashda		Rawashdeh
6. Khiza'a (Gaza)	Khirbat Ikhza' (Gaza)	
7. Atawna (108x92)	85. Bi'r Aslūg	
8. Galazin Tayaha	86. Abū al-Hawawit	
9. al-Huzail/Hkūk	87. al-Hamada	
10. Gatatwah (125x89)	88. al-Tahamah (8, 27-E)	
11. Abū Abdun	89. Raud Khattab	
12. Atawna (115x83)	90. Imsura	
13. al-Buraiqi	91. al-Madiriyya	
14. Khiz (Gaza)	92. Bi'rain	
15. Abū Rqayiq	93. Abū Rutha	
16. Arab Qailaiya A (87x76)	94. al-Thamalah	
17. Arab Qalaiya Qilai A (101x76)	95. al-Tahama (8, 28-G)	
18. Abū Ghaliyūn (103x76)	96. al-Khaya	
19. al-Sania (113x75)	97. al-Matrada	
20. al-Sūfi	98. Sahal al-Hawa'	
21. Abū Suwailiq	99. Mayat `Awad	
22. Abū Ghaliyūn (112x74)	100. Ruwais al-Badan	
23. Naba'at (92x73)	101. Injaib al-Ful	
24. Abū Yehya (112x73)	102. `Ayn al-Ghidyan	
25. Muhammadīyīn (128x73)	103. Umm Rashrāsh	
26. Subhiyīn (128x72)		
27. Naba'at (94x64)		
28. al-Sani (115x67)		
29. Zaraba (127x67)		
30. Masūdiyīn (117x62)		
31. Naba'at (94x64)		
32. Abū Yahya (109x60)		
33. Nabhaat (98x51)		
34. Zaraba (128x59)		
35. Muhammadīyīn (116x57)		
36. Muraiat		
37. Mas'ūdiyīn (122x57)		
38. Subhiyaīn (115x47)		
39. Zaraba (115x56)		
40. Mas'ūdiyīn (125x54)		

41. Subaihat (118x53)	<p>The number of 103 villages and other human settlements that Israeli forces demolished and dispossessed in the process of creating the <i>siyāj</i>, essentially accomplished by 1953, reflects a process by which the IFFM team reconciled and combined the findings of the three principal studies on Israeli-demolished of Palestinian villages: Walīd al-Khālīdī, <i>All that Remains</i> (Washington: Institute of Palestine Studies, 1997); Bashir Nijim and Bishara Muammar, <i>The De-Arabization of Palestine, 1945–1977</i> (Dubuque IA: Kendall-Hunt, 1984), and Salmān Abū Sitta, <i>Atlas of Palestine 1948: Reconstructing Palestine</i> (London: Palestine Land Society, 2007). The principal references for this analysis are the maps produced by Salman Abu Sitta, verifying and expanding on the historical accounts of `Arif al-`Arif: <i>The Return Journey</i> (London: Palestine Land Society [PLS], 2007); <i>Atlas of Palestine, 1948</i> Palestine Land Society (London: PLS, January 2004); and <i>The Palestinian Nakba 1948: The register of depopulated localities in Palestine</i> (London: Palestinian Return Centre, 1998 reprinted 2000).</p> <p>The Abū Sitta maps show also “unidentified” place names mapped by Nijim. Those included localities often linked by name to their traditional users, but not necessarily settlements of constant habitation. In his research, Abu Sitta has not been able to verify these “unidentified” places from either available satellite photos or the testimonies of local people. Thus, the number applied by the IFFM team omits such “unidentified” places in the totals. Tribes/villages numbered 1 to 80 are locations of primary and secondary lands (multilocations of tribal land). This reflects the traditional situation whereby a tribe may have a primary homeland, but own and cultivate other lands they own. (This is true also for other Palestinian agricultural (<i>fellahin</i>) villages.) British Mandate maps show such <i>secondary</i> village lands by the notation “detached” (noted after the village name). Those lands may or may not have a permanent structure on them; however, the values at stake are so much more than material.</p>
42. Farahīn (124x53)	
43. Farahīn (134x53)	
44. Subhiyīn (112x53)	
45. Mas`ūdiyīn (126x53)	
46. Subhīyīn (112x53)	
47. Subaihat (122x53)	
48. Naba`at (98x51)	
49. Muhammadīyīn (109x50)	
50. Muhammadīyīn (118x50)	
51. Subhiyīn (115x47)	
52. Subhiyīn (109x48)	
53. Muhammadīyīn (137x58)	
54. Nahbaat (90x46)	
55. Subhīyīn (103x45)	
56. Subhīyīn (101x42)	
57. Subhīyīn (109x46)	
58. Subhīyīn (113x43)	
59. Mas`ūdiyīn (115x46)	
60. Mas`ūdiyīn (124x46)	
61. Usaiyat	
62. Muhammadīyīn (133x47)	
63. Sawakhna	
64. al-Sania (162x45)	
65. Abū Kaff	
66. Abū Rbai`a (162x43)	
67. Abū Grainat (164x43)	
68. Abū Juwayed (163x43)	
69. Abū Ruayiq (153x52)	
70. Abū Rubai`a (169x59)	
71. Abū Juwayed (167x57)	
72. Abū Grainat (166x56)	
73. Abū Rubai`a (179x58)	
74. Janabīb	
75. Abū Juwayed (176x56)	
76. Abū Grainat (173x54)	
77. Subhīyīn (93x38)	
78. Subhīyīn (111x33)	
79. Subhīyīn (113x37)	
80. Subhīyīn (98x21)	
Unidentified	

ANNEX IV

Illustrative Examples of Demolitions during and since the IFFM Field Visit				
Year	Location	# of Structures	Remarks	Totals
2010	al-Batal	5		
	al-Araqīb	44+		
	Twail Abū Jarwal	16	Tents	
	Khirbat Zbalah	1		
				Subtotal 67
2009	Bi'r Hadaj	5		
	Wadi Mshāsh	1		
	Umm Mitnān	6		
	al-Fura	1		
	Bi'r al-Hamam	2		
	al-Qrain	1		
	Wadi Na`im	1	Mosque	
	Rahama	1	Day-care center	
	al-Bakht	1		
	Umm Bātin	1		
	Bakht al-Siraya	1		
	Qatamat	2		
	`Amra Tarabīn	1	Mosque & adjacent structure	
	Am Ratam	1		
	al-Furah	1		
	Twail Abū Jarwal	48	Tents, shacks, all water infrastructure, and tractor confiscated	
	al-Sīr	4		
	al-Gharīr	3		
	Abda	2		
	al-Araqīb	9	Tents	
	al-Matbakh	1		
Khirbat al-Watan	1			
Tal al-Rashīd	1			
Sawāh	1			
al-Bakht	1			
Za`rūra	1			
Umm al-Milih	1			
				Subtotal 99
	Total structures			166

ANNEX V

TRANSMITTAL LETTER / OFFICIAL RESPONSES

التحالف الدولي للموئل و شبكة حقوق الأخرى والسكن و التحالف الدولي للموئل و شبكة حقوق الأخرى والسكن و
 COALITION INTERNACIONAL PARA EL HABITAT & La Red para el Derecho por la Vivienda y la Tierra
 COALITION INTERNACIONAL POUR L'HABITAT & Réseau des droits à la terre et au logement & COAL
 अवासा एव भूमि अधिकार संस्थाएँ & अवासा एव भूमि अधिकार संस्थाएँ & अवासा एव भूमि अधिकार
 HABITAT INTERNATIONAL COALITION & HOUSING AND LAND RIGHTS NETWORK & H&R

Cairo, 15 February 2011

Ehud Praver
 Department of Policy Planning
 Office of the Prime Minister
 Kaplan St. 3
 Hakiryia, Jerusalem 91950

Dear Mr. Praver:

The Housing and Land Rights Network of Habitat International Coalition (HIC-HLRN) is pleased to present the enclosed report, *The Goldberg Opportunity: A Chance for Human Rights-based Statecraft in Israel*, which is intended to serve as a guide in applying the recommendations of the Commission for Regulating Bedouin Settlement in the Negev. This report of the International Fact-finding Mission of renowned experts in the fields of the Commission's work culminates consultations, research and verification of findings that began with the experts' visit to the Naqab/Negev in 2009. The International Fact-finding Mission's report adds analysis to the findings and recommendations of the Commission from the perspective of State of Israel's human rights treaty obligations.

We hope that the report's recommendations will be helpful as you consider the priorities and correctives necessary to resolve the relevant policy and implementation issues. We also look forward to discussing this report with you, with members of the Israeli government.

Please know that HIC-HLRN is interested in your office's response to this report, particularly as no currently serving official of the Israeli government was available to meet with the International Fact-finding Mission team while in the country.

In the meantime, please be assured of our highest consideration.

