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SYSTEMATIC INDIGENOUS PEOPLES' LAND DISPOSSESSION: THE BEDOUIN IN ISRAEL

*Morad Elsana**

I. INTRODUCTION

In 2007, the Israeli government unilaterally decided to settle the Bedouin land dispute and dispose of their land claims.¹ The state ordered Bedouin land claims to be promptly adjudicated in court.² The court, however, followed a forty-year-old precedent and rejected all Bedouin claims.³

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¹ See Israeli Government Res. 2491 (Oct. 28, 2007).

² See *id.*

³ See CA (BS) 7161/06 Suleiman Aluqbi v. St. of Israel, (unpublished manuscript) (2012) (Isr.).

In reaction, as part of the Bedouin's attempts to defend their rights, they, with several scholars,⁴ decided to challenge the legal status of Bedouin land through judicial intervention.⁵ This could change the longtime *Alhawashelah* precedent from 1984 and convince the court to recognize Bedouin land rights.⁶ Despite their intensive research and intellectual efforts, however, the test case they chose to take to court was also rejected.⁷

While recent research focuses on the judicial means that deprive the Bedouin of their lands⁸, this article presents the other part of the picture: a major part of the Bedouin lands was not expropriated by recent judicial means. Instead, they were legislated through laws by the Israeli Knesset and enforced by the administrative infrastructure overseen by the executive branch of the government through political and administrative means.⁹

⁴ See Morad Elsana, *The Role of the Judiciary in Dispossessing Indigenous Peoples' Land: The Bedouin Case in Israel*, 33 J. JURIS. 333 (2017); Oren Yiftachel, Alexander (Sandy) Kedar & Ahmad Amara, *Re-Examining the 'Dead Negev Doctrine': Property Rights in the Bedouin-Arab Space*, 14 MISHPAT UMIMSHAL (2012).

⁵ See *id.*

⁶ See *id.*

⁷ See CA (BS) 7161/06 Suleiman Aluqbi et. al. v. State of Israel, *supra* note 3; Suleiman Aluqbi v. St. of Israel, (2012).

⁸ See generally S. JAMES ANAYA, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW* (Oxford U. Press ed., 1996); see also Elsana, *supra* note 4; see also Joseph William Singer, *Nine-Tenths of the Law: Title, Possession & Sacred Obligations*, 38 CONN. L. REV. 605 (2006).

⁹ See generally Singer, *supra* note 8.

For many indigenous peoples throughout the world, the judicial battles to preserve or regain land rights generally started after violence from the initial dispossession that occurred.¹⁰ In the Bedouin's case, the timeline of this experience is somewhat more recent when compared to the narratives of the indigenous peoples of the Americas or Australia.¹¹ Therefore, judicial actions overlap with ongoing administrative executive and political legislative acts of land dispossession.¹² Thus, untangling the specific sources and methods of land dispossession becomes essential in the ongoing effort to understand the Bedouin peoples' encounter with a version of a settler colonial state.¹³

This article argues the indigenous land issue is not a classical legal case. Rather, it is an issue with a sharp political, ideological and cultural character. Therefore, the handling of the issue in court is "unusual" in many ways. It poses many non-conventional issues and clearly contradicts basic principles of justice. The article starts by showing that most Bedouin land rights were dispossessed through a colonial methodology that combines settlement, occupation, and acquisition of indigenous land on multiple levels rather than typical

¹⁰ See BILL YENNE, *INDIAN WARS: THE CAMPAIGN FOR THE AMERICAN WEST* (2006).

¹¹ See generally LOUIS A. KNAFLA, *ABORIGINAL TITLE AND INDIGENOUS PEOPLES: CANADA, AUSTRALIA, AND NEW ZEALAND* (W. Wesley Pue, et al. eds., 2010).

¹² See Singer, *supra* note 8.

¹³ See generally Elsana, *supra* note 4.

judicial decisions.¹⁴ The first part of land dispossession occurred through settlement and international decisions that supported the dispossession.¹⁵ The second part occurred after the establishment of the “settler state” through colonial oriented, administrative and legislative actions that ignore indigenous Bedouin land rights.¹⁶ Many of these acts are for the sole benefit and interest of the settler population.¹⁷ Moreover, these acts laid the groundwork for later colonial legal rulings that only confirmed previous administrative and legislative actions, and continued to ignore indigenous Bedouin land rights.¹⁸

Section two of this article introduces the indigenous land dispossession, generally exploring how indigenous land was dispossessed in several phases by different methods that include administrative, executive, and judicial ones.¹⁹ Section three introduces essential background about the Bedouin, including their demographics and land dispute. Then, section four describes the process of Bedouin land dispossession on the general level as part of the Palestinian land

¹⁴See generally S. JAMES ANAYA, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW* (Oxford U. Press ed., 1996).

¹⁵See *id.*

¹⁶ See Elsana, *supra* note 4, at 6.

¹⁷ See *id.*

¹⁸See generally *First Nations Summit, Implementation of Jurisprudence Concerning Indigenous Peoples' Rights: Experiences from the Americas - A Canadian Perspective 19-20* (2005), http://www.fns.bc.ca/pdf/ImplementationofJurisprudence_IP1005.pdf.

¹⁹ See Singer, *supra* note 8.

dispossession.²⁰ Section five focuses on the specific level of land dispossession, describing the explicit methods designated solely and especially for Bedouin in the Negev.²¹ This section details the administrative and legislative methods for land dispossession, mainly the concentration plan and the Goldberg plan.²² On the legislative level, this section looks at three acts and focuses on the Land Settlement Ordinance of 1969 as a major instrument for Bedouin land dispossession.²³ Finally, section six concludes with a discussion that aims to shed light on elements and tactics the state has been using to bend the rules (on the judiciary level) in order to make sure courts follow the state's plan.²⁴

II. THE DISPOSSESSION OF INDIGENOUS PEOPLES LAND RIGHTS

The dispossession of indigenous peoples' land rights remains one of the most common human rights violations around the world.²⁵ After the discovery of the New World, the Europeans started a long process of

²⁰ See Elsana, *supra* note 4, at 9.

²¹ See generally Israeli Government Res. 2491 (Oct. 28, 2007).

²² See generally Ministry Of Construction & Housing, GOLDBERG REPORT 31–2 (2009), http://www.moch.gov.il/SiteCollectionDocuments/odot/doch_goldberg/Doch_Vaada_Shofet_Goldberg.pdf.

²³ See Elsana, *supra* note 4, at 19.

²⁴ See generally Elsana, *supra* note 4.

²⁵ See Erica-Irene A., *Economic and Social Council Final Working Paper No. E/CN.4/Sub.2/2001/21*, 38 (June 11, 2001), http://www1.umn.edu/humanrts/demo/RelationshipptoLand_Daes.pdf.

conquest, occupation, and colonization of indigenous peoples' lands.²⁶ The newcomers took over the territory of indigenous peoples while denying their sovereignty, their land rights, their cultural expression, and, on several occasions, their very existence.²⁷

While specifics vary, indigenous peoples around the globe fiercely opposed the European invasions and resisted the occupation of their lands.²⁸ In many instances, they even engaged in wars or armed conflicts with the invaders to resist the acquisition and occupation of their lands.²⁹ However, the Europeans ultimately took over indigenous peoples' lands and territories through military dominance.³⁰ After conquering and occupying the lands, colonial powers and the new settlers established their new sovereign state's power over the

²⁶ See ANAYA, *supra* note 14, at 3.

²⁷ See *First Nations Summit, Implementation of Jurisprudence Concerning Indigenous Peoples' Rights: Experiences from the Americas - A Canadian Perspective* 19-20 (2005), http://www.fns.bc.ca/pdf/ImplementationofJurisprudence_IP1005.pdf; see also PETER H. RUSSELL, *RECOGNIZING ABORIGINAL TITLE: THE MABO CASE AND INDIGENOUS RESISTANCE TO ENGLISH-SETTLER COLONIALISM* (2006 U. of Toronto Press ed., 2005) (discussing how Aboriginal peoples' leaders and state representatives, such as Edward Woodward, head of the Woodward Commission, traveled from Australia to the United States and Canada to learn about the recognition of indigenous peoples land rights); EPHRAIM YUCHTMAN-YAAR & ZE'EV SHABAT, *MAGAMUT BAHEVRAH HAYESRAILIT [TRENDS IN ISRAELI SOCIETY]* 1218 (2003) (discussing former Israeli Prime Minister Golda Meir's denial of the existence of a Palestinian nation).