Sincerely,



Joseph Schechla
 Coordinator

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Endnotes

- ¹ Goldberg Commission's Recommendations (GCR), Introduction, para. 2. [References to GCR here are cited from the full English-language translation provided by the Regional Council of Unrecognized Villages, 2009.]
- ² *Cabinet Communiqué* (communicated by the Cabinet Secretariat) at the weekly Cabinet meeting on Sunday, 18 January 2009, at: http://www.worldjewishcongress.org/Features/cast_lead/090118_cabinet.pdf.
- ³ Thabet Abu-Ras, "Land Disputes in Israel: The Case of the Bedouin of the Naqab," *Adalah's Newsletter*, Volume 24 (April 2006), p. 6.
- ⁴ Habitat International Coalition (HIC) is the global civil movement of organizations in over 100 countries promoting together adequate housing, equitable access to land and practical solutions to problems in human settlements. Its Housing and Land Rights Network (HLRN) constitutes HIC's Member group that promotes the framework of human rights and related principles of international law through monitoring, research, capacity building and advocacy.
- ⁵ Including the International Convention on the Elimination of All Forms of Racial Discrimination (1965); International Covenant on Economic, Social and Cultural Rights (1966); International Covenant on Civil and Political Rights (1966); International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1979); International Convention on the Elimination of All Forms of Discrimination against Women (1984).
- ⁶ "Goldberg Commission's Recommendations," English-language translation provided by Regional Council of Unrecognized Villages [hereafter GCR] (March 2009), p.20.
- ⁷ Penny Maddrell, *The Bedouin of the Negev* (London: Minority Rights Group, 1990), p. 4.
- ⁸ Nathan Weinstock, *Zionism: False Messiah* (London: Ink Links, 1979), p. 51, citing the Keren Heyesod maps of 1938. See also Yoram Bar-Gal, *Propaganda and Zionist Education - the JNF 1924-1947* (Rochester NY: Rochester University Press, 2003), 144-45, 149; "The Blue Box and JNF Propaganda Maps, 1930-1947," *Israel Studies*, Vol. 8, No. 1 (spring 2003), pp. 1-19.
- ⁹ Kirk, op cit., p. 227; Jacob C. Hurewitz, *The Struggle for Palestine* (New York: Norton, 1950), pp. 205-06.
- ¹⁰ Joseph Weitz, head of the JNF Land and Afforestation Department, "The Negev Commission: A Survey of Its Work," pp. 47-52, cited in Walter Lehn with Uri Davis, *The Jewish National Fund* (London and New York: Kegan Paul, 1988), pp. 82-2.
- ¹¹ "Progress Report of the United Nations Mediator on Palestine Submitted to the Secretary-General for Transmission to the Members of the United Nations, in pursuance of paragraph 2, part II, of resolution 186 (S-2) of the General Assembly of 14 May 1948," A/648, 16 September 1948, p. 14.
- ¹² Rony E. Gabbay, *A Political History of the Arab-Jewish Conflict* (Geneva: 1959), p. 145, note 118, cited in Weinstock, op. cit., p. 238; Kirk, op. cit., pp. 296-97; John Bagot Glubb, *A Soldier with the Arabs* (New York: Harper, 1957), pp. 233-37, cited in Weinstock, op. cit., p. 241. See also Elmer Berger, *Peace for Palestine: First Lost Opportunity* (Gainesville FL: University of Florida Press, 1993), pp. 91-143.
- ¹³ Berger, *Peace for Palestine*, op. cit., pp. 118-19.
- ¹⁴ Edward Luttwak and Dan Horowitz, *The Israeli Army, 1948-1973* (New York: Harper and Row, 1975), p. 31 [emphasis in original].
- ¹⁵ 16-18 July 1948.
- ¹⁶ 15-22 October 1948.
- ¹⁷ 21 October 1948.
- ¹⁸ 9 November 1948.
- ¹⁹ 5-7 December 1948.
- ²⁰ 22 December 1948-7 January 1949.
- ²¹ 5-10 March 1949, following the Armistice with Egypt, signed 24 February 1949.
- ²² George Kirk, *The Middle East 1945-1950* (New York: 1954), pp. 294-95, as cited in Weinstock, op. cit., p 240.
- ²³ GCR, p. 9, para. 19.
- ²⁴ The Israeli courts ensured acquisition of land and other properties from Palestinians by interpreting British Mandate legislation in favor of state, including the *Transfer of*

Land Ordinance (1921); *The Correction of Land Registers Ordinance* (1926); *Land Settlement Ordinance* (1928); *Town Planning Ordinance* (1936); *Defence [Emergency] Regulations* (1939), which the British later repealed); *Roads and Railways (Defence and Development) Ordinance* (1943); *Land (Acquisition for Public Purposes) Ordinance* (1943). The Knesset efficiently adopted complementary laws such as *Law and Administration Ordinance [Amendment] Law [1948]* to reverse the British repeal and reinstate these *Emergency Regulations*; *Area of Jurisdiction and Powers Ordinance* (5708-1948); *Abandoned Areas Ordinance* (5708-1948) ; *Emergency Regulations (Absentees' Property) Law* (5709-1948) ; *Emergency Regulations (Cultivation of Waste [Uncultivated] Lands) Law*, 5709-1949; *Emergency Land Requisition (Regulation) Law*, 5710-1949 ; *The Absentee Property Law* (5710-1950)²⁴; *Development Authority (Transfer of Property) Law* (5710-1950); *State Property Law* (5711-1951); *World Zionist Organization – Jewish Agency (Status) Law*, (5713-1952); *The Land Acquisition (Validation of Acts and Compensation) Law* (5713-1953; *Jewish National Fund Law* (5713-1953).

²⁵ *The Land Rights Settlement Ordinance [New Version]*, 1969, *Ordinances of the State of Israel*, New Version 13, p. 293.

²⁶ The first JNF acquisition totalled 1,101,942 dunams: 1,085,607 rural and 16,335 urban; the second amounted to 1,271,734 dunams: 1,269,480 rural and 2,254 urban. Abraham Granott, *Agrarian Reform and the Record of Israel* (London: Eyre & Spottiswoode, 1956), pp. 107–110.

²⁷ Jewish National Fund, *Report to the 23rd Congress*, 32–33, emphasis in original, cited in Lehn and Davis, op. cit., 108.

²⁸ 12,445 land area, plus 64,000 dunams with refugee/private individual claim forms, in addition to the assumed 1,811,000 dunams assumed to be cultivated by Bedouin Arabs at the time of dispossession. “Working Paper Prepared by the Commission’s Land Expert on the Methods and Techniques of Identification and Valuation of Arab Refugee Immoveable Property Holdings in Israel, A/AC.25/W.84, 24 April 1964, cited in Michael Fischbach, *Records of Dispossession: Palestinian Refugee Property and the Arab-Israeli Conflict* (Cairo: American University in Cairo Press, 2004), 272–73.

²⁹ According to the Land Ordinance (*Mawat*) of 1921, a Bedouin who cultivated revitalized and improved *mawat* land was given a certificate of ownership for that land, which was then recategorized as *Miri*. Y. Ben-David, *Feud in the Negev: Bedouin, Jews, Land* (Rananna, Israel: The Center for the Research of Arab Society in Israel, 1996), in Hebrew, cited in Thabet Abū-Ras, “Land Disputes in Israel: The Case of the Bedouin of the Naqab,” *Adalah’s Newsletter*, Volume 24 (April 2006), p. 3, at: <http://www.adalah.org/newsletter/eng/apr06/ar2.pdf>.

³⁰ Due to a tradition of not cooperating with foreign government authorities, a lack of information and knowledge about the registration system, fear of taxation and military conscription based on registration records, no previous challenge to their traditional use land claims, and an insistence of the validity of their traditional land use and corresponding tenure rights. See Oren Yiftachel and Haim Yacobi, “The Making of an Urban Ethnocracy: Jews and Arabs in the Beer-Sheva Region, Israel,” paper presented at the conference “Urban informality in the age of liberalization,” Berkeley, April 2003.

³¹ Sabri Jiryis, *The Arabs in Israel* (New York and London: Monthly Review Press, 1976), p. 56; Y. Ben-David, *Feud in the Negev: Bedouin, Jews, Land* [Hebrew] (Rananna, Israel: The Center for the Research of Arab Society in Israel, 1996); also Thabet Abu-Ras, op. cit., p. 3. Israel’s Land Acquisition Law (1953) defined three criteria for proclaiming land as State property: land that was not cultivated or resided on as of 1 April 1952; land that was in need for essential State development, such as settlement or military uses, between 14 May 1948 and 1 April 1952; and land that was still needed for those reasons. Because the Arab Bedouins had been internally transferred inside the *siyaj* prior to this date, they lost their lands even when possessing certified proof of ownership.

³² Joseph Weitz, *Diaries and Letters to the Children* (Tel Aviv: Massada, 1965), 4:23, cited in Jiryis, op. cit., p. 122.

³³ Moshe Aram and Rustum Bastuni, *Knesset Debates*, 13 May 1953, p. 1320, and 4 December 1954, p. 282, cited in Jiryis, op. cit., p. 122.

³⁴ As Naqab Bedouin elders testified in a press conference reported in Haaretz (13 June

1965). See also Weitz, *Diaries* 3:355–57, 359; 4:8, 9, 15, and 22; and Emanuel Marx, “Bedouin of the Negev,” *Hamizrah Hehadash* Vol. 7, No. 2 (1966), 89–98; and Ben Gurion’s statements in *Knesset Debates*, 6 February 1952, pp. 1222–23, as cited in Jiryis, op. cit., p. 121.

³⁵ Emanuel Marx, *Bedouin of the Negev* (Manchester: Manchester University Press, 1967), p. 35, cited in Jiryis, op. cit., p. 35.

³⁶ Y. Ariel, *Ha’aretz* (13 August 1965). As an expression of policy on the need to demolish abandoned Arab villages David Ben-Gurion is recorded as saying: “I think one should remove all the remains left in the southern Negev.... They still stand there because a lot of money is needed to explode them and level the ground. But why should they stand at all? People pass in the vicinity of Julis and other places and see empty ruins. Who needs that?” Cabinet Meeting, 20 January 1952 (Jerusalem: Israel State Archives, 1952), cited in Shai, op. cit., note 15.

³⁷ Aron Shai, “The Fate of Abandoned Arab Villages in Israel, 1965–1969,” *History & Memory*, Vol. 18, No. 2 (fall/winter 2006), pp. 86–106.

³⁸ Absentee: persons whose status is defined in Israel’s Basic Law: Law of Absentees’ Property (5710 - 1950) and applied both *retroactively* and prospectively for the State of Israel possession by confiscation properties (mostly to be administered by the Jewish National Fund and subsidiaries). Those whom the Basic Law identifies as “absentees” include anyone who:

1. At any time during the period between 16 Kislev 5708 (29 November 1947) and the declaration published under Section 9(d) of the Law and Administrative Ordinance, 12 Iyar 5708 (21 May 1948), has ceased to exist as a legal owner of any property situated in the area of Israel or enjoyed or held by it, whether by himself or another and who, at any time during the said period,

- (i) was a national or citizen of the Lebanon, Egypt, Syria, Saudi Arabia, Transjordan, Iraq or the Yemen; or
- (ii) was in one of these countries or in any part of Palestine outside the area of Israel; or
- (iii) was a Palestinian citizen and left his ordinary place of residence in Palestine
 - (a) for a place outside Palestine before 27 Av 5708 (1 September 1948); or
 - (b) for a place in Palestine held at the time by forces that sought to prevent the establishment of the state of Israel or that fought against its establishment.”

Full text of Basic Law: Absentees’ Property Law [LAP], at:

<http://domino.un.org/UNISPAL.NSF/d80185e9f0c69a7b85256cbf005afeac/e0b719e95e3b494885256f9a005ab90a!OpenDocument>.

Absentee property: a type of individual or collective possession denied to an indigenous class of inhabitants of Palestine through military and legislative events of the State of Israel’s proclamation of establishment process.

Israel’s Absentee Property Regulations (1950) vested possession of properties belonging to indigenous Palestinian Arabs in the “Custodian,” which was an acquisitive function within the Israeli Finance Ministry in 1947, established well in advance of the Regulations. The Law of Absentees’ Property (LAP) (see also “present absentee” below) provided the Custodian a new name, The “Custodian of Absentee Property” (CAP), also replaced the temporary and vague legal category of “abandoned” property with the better-defined and soon-to-be permanent category of “absentee property.” The CAP possessed broad administrative and quasijudicial powers, as well as evidentiary and procedural devices, to seize property at CAP’s own discretion, and ensured that the burden of proving “nonabsentee” status fell heavily on the newly dispossessed Palestinian Arab property holders.

The British *Trading with the Enemy Act* (1939), which created an extremely powerful property custodian and formally extinguished all rights of former owners, inspired the Israeli Absentee Property Regulations. Israel thus treated absentee property as State property, but the nature of the emergency legislation model from which the Israeli Absentees’ Property Law derived also made it subject to long-term legal challenge.

Therefore, the State of Israel incorporated the ideologically Zionist protostatal institutions within the State under 1953 legislation, but maintained them arguably outside of “government.” So, in order to retain the “absentee” properties and shed the

potentially constraining State obligations governing the Custodian under general principles of public international law (see “obligations” above.), the State of Israel began transferring newly acquired properties—especially such properties acquired outside internationally recognized Israeli territory—to the parastatal institutions (Jewish National Fund, World Zionist Organization/Jewish Agency and their subsidiaries and affiliates) and, subsequently, other State-managed institutions that share the Zionist protostatal institutions’ covenanted principles of Jewish-only presence in, and possession of the land, properties and productive resources contained in all areas of the Land of Israel (*Eretz Israel*), defined as the whole of historical Palestine.³⁸

The illegal transfer of Palestinian refugees’ and internally displaced persons’ (all “absentees”) properties (see “Internally displaced person(s)” above) to the Jewish National Fund (JNF) in exchange for revenues to the nascent colony was to a (then) off-shore England-registered entity, the JNF, which reunited with the State of Israel under the above-mentioned 1953 Knesset legislation. That transfer of “absentee property” took place over five years, after no standing party posed an international law challenge to Israel’s territorial expansion beyond the 1947 Partition Plan (UNGA resolution 181 [II]). That omission is despite the fact that UNGA 181 was merely one of the General Assembly’s contemporary nonbinding recommendations on the Palestine question, but submitted to a vote on 29 November 1947.

The “absentee property” lost in this gradual process is undetermined, but subject to reparation to Palestinian refugees and present absentees.

Present absentee: a person or descendant of a person living in Israel after 21 May 1948 with the “absentee” status created under the *Basic Law: Law of Absentees’ Property of 5710/1948* (LAP), especially those consequently dispossessed; a dispossessed citizen of Israel. Technically, this status affected virtually all Arabs who exited their actual homes or other possessed or owned properties during the 1947–48 War of Independence/Conquest, regardless of whether they returned. Also technically, the legislative dispossession order covered most residents, indigenous Palestinian Arabs and Israeli Jews (LAP, Article 1[iii]). However, the LAP regulations embedded a clause that systematically exempted Jews from the law’s intended dispossession.³⁸ Consequently, tens of thousands of Arabs citizens who became citizens of Israel were dispossessed absentees, but practically no Jewish Israelis were. The dispossessed Arab citizens of Israel thus assumed the paradoxical legal identity and simultaneous materially dispossessed status of “present absentee.”

³⁹ Jiryis, op. cit., p. 121.

⁴⁰ Jonathan Cook, “Bedouin `Transfer” *MERIP* (10 May 2003), at: <http://www.merip.org/mero/mero051003.html>; S/RES/93 (1951)- S/2157, 18 May 1951. Although Israeli authorities eventually issued identity cards in 1952, many expulsions into Egypt and Jordan continued thereafter. Such expulsions of Bedouin to Egypt and Jordan are recorded as late as 1959. See Maddrell, op. cit., p. 6; and Ghazi Falah, “How Israel Controls the Bedouin,” *Journal of Palestine Studies*, Vol. 14, No. 2 (1985), p. 43. Falah notes that “Bedouin problems in Israel are not so much those of being Bedouin, but rather those of being Arabs in a Zionist state,” at. 36.

⁴¹ Attributed to Pliya Albeck, then head of the Civil Department of the Attorney General’s Office, Ministry of Justice. Abū-Ras, op. cit., pp. 5–6.

⁴² Land Settlement Department – *Minhal Habitsua* (1997); Abū-Ras, op. cit., pp. 5–6.

⁴³ *Salim Hawashlah v. The State of Israel*, Civil Appeal 218/74, Piskei Din [Court Sentences], 38(3), 1984, p. 141. This decision is referred to in the Goldberg Commission report as the “Hawashlah precedent.”

⁴⁴ Yahel, op. cit.

⁴⁵ “Jahalin Beduin may be relocated next to Abu Dis garbage dump,” *Jerusalem Post* (24 December 2009), at: <http://www.jpost.com/Israel/Article.aspx?id=164101>; B’Tselem: The Israeli Information Center for Human Rights in the Occupied Territories, and Bimkom: Planners for Planning Rights, “The Hidden Agenda: The Establishment and Expansion Plans of Ma’ale Adummim and their Human Rights Ramifications,” December 2009, at: http://www.btselem.org/Download/200912_Maale_Adummim_Eng.pdf.