²⁸ See KNAFLA, *supra* note 11, at 173.

²⁹ See YENNE, *supra* note 10, at 7.

³⁰ See ELSANA, *supra* note 4, at 7.

indigenous territories.³¹ With their new governmental systems—administrative, political, and, eventually, judicial—they continued dispossessing the remaining of indigenous peoples' lands.³² Hence, while conquest and occupation enabled taking physical possession, the new state's administrative, political, and judicial methods were utilized to legitimize their acts of dispossession.³³ At the same time, this ensured that no political or legal options were available for indigenous people to defend or regain their land rights.³⁴

The process of dispossession rarely, if ever, proceeded in a clear, simple sequence, and depending on the size of the territory, the physical conquest often overlapped with the establishment of the governmental systems that established the Western legal apparatus for nullifying the rights of indigenous peoples to their own lands in perpetuity.³⁵ While the judicial method of dispossession was often the last method utilized by a government, it often overlapped in its establishment and actions with ongoing administrative policies and political or legislative actions that expropriated land from indigenous peoples.³⁶ One need to think only of

³¹ See generally, JÉRÉMIE GILBERT, *INDIGENOUS PEOPLES' LAND RIGHTS UNDER INTERNATIONAL LAW: FROM VICTIMS TO ACTORS* (2006) (discussing methods of land dispossession).

³² See Singer, *supra* note 8.

³³ See *id.*

³⁴ See *id.*

³⁵ See generally ANAYA, *supra* note 14, at 3.

³⁶ See *id.*

the history of the United States and the infamous Trail of Tears to recognize the pattern of executive and legislative actions, overlapping with, in that case, somewhat more sympathetic judicial action that nevertheless ultimately dispossessed tens of thousands of indigenous peoples from their lands.³⁷

The international community supported the invasion and occupation of indigenous peoples of the New World.³⁸ Unlike modern international law that protects the rights of indigenous peoples, during that time, international law supported colonial acts of invasion and land dispossession even when they violated indigenous peoples' rights.³⁹ "Europeans" at that time denied indigenous peoples in the New World the right of sovereignty and facilitated the dispossession of their land.⁴⁰ Old principles of international law and legal doctrines, such as the Doctrine of Discovery and *terra nullius*, justified the occupation and the dispossession of indigenous peoples' land.⁴¹ Relying on such international law principles, colonial powers made fictional assumptions regarding indigenous peoples' land that severely affected their land rights.⁴² They did this

³⁷ *See id.*

³⁸ *See id.* at 9, 26.

³⁹ *See id.* at 6, 15-26.

⁴⁰ *See id.* at 22.

⁴¹ *See* Blake Watson, *The Impact of the American Doctrine of Discovery on Native Land Rights in Australia, Canada, and New Zealand*, 34 SEATTLE UNIV. LAW REV. 507, 512 (2011).

⁴² *See id.*

first, by claiming that indigenous peoples did not legally exist (thus their land could be acquired); then, by arguing that they were inferior to the colonial powers (thus their right to lands could be extinguished).⁴³ In the United States, for example, Chief Justice of the Supreme Court John Marshall similarly justified the way in which colonial powers laid claim to indigenous peoples' lands during the Age of Discovery.⁴⁴ Australia considered Aboriginal land as a vacant land and denied their land ownership claims.⁴⁵ Similarly, Israel considers all Bedouin's land as *mawat* land, which literally means "dead land."⁴⁶

Despite this, during the last few decades indigenous people have succeeded in bringing their issues to the attention of the international community.⁴⁷ Moreover, several international organizations, such as the International Labor Organization (ILO), have raised the issue and called for recognition of indigenous

⁴³ See GILBERT, *supra* note 31; Gilda C. Rodriguez, *Wik Peoples v. State of Queensland: A Restrained Expansion of Aboriginal Land Rights*, 23 N. C. J. INT. LAW COMMER. REGUL. 711, 722 (1997).

⁴⁴ See Watson, *supra* note 41 at 511.