⁴⁶ Law of Citizenship and Entry into Israel, amended by Section 3A in 1980, recognizing ineligible nationalities as Lebanese, Syrian, Palestinian, Jordanian and Iranian.

- ⁴⁷ *Tamarin v. State of Israel* (1970) 26 P.D. I 197.
- ⁴⁸ Moshe Gorali, "So this Jew, Arab, Georgian and Samaritan go to court...The state denies there is any such nationality as 'Israeli'," *Haaretz* (28 December 2003), at: <http://www.haaretz.com/hasen/objects/pages/PrintArticleEn.jhtml?itemNo=376724>; Uzi Ornan, "Apartheid Laws in Israel - The Art of The Obfuscatory Formulation," *Ha'aretz* [Hebrew] (17 May 1991), at: <http://cosmos.ucc.ie/cs1064/jabowen/IPSC/php/art.php?aid=1131>; and Jonathan Cook, "Lawsuit Challenges Israel's Discriminatory Citizenship Definition," *The National* (Abu Dhabi) (06 April 2010), at: http://electronicintifada.net/v2/article11187.shtml?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+electronicIntifadaPalestine+%28Electronic+Intifada+%3A+Palestine+News%29.
- ⁴⁹ Jewish National Fund Articles of Incorporation, Article 3(C).
- ⁵⁰ H.C. 2390/96 *Karsik v. State of Israel* 55(2), P.D. 625.
- ⁵¹ Jewish National Fund Articles of Incorporation, para. 3(1).
- ⁵² Jeremy Forman and Alexandre (Sandy) Kedar, "From Arab land to 'Israel Lands': the legal dispossession of the Palestinians displaced by Israel in the wake of 1948," *Environment and Planning D: Society and Space*, Vol. 22 (2004), pp. 809–30.
- ⁵³ See *Jewish Agency for Israel Yellow Pages*, at: <http://www.jafi.org.il/about/abroad.htm>.
- ⁵⁴ "Blueprint Negev," described on the Jewish National Fund website, at: <http://www.jnf.org/work-we-do/blueprint-negev/>.
- ⁵⁵ Joseph Schechla, "The Invisible People Come to Light: Israel's 'Internally Displaced' and the 'Unrecognized Villages'," *Journal of Palestine Studies* (autumn 2001).
- ⁵⁶ Y. Ben-David, "The Bedouins in Israel — Land Conflicts and Social Issues" (Jerusalem: Jerusalem Institute for Israel Studies, Jerusalem, 2004).
- ⁵⁷ "Factsheet on the Naqab (Negev)," Arab Association for Human Rights, at: www.caiaweb.org/files/AAHRA-negev.factsheet.pdf
- ⁵⁸ Amer al-Huzayil, "The Unrecognized Villages in the Naqab: Between Institutional Planning and Alternative Planning" (unpublished position paper presented to the Arab Center for Alternative Planning, in Arabic), cited in Abū-Ras, op. cit., p. 6.
- ⁵⁹ The UN Committee on Economic, Social and Cultural Rights requested that the State of Israel explain its criteria for "recognition" of a human settlement and the corresponding rights and entitlements. However, the State of Israel has declined to answer that question until today. "List of issues to be taken up in connection with the consideration of the second periodic report of Israel concerning the rights referred to in articles 1–15 of the International Covenant on Economic, Social and Cultural Rights (E/1990/6/Add.32)," E/C.12/Q/ISR/2, 5 June 2002, question 17.
- ⁶⁰ Data submitted to the Goldberg Commission by the Bedouin Administration as of July 2008. GCR, p. 15, paras. 34–35 and following table.
- ⁶¹ Testimony of Muhammad Abū Fraiha, head of Sheep Raisers Committee (Umm Mitnān), 11 March 2009.
- ⁶² Data are scarce for the period preceding 1993. The IFFM refers to the Ministry of Interior for further data..
- ⁶³ Based on an estimate of 6.8 persons per household.
- ⁶⁴ Such as the few demolitions taking place in 2000–01 due to "ministerial policy." Yahel, p. 9.
- ⁶⁵ Yanir Yagna, "Israel to Triple Demolition Rate for Illegal Bedouin Construction," *Haaretz* (18 February 2010), at: <http://www.haaretz.com/hasen/spages/1150664.html>.
- ⁶⁶ According to information available to the RCUV and testified to the IFFM.
- ⁶⁷ HRW, op. cit., Appendix B, citing RCUV.
- ⁶⁸ Yahel, op. cit., p. 5.
- ⁶⁹ GCR, para. 68. However, this number may be an overestimate. Information available to the investigative team is that those structures in the unrecognized villages number about 12, 500. An overall total is cited as 40,000 as of 2005. Yahel, op. cit., note 66.
- ⁷⁰ Uri Tal, "Metropolitan-plans for the Bedouin Settlements in the Negev," Knesset Center for Research and Information [in Hebrew], 3 December 2006, at: <http://www.knesset.gov.il/mmm/doc.asp?doc=m01668&type=pdf>. See also letter to Human Rights Watch from Ministry of Justice, 23 July 2007.
- ⁷¹ GCR, op. cit., p. 32, para. 63.
- ⁷² In June 2002, Attorney General Elyakim Rubinstein proposed a new policy before

Knesset and appointed Regional Development Minister Ms. Tsipi Livni to formulate the plan. Havatzelet Yahel, "Land Disputes between the Negev Bedouin and Israel," *Israel Studies*, Vol. 11, No. 2 (summer 2006), pp. 1–22, at 12–13.

⁷³ Rather, the main items of the Sharon Plan for the "unrecognized villages" involve the following:

- Establishing a special police station and forces to implement the Plan;
- Empowering the Green Patrol by allocating more funding and personnel for land confiscation, and registration of the land as (Jewish-only) State Land;
- Instructing the Justice Ministry, Israel Lands Authority and the Bedouin Authority to collaborate to identify land ownership by appealing to the courts and claiming village land as State property. (According to the leading precedent, in 1984 the court ruled that the Bedouin in the Negev have no claims to land ownership.)
- Affirming that any money or land compensation will be according to the Israeli law, governmental decisions, and the Lands Authority;
- The Jewish Regional Council of Ramat Hovav and Bani Shimoun will grant individual farms (to "Jewish nationals" only), including areas not within their municipal jurisdiction, where the unrecognized villages are located;
- The Israeli Government will implement its 4 August 2002 decision to implement the Planning and Building Law, which deems all houses in these historical villages illegal (although they predate the State of Israel and the Planning Law);
- Allocating NIS 325 million (US\$77,381,000) for land compensation through the Lands Authority (on condition that Palestinian Bedouin owners evacuate to a concentration township);
- Local Municipalities will be established for the recognized villages with residents registered according to those recognized villages and concentrations, such as Meriet concentration township.

⁷⁴ Banna Shugri-Badarne, presentation to the IFFM team, 14 April 2009, explaining that the grounds of appeal were that the plan took no account of Bedouin culture and that the appeal "failed."

⁷⁵ Oren Yiftachel, presentation to FFM team, 12 April 2009.

⁷⁶ Havatzelet Yahel, "Land Disputes Between the Negev Bedouin," *Israel Studies* Vol. 11, No. 2 (2006), 1–22, note 14.

⁷⁷ Oren Yiftachel presentation, op. cit.

⁷⁸ Shlomo Swirski and Yael Hasson, *Invisible Citizens: Israeli Government Policy Toward the Negev Bedouin*, (Tel Aviv: Adva Center Information on Equality and Social Justice in Israel, February 2006), at: <http://www.adva.org/UPLOADED/NegevEnglishFull.pdf>.

⁷⁹ Israel's first Prime Minister David Ben-Gurion announced in the Knesset a general 5-year plan for the Arab sector in Israel, in which "the government will bring down legislation to move and concentrate the Bedouins into permanent settlements." Yiftachel, *Bedouin Arabs*, op cit., p. 34. Original source uncertain.

⁸⁰ Rahat, 1972; `Ar`ara in the Naqab, 1980; Keseifa, 1982; Segev-Shalom, 1982; Hura, 1991; Laqiyya, 1991. Yahel, op cit., note 13.

⁸¹ Swirsky and Hasson explain that current plan indicates nine were decisions that had already been made, and two were proposals of the plan itself.

⁸² Sandy Kedar and Oren Yiftachel, "Land Regime and Social Relations in Israel," in Hernando de Soto & Francis Cheneval (ed.), "Realizing Property Rights," *Swiss Human Rights Book* Vol. 1 (Zurich: Ruffer & Rub Publishing House, 2006), 129–296, at 141.

⁸³ Oren Yiftachel, "Bedouin Arabs and the Israeli Settler State: Land Policies and Indigenous Resistance," *TransEuropeaness* (2002), 21–47, at 30.

⁸⁴ Oren Yiftachel presentation to FFM team.

⁸⁵ Oren Yiftachel presentation to FFM team.

⁸⁶ Under Plan 14/4 and, as in the case of al-Awa village, all were rejected for lack of village recognition.

⁸⁷ Israeli law provides no criteria for defining what is a settlement. However, the local councils decree [Regional Councils – 1958]. T.M.A 35, enacted in 2005, refers to a descriptive building plan that combines development and conservation defines an "existing settlement" as any local authority or local council that has a valid plan providing for the construction of at least 50 residence units, and which is not a division of another settlement.

- ⁸⁸ Misgav Regional Council, "Lavon - A Dream of a Place!" at: <http://www.misgav.org.il/e/65/>.
- ⁸⁹ "Factsheet: Discrimination against the Negev Bedouin in State Planning," The Association for Civil Rights in Israel (ACRI), 10 January 2008, at: <http://www.acri.org.il/eng/Story.aspx?id=402>
- ⁹⁰ Israel Central Bureau of Statistics figures for 2006, cited in Response to Report of the Commission for Arrangement of Bedouin Settlement, 28 December 2008. See also Talia Sasson, "Summary of the Opinion Concerning Unauthorized Outposts," Prime Minister's Office, 10 March 2005, at: <http://unispal.un.org/unispal.nsf/9a798adbf322aff38525617b006d88d7/956aa60f2a7bd6a185256fc0006305f4?OpenDocument&Highlight=0,outposts>.
- ⁹¹ According to Association of Forty, www.assoc40.org.
- ⁹² Swirsky and Hasson, op. cit., pp. 2, 6–7.
- ⁹³ Ibid, pp. 6–7.
- ⁹⁴ Swirsky and Hasson, op. cit., pp. 36–37. On 11 January 2005, the Knesset passed an amendment to the Public Lands (Removal of Trespassers) Law (1981), expanding the Israel Land Administration's already broad powers to enforce ownership rights that are the subject of legal dispute. The amendment is expected to have an adverse effect mainly on the Negev Bedouin. See Banna Shugri-Badarne, "Amendment to the Public Land Law (Expulsion of Invaders)," *The Negev Coexistence Forum Newsletter*, 3 (March 2005).
- ⁹⁵ Swirsky and Hasson, op. cit.
- ⁹⁶ Ibid.
- ⁹⁷ Adalah, "New Law Deprives 25,000 Arab Bedouin Citizens of Israel of Right to Vote in Local Elections in the Naqab (Negev)," *News Update* (19 November 2009), at: http://www.adalah.org/eng/pressreleases/pr.php?file=09_11_19.
- ⁹⁸ Evidence presented to Fact-finding Team: Social worker from Shaqīb al-Salām, Khair al-Din al-Baz, "The community of the unrecognized villages from the perspective of social services," Ben Gurion University in the Negev, 12 March 2009.
- ⁹⁹ "Data on the Bedouin Women of the Negev," *Sidreh*, at: <http://www.lakiya.org/121194/Data-on-the-Bedouin-Women-of-the-Negev>.
- ¹⁰⁰ Ibid.
- ¹⁰¹ Ibid.
- ¹⁰² al-Baz, op. cit..
- ¹⁰³ Elana Boteach, *The Indigenous Bedouin of the Negev Desert in Israel*, Negev Coexistence Forum, July 2005, p.15
- ¹⁰⁴ Ibid.
- ¹⁰⁵ For example, The Stockholm Convention on Persistent Organic Pollutants was concluded on 22 May 2001 with the aim to protect human health and the environment by eliminating or restricting the production and use of persistent organic pollutants (POPs), which are chemicals that remain intact in the environment for long periods, become widely distributed geographically and accumulate in the fatty tissue of humans and wildlife. Exposure to POPs can lead to serious health effects including certain cancers, birth defects, dysfunctional immune and reproductive systems, greater susceptibility to disease and even diminished intelligence. The Convention entered into force in 2004, and currently has 169 treat parties. Israel signed the treaty on 30 July 2001, but has yet to ratify it. See Stefano Sensi, "The Adverse Effects of the Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights," [OHCHR-UNEP High Level Expert Meeting on the New Future of Human Rights and Environment: Moving the Global Agenda Forward, Nairobi, 30 November–1 December 2009]; "The adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights," A/HRC/RES/12/18, 12 October 2009; also Zafrir Rinat, "Ramat Hovav council head: Hazardous waste dump site violates the law," *Haaretz* (20 December 2007), at: <http://www.haaretz.com/hasen/spages/936459.html>.
- ¹⁰⁶ Boteach, op. cit, p.16
- ¹⁰⁷ Ibid, p.17
- ¹⁰⁸ Maha Qupty, "Bedouins of the Negev: Israeli Citizens or Punishable Trespassers?," *Electronic Intifada*, 19 February 2003, at: <http://electronicintifada.net/v2/article1174.shtml>.

- ¹⁰⁹ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI), 16 December 1966, 21 UN GAOR Supp. (No. 16) at 49, UN Doc. A/6316 (1966); 993 UNTS 3, entered into force 3 January 1976; International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI), 16 December 1966, 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March 1976.
- ¹¹⁰ For further explanation of this point, see Charter of Economic Rights and Duties of States, A/3281(xxix), UN GAOR, 29th Sess., Supp. No. 31 (1974) 50; Olivier de Schütter, “Extraterritorial Jurisdiction as a tool for improving the Human Rights Accountability of Transnational Corporations,” *Faculté de Droit de l’Université Catholique de Louvain* (22 December 2006); Sigrun I. Skogly and Mark Gibney, “Economic Rights and Extraterritorial Obligations,” in Minkler and Hertel (eds), *Economic Rights: Conceptual, Measurement and Policy Issues* (Cambridge: Cambridge University Press, 2007).
- ¹¹¹ ICESCR, Article 2.1.
- ¹¹² The Universal Declaration of Human Rights (UDHR) was proclaimed by the United Nations General Assembly in Paris on 10 December 1948, General Assembly resolution 217 A (III).
- ¹¹³ Committee on Economic, Social and Cultural Rights General Comment No. 4 “the right to housing” (1991) and General Comment No. 7 “forced eviction” (1997).
- ¹¹⁴ Legal safeguards that guarantee legal protection against forced eviction, harassment and other threats and the state’s immediate measures to confer legal security of tenure upon those persons and households currently lacking such protection. See *Ibid*, para. 8(a).
- ¹¹⁵ Including safe drinking water delivery, sanitation, energy and emergency services essential for health, security, comfort and nutrition. See *Ibid*, para. 8(b).
- ¹¹⁶ Including natural and common resources, proper waste disposal, site drainage and land access for livelihood and recreational purposes. See *Ibid*, para. 8(c).
- ¹¹⁷ Such that personal or household financial costs associated with housing be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised, including the state’s prompt measures to ensure that the percentage of housing-related costs is, in general, commensurate with income level. See *Ibid*, para. 8(d).
- ¹¹⁸ Whereas housing must be habitable, providing inhabitants with adequate space and protecting them from the climatic elements and other threats to health, structural hazards and disease vectors. See *Ibid*, para. 8(e).
- ¹¹⁹ So that everyone, particularly those with special needs, have full and sustainable access to adequate housing resources. See *Ibid*, para. 8(f).
- ¹²⁰ Within reasonable access to employment options, services, schools and other social facilities, whether in urban or rural areas. *Ibid*, para. 8(g).
- ¹²¹ Corresponding to building patterns, methods and materials enabling the expression of cultural identity and diversity of housing. *Ibid*, para. 8(h).
- ¹²² Enshrined in Articles 19, 21, 22 and 25, respectively, of the International Covenant on Civil and Political Rights (ICCPR), which Israel ratified in 1991.
- ¹²³ The rights to education (enshrined in Articles 13 and 14 of ICESCR), information (Article 19 of ICCPR), and particularly to uphold these rights so as to ensure capabilities of inhabitants to realize their housing rights.
- ¹²⁴ Physical security (ICCPR, Article 9), including freedom from domestic and social violence, and privacy (ICCPR, Article 17).
- ¹²⁵ (Article 12 of ICCPR), and the rights of victims of displacement to reparations, which includes the entitlements to remedy and reparation, entails restitution, return, resettlement, compensation, rehabilitation, the promise of nonrepetition of the crime and satisfaction that justice has been restored, as affirmed in general principles of international law and most-recently adopted in General Assembly resolution “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,” A/60/147, 22 March 2006.
- ¹²⁶ Articles 17 and 9(1), respectively.

¹²⁷ Article 5(d)(v).

¹²⁸ Article 5(e)(iii).

¹²⁹ Article 14.2(h).

¹³⁰ Article 14.1.