⁴⁵ See Rodriguez, *supra* note 43 at 722.

⁴⁶ See Chanina Porat, *Israel's Policy on the Bedouin Issue and Left-Wing Alternatives, 1953-1960*, 10 Iyyunim BiTekumat Israel 420-476, 457 (2000) (explaining Bedouin submitted land claims as early as the 1950s. They based their land claims on documents proving that they had paid taxes. However, the State claimed that no land titles settlement occurred in the Negev; therefore, Bedouin did not possess any proof of land ownership. In addition, the State claimed that tax documents were lost from the State archives).

⁴⁷ See generally ANAYA, *supra* note 14.

peoples' land rights.⁴⁸ Others have articulated several instruments that recognize and protect indigenous peoples' rights. For example, in 2007, international recognition of indigenous peoples' land rights through the United Nations Universal Declaration for the Rights of Indigenous Peoples.⁴⁹ Unfortunately, despite these substantial developments, international law continues to offer very limited protection for their land rights.⁵⁰

On the national level, after the establishment of the settlers-state, indigenous peoples began to struggle for their land rights through the settler-state system, but mainly through local courts.⁵¹ But as this article shows, their legal struggle was also cut off and doomed to failure. The legislations the settler-state enacted and the administrative processes it carried out not only led to the dispossession of indigenous lands, but also created the platform for legal supremacy and even eliminated any chance of indigenous claims in court.⁵² Furthermore, changes settler-states made on the ground, and many other factors—not directly related to land conflict—such as language competence (difficulties) and a difficult

⁴⁸ See generally GILBERT, *supra* note 31.

⁴⁹ See generally Universal Declaration for the Rights of Indigenous Peoples, G.A. Res. 61/295 (Oct. 2, 2007), https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf.

⁵⁰ See GILBERT, *supra* note 31 at 114.

⁵¹ See Elsana, *supra* note 4 at 336 (explaining although other struggle and advocacy options were available more attention was given to the legal advocacy).

⁵² See *id.* at 367.

economic situation have made their struggle impotent; without a real chance of success.⁵³

However, in the recent decades, many indigenous groups around the globe, with no other choice, focus on judicial advocacy; sometimes they overestimate the power of judges and courts to recognize their rights.⁵⁴ They tend to forget the inherent conflict between colonialism and injustice, especially in land conflicts.⁵⁵ They also ignore the historical fact that the majority of indigenous peoples' land was mainly dispossessed by non-judicial methods.⁵⁶ But, most importantly, they forget that when they approached national courts to protect their rights, and recognize their right, national courts—with some exceptions—could not provide any protection, in the contrary many times courts supported the colonial action and even legitimized them.⁵⁷

The Bedouin case shows how their land was dispossessed and how the Bedouin's have been trying, with no avail, to get their land rights recognized in the courts that have been denying their cases time after time. This article goes further to show how the state, using legislation, and administrative orders was able to

⁵³ *See id.* at 357.

⁵⁴ *See generally* Gilbert, *supra* note 31.

⁵⁵ *See id.* at 157.

⁵⁶ *See id.*

⁵⁷ *See generally* Elsana, *supra* note 4 (according to the decisions of J. Marshall in the US context and the decision of the Israeli Supreme court in Alhawashela case).

dispossess about 90% of Bedouin land.⁵⁸ Moreover, these legislative and administrative orders insured the Bedouin's land rights were denied in court.

III. THE BEDOUIN AND THEIR LAND ISSUE

A. *THE BEDOUIN*

The Bedouin in Israel live in the Negev, the southern part of Israel.⁵⁹ They are part of the Arab-Palestinian minority in Israel⁶⁰ that consists of between 200,000 and 230,000 people. They constitute about 3.5% of Israel's population.⁶¹ The Bedouin live in two types of settlements: (1) village the state has recognized ("townships") and (2) villages that the state considers illegal settlements ("villages" or "unrecognized villages").⁶² Approximately two-thirds of the Bedouin population in the Negev live in seventeen townships and nearly one-third live in thirty-five unrecognized

⁵⁸ See generally Elsana, *supra* note 4.

⁵⁹ See Salman Elbedour et al., *Bedouins of the Negev: Ethnicity and Ethnic Identity among Bedouin Adolescents in Israel*, 2 INT. J. CHILD HEALTH HUM. DEV. 177 (2009) (exploring Bedouin identity).

⁶⁰ See *id.*

⁶¹ See *Lexicon of Terms: Minorities in Israel, Bedouin*, THE KNESSET (July 2007), <http://www.knesset.gov.il/lexicon/heb/bedouim.htm>; Ghazi Falah, *Israeli State Policy toward Bedouin Sedentarization in the Negev*, 18 J. OF PALESTINE STUDIES 71, 78 (1989).

⁶² See Shiri Bass Spector, *Environmental and Health Issues Among Bedouin in the Negev Unrecognized Villages*, KNESSET RESEARCH AND INFORMATION CENTER (2011), <http://www.knesset.gov.il/mmm/data/pdf/m02809.pdf>.

villages.⁶³ Bedouins who live in unrecognized villages are deprived of very basic rights and services, including running water, electricity, secure infrastructure, education, health services, and social services.⁶⁴ But most importantly, they are not allowed to build any houses in these villages.⁶⁵ Thus, they are subject to harsh state acts such as, house demolitions, crop destruction, livestock confiscation, and land expropriation,⁶⁶ all due to a longtime dispute over the land.

Historically, the Bedouin have lived as a semi-nomadic people in the Negev for centuries, well before the establishment of the State of Israel and some would say since the fifth century C.E.⁶⁷ The Bedouin have lived in the Negev from the time immemorial and consider themselves natives.⁶⁸

Mischaracterizations of their nomadic and semi-nomadic lifestyle have been used as part of the narrative to undermine claims to their historic presence in the Negev and to assert a lack of ties—to these specific lands.⁶⁹ However, the Bedouin have long-held tribal

⁶³ *See id.*

⁶⁴ *See* HUMAN RIGHTS WATCH, OFF THE MAP, <http://hrw.org/reports/2008/03/30/map> (last visited Mar. 5, 2019).

⁶⁵ *See id.*

⁶⁶ *See id.*

⁶⁷ *See* PENNY MADDRELL & YUNIS GRINAWI, THE BEDOUIN OF THE NEGEV 4, LONDON MINORITY RIGHTS GROUP (1990).

⁶⁸ *See* Yiftachel, *supra* note 4 at 134-36.

⁶⁹ *See* Havatzelet Yahel, Ruth Kark & Seth J. Frantzman, *Are the Negev Bedouin an Indigenous People?*, MIDDLE EAST Q. (2012), <http://www.meforum.org/3254/negev-bedouin-indigenous> (last visited Jan

territorial boundaries, defined by intra- and inter-tribal agreements of customary tribal law, forged over generations and preserved in indigenous documents called *Sanadat*.⁷⁰ Sanadat describe the Bedouin land, rights, boundaries of different tribes' lands, size, and the owners and many other details related to their land, just like any modern title deed.

B. THE BEDOUIN'S LAND ISSUE

Since its establishment, the State of Israel has been denying Bedouin land rights and continues to dispossess their lands in order to drive them out.⁷¹ The dispossession of Bedouin land⁷² can be divided into two general phases: (1) the occupation of the land, and (2) the legalization of the occupation of the land.⁷³ The State first occupied the Bedouin's land, evicted many of them and concentrated the remaining groups into a small area in the northern Negev called *Siyag*.⁷⁴ Then, in the second phase, it enacted several laws that further enabled the dispossession of Bedouin land through legislative and judicial means.⁷⁵ Courts have supported the

9, 2017) (This article shows how some Israeli scholars, who are affiliated with the government, present the Bedouins in Israel).

⁷⁰ See Elsana *supra* note 4.

⁷¹ See Havatzelet, *supra* 69 at 8-9.

⁷² See HUMAN RIGHTS WATCH, OFF THE MAP, *supra* note 64.