¹³¹ Article 14.2(a).

¹³² Article 27.1.

¹³³ Article 27.3.

¹³⁴ Among the standards that Israel has not yet accepted are: ILO Convention No. 11 Right of Association (Agriculture) (1921); ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989); Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008); International Covenant on Civil and Political Rights (1966); Optional Protocol to the International Covenant on Civil and Political Rights (1966); Convention on the Nonapplicability of Statutory Limitations to War Crimes and Crimes against Humanity (1968); International Convention on the Suppression and Punishment of the Crime of Apartheid (1973); Convention on the Rights of Persons with Disabilities (2006).

¹³⁵ Article 18.

¹³⁶ Article 27.

¹³⁷ Concluding observations of the Committee on Economic, Social and Cultural Rights: Israel, E/C.12/1/Add.27, 4 December 1998, especially paragraphs 10–12, 26–28, 32 and 42; Concluding observations of the Committee on Economic, Social and Cultural Rights: Israel, E/C.12/1/Add.90, 23 May 2003, especially paragraphs 16, 20, 27, 43.

¹³⁸ Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel, CERD/C/ISR/CO/13, 14 June 2007, especially paragraph 25.

¹³⁹ United Nations Declaration on the Rights of Indigenous Peoples, A/61/295, 2 October 2007.

¹⁴⁰ *Calder v. British Columbia (Attorney General)* [1973] S.C.R. 313, [1973] 4 W.W.R., at: <http://www.canlii.org/en/ca/scc/doc/1973/1973canlii4/1973canlii4.html>.

¹⁴¹ *Mabo and Another v The State of Queensland and Another* [1989] HCA 69; (1989) 166 CLR 186, at: <http://www.austlii.edu.au/au/cases/cth/HCA/1988/69.html>; and *Mabo and Others v Queensland (No. 2)* (1992) 175 CLR 1, [1992] HCA 23, at: <http://www.austlii.edu.au/au/cases/cth/HCA/1992/23.html>.

¹⁴² *Delgamuukw v. British Columbia* [1997] 3 S.C.R. 1010, also known as *Delgamuukw vs. the Queen*, at: <http://www.canlii.org/en/ca/scc/doc/1997/1997canlii302/1997canlii302.html>.

¹⁴³ *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* Judgment of Inter-American Court of Human Rights, 31 August 2001, *Arizona Journal of International and Comparative Law* Vol. 19, No. 1 200, pp. 395–442.

¹⁴⁴ *Roy Sesana, Keiwa Sethobogwa and Others v. The Attorney General, Misca*. No. 52 of 2002, 13 December 2006.

¹⁴⁵ *Sagong Bin Tasi v. The Selangor State Government* [2002] 2 MLJ 591, at: <http://www.paclii.org/journals/MLJ/2002/591.html>.

¹⁴⁶ *Alexkor Ltd and Another v. Richtersveld Community and Others* (CCT19/03) [2003] ZACC 18; 2004 (5) SA 460 (CC); 2003 (12) BCLR 1301 (CC) (14 October 2003), at: <http://www.saflii.org/za/cases/ZACC/2003/18.html>.

¹⁴⁷ *Elouise Pepion Cobell, et al., Plaintiffs, vs. Ken Salazar, Secretary of the Interior, et al., Defendants*, Case No. 1:96CV01285–JR (USA), at: http://www.cobellsettlement.com/docs/2009.12.07_Settlement_Agreement.pdf. See also: “US to Pay \$3.4 bn in Indigenous Land Settlement,” at: <http://www.hlrn.org/english/newsdetails.asp?id=527>.

¹⁴⁸ 276 / 2003 – *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya* 276/2003, at: <http://allafrica.com/view/resource/main/main/id/00020047.html>.

¹⁴⁹ United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, 2 October 2007. The Declaration provides that:

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return. (Article 10)

Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security. (Article 21.1)

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions. (Article 23)

Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. (Article 26(1)) Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. (Article 26(2)) States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned. (Article 26(3))

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process. (Article 27)

¹⁵⁰ Abū-Ras, op. cit., p. 6. “Arab MK demands a probe into statements of incitement by Rabbi, IMEMC (25 March 2008), at:

http://imemc.org/index.php?obj_id=53&story_id=53712; “Bedouin ask UN to help fight systemic discrimination in Israel,” *Haaretz* (3 July 2006), at:

<http://www.haaretz.com/hasen/spages/734096.html>; Abe Selig, “‘Protecting’ Jewish girls from Arabs,” *The Jerusalem Post* (18 September 2009), at:

<http://www.jpost.com/servlet/Satellite?cid=1253198149221&pagename=JPost/JPArticle/ShowFull>; Jonathan Cook, “Israeli drive to prevent Jewish girls dating Arabs,” *The National* (UAE) [on a school programme launched in Kiryat Gat schools to warn Jewish girls against dating local Bedouin men], at:

<http://www.thenational.ae/apps/pbcs.dll/article?AID=/20090925/FOREIGN/709249932/0/rss>;

“Public security minister calls cop ‘dirty Arab’,” *Haaretz* (16 June 2009), at:

<http://www.haaretz.com/hasen/spages/1093401.html>; Jack Khoury, “Israeli Arab Committee slams ‘racist, fascist’ bills,” *Haaretz* (30 May 2009), at:

<http://www.haaretz.com/hasen/spages/1088949.html>.

¹⁵¹ The Colonial Secretary Winston S. Churchill had confirmed, in the presence of the High Commissioner Herbert Samuel that ownership of land in Beer Sheva, determined by the Custom Law, is recognized by the British Government, as cited in Chief Justice of the Supreme Court of Palestine Sir Michael McDonnell, *Law Reports of Palestine, 1920–1923*, Public Records Office CO 733/2/21698/folio 77, 29 March 1921, p. 458, as cited in Salman Abu Sitta, “Beer Sheba: The Forgotten Half of Palestine,” *Al Majdal* No. 18 (June 2003), 32–37.

¹⁵² Association for Civil Rights in Israel, “Comments on the Combined Initial and First Periodic Reports Concerning the Implementation of The International Covenant of Civil and Political Rights (ICCPR),” submitted to the United Nations Human Rights Committee, July 1998.

¹⁵³ H.C. 7115/97, *Adalah, et. al. v. Ministry of Health, et. al.*

¹⁵⁴ In September 2000, the Court accepted the state's commitment to add 11 positions for social workers over two years, which raised services to unrecognized village residents to only one social service provider for 2,291 people, as compared with local Jewish localities, which receive one SSP for 641 people. H.C. 5838/99, *Regional Council of the Unrecognized Villages in the Negev, et. al. v. Minister of Labor and Social Welfare, et. al.* H.C. 5838/99, *Regional Council of the Unrecognized Villages in the Negev, et. al. v. Minister of Labor and Social Welfare, et. al.*