⁷³ See *id.*

⁷⁴ See *id.*

⁷⁵ See *id.*

dispossession and made sure the interpretation of the law maintained the same principles.⁷⁶

Like Palestinian lands, Bedouin lands were occupied as part of the colonial activity of the Zionist settlement movement in Palestine during the British Mandate. These lands were then occupied during the war fought in 1947 to 1948, immediately after the U.N. vote to establish a Jewish state in Palestine.⁷⁷ The early colonial history of the Bedouin barely even scratches the surface of the broader history of European colonialism that reshaped the map of the Middle East in the wake of World War I and the dissolution of the Ottoman Empire.⁷⁸

The Negev had been part of the Ottoman Empire for centuries, and it fell under British rule (later British Mandate) in Palestine from 1917 to 1948.⁷⁹ The land reforms to settle and register land rights (title deeds), instituted by the Ottomans and continued by the British in Palestine, were not applied to the Bedouin lands in the Negev.⁸⁰ However, in practice, both the Ottomans and the British largely accepted the Negev Bedouins' tribal system for establishing land claims, handling land disputes between tribes, paying taxes on lands, and

⁷⁶ *See id.*

⁷⁷ *See* YEHUSHOA PORAT & YAKOVSHAVIT, *THE HISTORY OF ERETZ YESRAEL: THE BRITISH MANDATE AND THE JEWISH NATIONAL HOME* (1998).

⁷⁸ *See* Ahmad Amara, *The Negev Land Question Between Denial and Recognition*, 42 *THE J. OF PALESTINE STUDIES* 4, 27, 30-34 (2013).

⁷⁹ *See id.* at 29.

⁸⁰ *See id.* at 30.

managing land-related issues.⁸¹ Hence, neither the Ottoman nor British land registry laws were applied to the Negev Bedouin.⁸² Thus, when the British Mandate ended and the State of Israel was established, the Bedouin found themselves facing a different settler-colonial ruler who applied the old rules in new ways that did not recognize their indigenous land rights.⁸³

IV. BEDOUIN LAND DISPOSSESSION ON THE GENERAL LEVEL

The roots of the Bedouin land issue can be traced to the history and developments in Palestine and the Middle East since the late 18th century.⁸⁴ Like many Palestinian lands, Bedouin lands were occupied as part of the Zionist movement in Palestine.⁸⁵ The first phase of their dispossession was done as a part of the entire Palestinian land dispossession without specific attention to Bedouin land in the Negev.⁸⁶ While the second phase was completed later as part of an explicit project designated to specifically dispossess the indigenous Bedouins of the Negev.⁸⁷

⁸¹ *See id.* at 31-34.

⁸² *See id.*

⁸³ *See id.*

⁸⁴ *See* Elsana *supra* note 4.

⁸⁵ *See* Falah, *supra* note 61, at 73.

⁸⁶ *See* Elsana, *supra* note 4, at 339.

⁸⁷ *See id.*

Settlement in Palestine started to be the primary goal for the Zionist movement after the decision to establish a State for the Jewish people.⁸⁸ During the late 19th century, the Zionist movement held its first conference where it decided to establish a Jewish state in Palestine. As part of its plan, the Zionist movement started a process of settlements in different places in Palestine. To facilitate Jewish settlement, the Zionist movement focused on land purchase in Palestine.⁸⁹

In addition to the above-mentioned reasons, the Zionist movement of settlement in Palestine was also supported by both practical (the need for land) and ideological levels.⁹⁰ On a *practical level*, Zionist leaders believed that possession of land in Palestine was an essential element for the Zionist project's success, vital for the future Jewish state, and important to accommodate incoming Jewish immigrants.⁹¹ On the *ideological level*, the movement embraced a biblically based ideology that claimed that the land in Palestine (i.e. the land of Israel) was divinely given to the Jewish

⁸⁸ Practical Zionism - under the leadership of Moshe Lilienblum and Yehuda Leib Pinsker - argued that immigration to Israel and settlement should begin soon, even before the attainment of a charter for the Land of Israel. The proponents of this approach emphasized the need for large-scale settlement in Palestine/Eretz Israel that would help establish a national home. See WALTER LAQUEUR, *A HISTORY OF ZIONISM* 103-07 (2003); Oren Yiftachel, *Ethnocracy: Land and Identity Politics in Israel/Palestine*, (2006).

⁸⁹ *See id.*

⁹⁰ *See* Elsana, *supra* note 4 at 340.

⁹¹ *See id.*

people, and thus, Jews must “redeem the land” from non-Jewish inhabitants.⁹² Many of the movement’s leaders also brought with them a European culture of bias that viewed the Arabs, particularly the Bedouin, as uncivilized people, and viewed their land as empty land, *terra nullius* in the classical sense.⁹³

A. INTERNATIONAL INTERVENTION

As a result of the influx of Jewish migrants from Europe to Palestine and the spread of the news about the Zionist plan to establish a Jewish state, Palestinians demonstrated against the British mandate and demanded the restriction of Jewish migration. demanding to restrict the Jewish migration.⁹⁴ These “demonstrations” reached their peak in the 1936 Arab Revolt.⁹⁵ The British, who ruled during that time, asked for the intervention of the international community and forwarded the issue to the League of Nations, who in turn, decided to establish a committee, the Peel Commission, to search for and suggest a solution for the issue.⁹⁶ After deliberations, the committee came up

⁹² See *id.* at 341-2.

⁹³ See GERSHON SHAFIR, *LAND, LABOR, AND THE ORIGINS OF THE ISRAELI-PALESTINIAN CONFLICT, 1882-1914*. Cambridge: Cambridge (University Press, 1989); Yiftachel, *supra* note 88 at 54.

⁹⁴ See Elsana, *supra* note 4 at 350-54 (discusses British mandate’s refusal to recognize Bedouin customary law).

⁹⁵ See MATTHEW KELLY, *THE CRIME OF NATIONALISM: BRITAIN, PALESTINE, AND NATION-BUILDING ON THE FRINGE OF EMPIRE* 11, 58 (2017).

⁹⁶ See Elsana, *supra* note 4 at 348-49; MARTIN GILBERT, *THE ROUTLEDGE ATLAS OF THE ARAB-ISRAELI CONFLICT* 12-3 (2012).

with the partition plan to divide Palestine into two states: an Arab state and a Jewish state.⁹⁷ During that time (1937), Zionist leaders discovered that the proposed Jewish state borders excluded the Negev region.⁹⁸ Zionist leaders acknowledged the need to expand Jewish settlements into the Negev in order to convince the international community to include the Bedouin territory in the Negev to the future Jewish state.⁹⁹

They also came to understand that the rules of partition of the land were based mainly on the “existence of majority.”¹⁰⁰ In places where the majority of people were Jews, the committee offered the area to the Jewish state, and in areas of Arab majority, the area was offered to the Arab state.¹⁰¹ Jewish leaders realized that to get the Negev included into the future Jewish state, they had to settle it with Jewish settlers.¹⁰² Therefore, over the next two years,¹⁰³ the Zionist movement established eleven small colonies in the Negev, each with only a little more than a wall and a

⁹⁷ See Elsana, *supra* note 4 at 348-49.

⁹⁸ See Chanina Porat, *Policy of Land Purchase and Settlement in the Negev before the War of Independence*, 62 CATHEDRA 123-54, 393 (1991).

⁹⁹ See *id.*

¹⁰⁰ See *id.*

¹⁰¹ See *id.*

¹⁰² See *id.*

¹⁰³ Before the 1939 White Paper closed off Jewish purchases of land, and again after 1946 when the Morrison-Grady Plan recommended again allowing Jewish land purchases in Palestine.

watchtower.¹⁰⁴ The Zionist movement's plan worked and the 1947 League of Nations Partition Plan for Palestine designated the Negev as part of the Jewish state.¹⁰⁵

B. THE 1948 WAR AND THE ESTABLISHMENT OF A NEW STATE

The Partition Plan, however, was just the beginning of the conquest phase of the land dispossession for the Palestinian land, including the Bedouin. The 1948 war that broke out when the British ended the mandate on Palestine and decamped, resulted in the conquest of the rest of Negev. The brutality of the Jewish paramilitary organizations during the 1948 war, and later by the Israeli Army, with their determination to expel as many Palestinian Arabs from their homes as possible,¹⁰⁶ resulted in the eviction of an estimated 700,000 Palestinians, only an estimated 160,000 remained.¹⁰⁷ When the border of the State of Israel was finally established in 1949, the Palestinians who

¹⁰⁴ See Porat, *supra* 98 at 123 (describing the Zionist movement and establishment of 11 Jewish settlements in the Negev, illustrating the Jewish existence in the Negev).