- ¹⁵⁵ HC 1991/00 *Ishak Abu-Hamad et. al. v. the Ministry of Interior et. al.*, at: <http://elyon1.court.gov.il/files/00/910/019/R31/00019910.r31.htm>
- ¹⁵⁶ In April 2003, Adalah lawyers filed one motion on behalf of 62 families from Draijat, 17 families from al-Gara, and five families from Abū Grinat. While most requests were denied, some water points were added for Abū Ginat. In September 2003, Adalah lawyers filed a second motion on behalf of 18 families from al-Hawashlah, 15 families from Abū Msa'id, 11 families from al-Ganami; and 17 families from al-'Atrash. H.C. 3586/01, The Regional Council for Unrecognized Villages in the Naqab, et. al. v. The Minister of National Infrastructure, et. al., decision delivered 16 February 2003.
- ¹⁵⁷ Adalah, "Adalah Appeals Water Commissioner's Refusal to Provide Water Access for Hundreds of Arab Bedouin Living in Unrecognized Villages in the Naqab," *News Update* (27 April 2005), at: http://www.adalah.org/eng/pressreleases/pr.php?file=05_04_27-1.
- ¹⁵⁸ C.A. (Civil Appeal) 9535/06, Abdullah Abū Musa'ed, et al. v. The Water Commissioner and the Israel Lands Administration.
- ¹⁵⁹ Adalah, "Haifa District Court: No Right to Water for Arab Bedouin Families Living in Unrecognized Villages in the Naqab," *News Update* (27 September 2006), at: http://www.adalah.org/eng/pressreleases/pr.php?file=06_09_27.
- ¹⁶⁰ Adalah, "Adalah to Supreme Court: Using Water Resources as a Way of Exerting Pressure on Arab Bedouin to Leave Unrecognized Villages in the Naqab is Illegal," *News Update* (12 December 2007), at: http://www.adalah.org/eng/pressreleases/pr.php?file=07_12_12.
- ¹⁶¹ H.C. 786/04, Ahlam el-Sana, et. al. v. Ministry of Health, et. al. (decision delivered 8/7/04).
- ¹⁶² Adalah, "Adalah Petitions Supreme Court against Health Ministry Demanding Re-Opening of Mother and Child Clinics in Three Arab Bedouin Unrecognized Villages in the Naqab," *News Update* (16 December 2009), at: http://www.adalah.org/eng/pressreleases/pr.php?file=09_12_16.
- ¹⁶³ H.C. 6901/05, *Mayor of Rahat Municipality, et. al. v. Minister of Finance, et. al.*
- ¹⁶⁴ Adalah, "Following Adalah's Petition, Supreme Court Orders State to Provide Updated Information regarding Discriminatory Law which Excludes Arab Bedouin Towns in the Naqab from Income Tax Benefits," *News Update* (12 July 2007), at: http://www.adalah.org/eng/pressreleases/pr.php?file=07_07_12.
- ¹⁶⁵ This is despite MoE committing before the Court to transport the children to preschools outside of the village in two previous High Court cases: H.C. 3757/03 and H.C. 5108/04.
- ¹⁶⁶ H.C. 100030/05, *A'aref Ala'moor v. The Ministry of Education* (petition dismissed).
- ¹⁶⁷ Maxine Kaufman Nunn, "Ramya: Palestinian Land Israel Is Seizing Inside the Green Line," *Washington Report on Middle East Affairs* (December/January 1992/93), p. 50.
- ¹⁶⁸ "Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel," E/C.12/1/Add.27, 4 December 1998 read as follows (excerpt):
11. The Committee notes with grave concern that the Status Law of 1952 authorizes the World Zionist Organization/Jewish Agency and its subsidiaries, including the Jewish National Fund, to control most of the land in Israel, since these institutions are chartered to benefit Jews exclusively. Despite the fact that the institutions are chartered under private law, the State of Israel nevertheless has a decisive influence on their policies and thus remains responsible for their activities. A State party cannot divest itself of its obligations under the Covenant by privatizing governmental functions. The Committee takes the view that large-scale and systematic confiscation of Palestinian land and property by the State and the transfer of that property to these agencies constitute an institutionalized form of discrimination because these agencies by definition would deny the use of these properties to non-Jews. Thus, these practices constitute a breach of Israel's obligations under the Covenant....
26. The Committee notes with deep concern that a significant proportion of Palestinian Arab citizens of Israel continue to live in unrecognized villages without access to water, electricity, sanitation and roads. Such an existence has caused extreme difficulties for the villagers in regard to their access to health care, education and employment opportunities. In addition, these villagers are continuously threatened with demolition of their home and confiscation of their land. The Committee regrets the inordinate delay in the provision of essential services to even the few villages that have been

recognized. In this connection, the Committee takes note that while Jewish settlements are constructed on a regular basis, no new Arab villages have been built in the Galilee.

27. The Committee regrets that the Regional Metropolitan Plan for the Northern District of Israel and the Plan for the Negev have projected a future where there is little place for Arab citizens of Israel whose needs arising from natural demographic growth are largely ignored.

28. The Committee expresses its grave concern about the situation of the Bedouin Palestinians settled in Israel. The number of Bedouins living below the poverty line, their living and housing conditions, their levels of malnutrition, unemployment and infant mortality are all significantly higher than the national averages. They have no access to water, electricity and sanitation and are subjected on a regular basis to land confiscations, house demolitions, fines for building "illegally", destruction of agricultural fields and trees, and systematic harassment and persecution by the Green Patrol. The Committee notes in particular that the Government's policy of settling Bedouins in seven "townships" has caused high levels of unemployment and loss of livelihood....

42. The Committee urges the State party to recognize the existing Arab Bedouin villages, the land rights of the inhabitants and their right to basic services, including water.

¹⁶⁹ In "Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel," E/C.12/1/Add.90, 23 May 2003, the Committee urged Israel "to recognize all existing Bedouin villages, their property rights and their right to basic services, in particular water, and to desist from the destruction and damaging of agricultural crops and fields, including in unrecognized villages. The Committee further encourages the State party to adopt an adequate compensation scheme for Bedouins who have agreed to resettle in 'townships'."

¹⁷⁰ "Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel," CERD/C/ISR/CO/13, 14 June 2007 state:

17. The Committee regrets that it has not received sufficient information from the State party on the status, mandate and responsibility of the World Zionist Organization, the Jewish Agency and the Jewish National Fund, as well as on their budgets and allocation of funds. It is concerned by information according to which these institutions manage land, housing and services exclusively for the Jewish population. (Articles 2 and 5 of the Convention)

The Committee urges the State party to ensure that these bodies are bound by the principle of non-discrimination in the exercise of their functions....

19. The Committee welcomes the statement made by the delegation that the Jewish character of the State party does not allow it to discriminate between its citizens. It also notes the statement that the only significant difference regarding the enjoyment of human rights between Jewish nationals and other citizens exists with regard to determining the right to immigrate to Israel, according to the Law of Return, and that such preference is made for the purpose of developing the national identity of the State party. The Committee is concerned, however, by reports that such preference is accompanied by other privileges, in particular regarding access to land and benefits. (Articles 1, 2 and 5 of the Convention)

The Committee recommends that the State party ensure that the definition of Israel as a Jewish nation State does not result, in any systemic distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin in the enjoyment of human rights. The Committee would welcome receiving more information on how the State party envisages the development of the national identity of all its citizens....

23. The Committee welcomes the decisions of the Supreme Court in *Ka'adan v. The Israel Lands Administration* (2000) and *Kibbutz Sde-Nahum et al v. Israel Land Administration et al* (2002), in which it ruled that State land should not be allocated on the basis of any discriminatory criteria or to a specific sector. It notes that the Israel Land Administration, as a result, has adopted new admission criteria for all applicants. It remains concerned, however, that the condition that applicants must be "suitable to a small communal regime" may allow, in practice, for the exclusion of Arab Israeli citizens from some State-controlled land. (Articles 2, 3 and 5 (d) and (e) of the Convention)

The Committee recommends that the State party take all measures to ensure that State land is allocated without discrimination, direct or indirect, based on race, colour, descent, or national or ethnic origin. The State party should assess the significance and impact of the social suitability criterion in this regard.

25. The Committee expresses concern about the relocation of inhabitants of unrecognized Bedouin villages in the Negev/Naqab to planned towns. While taking note of the State party's assurances that such planning has been undertaken in consultation with Bedouin representatives, the Committee notes with concern that the State party does not seem to have enquired into possible alternatives to such relocation, and that the lack of basic services provided to the Bedouins may in practice force them to relocate to the planned towns. (Articles 2 and 5 (d) and (e) of the Convention)

The Committee recommends that the State party enquire into possible alternatives to the relocation of inhabitants of unrecognized Bedouin villages in the Negev/Naqab to planned towns, in particular through the recognition of these villages and the recognition of the rights of the Bedouins to own, develop, control and use their communal lands, territories and resources traditionally owned or otherwise inhabited or used by them. It recommends that the State party enhance its efforts to consult with the inhabitants of the villages and notes that it should in any case obtain the free and informed consent of affected communities prior to such relocation.

¹⁷¹ GCR, p. 13, para. 26.

¹⁷² "Bedouin Settlement in the Negev in the Ottoman Period," GCR, p. 6, para. 3.

¹⁷³ "Implications of the Hawashleh Precedent," GCR, p. 22, para. 43.

¹⁷⁴ Shlomo Swirski and Yael Hasson, "Invisible Citizens: Israeli Government Policy toward the Negev Bedouin" (Tel Aviv: Avda Center, February 2006).

¹⁷⁵ GCR, p. 34, para. 71.

¹⁷⁶ Data submitted to the Goldberg Commission by the Bedouin Administration as of July 2008. GCR, p. 15, paras. 34–35 and following table.

¹⁷⁷ "Implications of the Hawashleh Precedent," GCR, p. 22, para. 44.

¹⁷⁸ GCR, p. 27–28, para. 50.

¹⁷⁹ As stated in the both of the government resolutions. The translation of the government resolution uses the words "new and existing settlements."

¹⁸⁰ GCR, para. 46.

¹⁸¹ GCR, para. 71.

¹⁸² GCR, para. 71.

¹⁸³ GCR, para. 72.

¹⁸⁴ GCR, paras. 71 and 77.

¹⁸⁵ GCR, para. 85.

¹⁸⁶ GCR, para. 108.

¹⁸⁷ See Oren Yiftachel, "Bedouin Arabs and the Israeli Settler State: Land Policies and Indigenous Resistance," *Transeuropeanness* (2002), 21–47, at 34.

¹⁸⁸ GCR, p. 42, para. 110.

¹⁸⁹ *Ibid.*

¹⁹⁰ "A Proposed Policy Outline," GCR, p. 34, para. 71.

¹⁹¹ GCR, pp. 34–35, para. 72.

¹⁹² *Ibid.*

¹⁹³ GCR, pp. 35, para. 75.

¹⁹⁴ GCR, para. 86.

¹⁹⁵ GCR, paras. 87, 105.

¹⁹⁶ GCR, para. 105.

¹⁹⁷ GCR, para. 90.

¹⁹⁸ GCR, para. 91.

¹⁹⁹ GCR, paras. 86, 97.

²⁰⁰ GCR, para. 109.

²⁰¹ GCR, paras. 110, 112.

²⁰² GCR, paras. 127–40.

²⁰³ "Report of the United Nations Fact-finding Mission on the Gaza Conflict," A/HRC/12/48, 15 September 2009, 449, 450, 461, 469–70.

²⁰⁴ See John Dugard, *Human Rights and the South African Legal Order* (Princeton NJ:

Princeton University Press, 1978).

²⁰⁵ The International Convention on the Elimination of All Forms of Racial Discrimination (1965), which Israel ratified on 2 February 1979, provides in Article 1(4): “Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.”

²⁰⁶ CESCR, General Comment No. 20 “Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2 of the Covenant), E/C.12/GC/20, 10 June 2009, para. 38.

²⁰⁷ “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,” A/RES/60/147, 21 March 2006.

²⁰⁸ General Assembly resolutions 103(I), 19 November 1946, 377A (IV) section E, 3 November 1950, 616 B (VII), 5 December 1952; and 721(VIII), 8 December 1953 affirmed that “it is in the higher interests of humanity to put an end to put an immediate end to religious and so-called racial persecution and discrimination” and that “it is highly unlikely, and indeed improbable, that the policy of *apartheid* will ever be willingly accepted by the masses subjected to discrimination.” In particular, the resolutions recognized that “The question of race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa,” Resolution 721(VIII), 469th plenary meeting, 8 December 1952, affirmed also, in para. 1, that “enduring peace will not be secured solely by collective security arrangements against breaches of international peace and acts of aggression, but that a genuine and lasting peace depends upon the observance of all the Principles and Purposes established in the Charter of the United Nations, upon the implementation of the resolutions of the Security Council, the General Assembly and other principal organs of the United Nations intended to achieve the maintenance of international peace and security, and especially upon a respect for observance of human rights and fundamental freedoms for all and on the establishment and maintenance of conditions of economic and social well-being in all countries”; and that “in a multi-racial society harmony and respect for human rights and freedoms and the peaceful development of a unified community are best assured when patterns of legislation and practice are directed towards ensuring the equality before the law of all persons regardless of race, creed or colour, and when economic, social and political participation of all racial groups is on a basis of equality.”

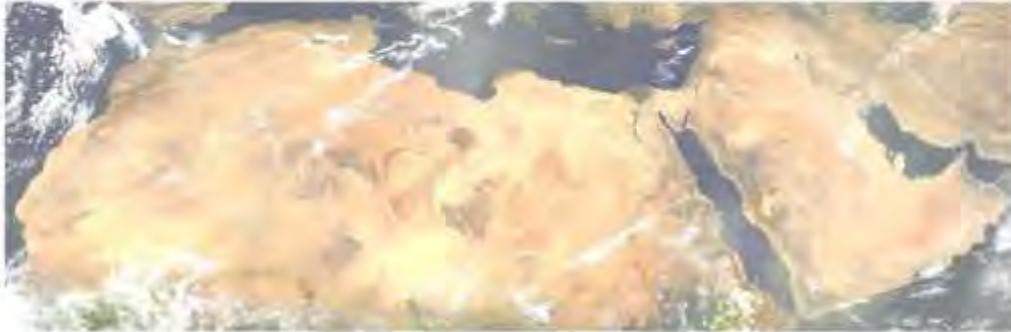
²⁰⁹ CESCR, “Concluding Observations: Israel” (1998), para. 10.

²¹⁰ Wil Kymlicka, *Multicultural Odysseys: Navigating the New International Politics of Diversity* (Oxford and London: Oxford University Press, 2007); Klaus Vondung, ed., transl. Ruth Hein, *The Collected Works of Eric Voegelin, Volume 2: Race and State* (Baton Rouge LA: Louisiana State University, 1997), p. 163; Habitat International Coalition – Housing and Land Rights Network, “The State of Housing Rights: World Habitat Day 2004 in the Middle East/North Africa” (Cairo: HIC-HLRN, 2004).

²¹¹ The Vienna Declaration and Programme of Action, A/CONF.157/23, 12 July 1993, para. 5.

²¹² GCR, para. 71.

²¹³ *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others* (24/07) [2008] ZACC 1; 2008 (3) SA 208 (CC); 2008 (5) BCLR 475 (CC) (19 February 2008).



HIC-HLRN Middle East/North Africa Program

The Middle East/North Africa regional program of Habitat International Coalition's Housing and Land Rights Network addresses the need for civil society participation in public affairs by applying the criteria of human rights and corresponding state obligations as a defining framework for civil discourse. The ultimate objective of this program is to develop civil society actors' knowledge and capacity to address complex policy issues related to the most-vital public resources with a degree of competence that enables direct engagement with decision makers at all levels.

HLRN's MENA program draws together diverse efforts and approaches to upholding housing and land rights, ranging from popular and legal initiatives to posing alternatives to the privatization of public and environmental goods and services, which affects housing and land rights. The program activities promote adequate housing, land and water management as public goods; land as related to food sovereignty; as well as all relevant traditional methods, moral principles and other culturally specific devices for guiding equitable management of land and natural resources.

The MENA region is exceptionally suitable as a focus for this discussion, with its conspicuous features of foreign occupation, and confiscation of land and water that are bases for livelihoods, and the land and scarce water dimension of self-determination of the indigenous peoples in the region, and people's sovereignty in general.

The MENA Program promotes the development of economic, social and cultural rights culture in the region and builds capacity by providing training, appropriate methodologies for housing rights monitoring and legal defense, access to international forums, and opportunities for cooperation with the UN human rights system. Thus, HLRN's MENA program contributes to the region's discourse on ESC-rights and globalization, and organizes regional and inter-regional exchanges of expertise. HLRN seeks to help create the context for MENA communities and housing rights defenders to develop practical skills, to work cooperatively and develop solidarity regionally and with social movements elsewhere. HIC-MENA's website also provides self-service databases and archives with unique Arabic-language resources on housing and economic/social/cultural rights.

For more information on the MENA Program and HIC-HLRN membership, go to: www.hic-mena.org.

HOUSING AND LAND RIGHTS NETWORK (HLRN)

More than a billion people are ill housed, or have no shelter; tens of millions are forced from their homes and land due to war, discrimination, development projects, social-service reductions, economic liberalization and privatization policies. They all need our solidarity.

Habitat International Coalition (HIC) is an independent, international, nonprofit movement with hundreds of Members specialized in various aspects of human settlements. Its Members include NGOs, CBOs, social movements, academic and research centers, professional associations and like-minded individuals from over 100 countries in both North and South, all dedicated to reciprocal cooperation toward realizing the human right to adequate housing for all. HIC's programmatic activities are managed through thematic structures:

- Women and Habitat Network (HIC-WAHN)
- Housing and Land Rights Network (HIC-HLRN)
- Habitat and Sustainable Environment Network (HIC-HSEN)
- Social Production of Habitat Working Group

Housing and Land Rights Network (HLRN) objectives:

HLRN members share with HIC general a set of objectives that bind and shape HLRN's commitment to communities struggling to secure housing and improve their habitat conditions. HLRN advocates the recognition, defense and full implementation of every human's right everywhere to a secure place to live in peace and dignity by:

- Defending the human rights of the homeless, poor and inadequately housed;
- Promoting public awareness about human-settlement problems and needs globally;
- Upholding legal protection of the human right to housing as a first step to support communities pursuing housing solutions, including social production and other practical means to realize the right;
- Cooperating with various UN human rights bodies to develop and monitor standards of the human right to adequate housing, as well as clarify states' obligations to respect, protect, promote and fulfill the right;
- Providing a common platform for communities across the Network to formulate and share problem-solving strategies through social movements and progressive NGOs in the field of human settlements; and
- Advocating on their behalf in international forums.

To attain these objectives, HLRN member services include:

- Building local, regional and international member cooperation to form effective housing rights campaigns;
- Human resource development, human rights education and training;
- Enhancing self-representation skills and opportunities;
- Action research and publication;
- Exchanging and disseminating member experiences, best practices and strategies;
- Support for lobby efforts toward policy reform;
- Developing tools and techniques for professional monitoring of housing rights;
- Urgent actions against forced eviction and other violations.

For more information, log onto HIC-HLRN websites at:

www.hlrn.org and www.hic-mena.org