¹⁰⁵ See GILBERT, *supra* 96.

¹⁰⁶ See BENNY MORRIS, *RIGHTEOUS VICTIMS: A HISTORY OF THE ZIONIST-ARAB CONFLICT, 1881-1998* (2011).

¹⁰⁷ See ILAN PAPPE, *A HISTORY OF MODERN PALESTINE: ONE LAND, TWO PEOPLES* 127 (2006).

survived the war became citizens of the new Jewish State.¹⁰⁸

After the establishment of Israel, despite their Israeli citizenship, tens of thousands of Palestinian-Israelis were forcibly relocated from their original villages to other villages; a practice that affected all Arabs, but mainly the Bedouins of the Negev.¹⁰⁹ Indeed, the majority of the remaining 11,000 Bedouins were evicted from their land and relocated to a small area in the northern Negev called the *siyag*, “fence” in Hebrew.¹¹⁰

After Israel's independence, the State placed all Palestinians under a military rule from 1949 until 1966 and forced many Palestinians to live in designated areas.¹¹¹ During this eighteen year period, the State worked on several levels to change the historical reality and geography of the region. The State destroyed many villages that were abandoned by the Palestinians and

¹⁰⁸ See Nihad Bokae'e, *Palestinian Internally Displaced Persons Inside Israel: Challenging the Solid Structures*, PALESTINE-ISRAEL J. POLITICS, ECON. & CULTURE 2, 3-4 (2003).

¹⁰⁹ See *id.*; WALID KHALIDI, ALL THAT REMAINS: THE PALESTINIAN VILLAGES OCCUPIED AND DEPOPULATED BY ISRAEL IN 1948 (1992).

¹¹⁰ See Elsana, *supra* note 4 at 349; PENNY MADDRELL, BEDOUIN OF THE NEGEV 6 (1989) (The Negev Bedouin population before 1948 had been an estimated 65-95,000, and their historic lands covered all of the Negev. Israel concentrated their remnant on 10% of their historic lands, in a triangular area between Be'er Sheva, Arad, and Dimona.)

¹¹¹ See generally *The Arab-Israeli War of 1948*, OFFICE OF THE HISTORIAN, <https://history.state.gov/milestones/1945-1952/arab-israeli-war> (last visited Mar. 11, 2019).

prevented inhabitants from returning to their homes.¹¹² The State built Jewish settlements in place of the destroyed Palestinian villages, and changed the geographical zoning of the land by planting forests or building roads to make reestablishment of the Palestinian villages impossible.¹¹³ Israel took these actions despite obligations under international law¹¹⁴ and demands from the international community that Israel allow refugees to return to their homes.¹¹⁵

C. THE ESTABLISHMENT OF THE STATE

On the political level, land control became an important component of the State's settlement, development, and defense policies.¹¹⁶ The first leaders of the State, such as David Ben-Gurion, Avraham Granott, and Moshe Dayan, believed that State control of land

¹¹² See Jonathan Cook, *Palestinian Villages Hidden Under Israeli Forests*, VIMEO (Sept. 27, 2016) <https://vimeo.com/184497845>.

¹¹³ See *id.*

¹¹⁴ See Palestine - Progress Report of the United Nations Mediator, G.A. Res. 194 (III), (Dec. 11, 1948) (recognizing the right of Palestinian return for the first time. However, since it is only a General Assembly resolution it is not binding under international law, as opposed to Security Council resolutions).

¹¹⁵ See A Universal Declaration of Human Rights, G.A. Res. 217 (III) (Dec. 10, 1948) (stating generally in Article 13 that: "[e]veryone has the right to freedom of movement and residence within the borders of each State. Everyone has the right to leave any country, including his own, and to return to his country"); see also An International Covenant on Civil and Political Rights, G.A. Res. 2200 (XXI) (Dec. 16, 1966).

¹¹⁶ See Elsana, *supra* note 4.

was an essential for the existence of Israel.¹¹⁷ Acting on this belief, that a Jewish presence on as much land as possible within the State was essential for Israel's future security, Israel drafted plans for land control, which focused on demographic engineering and population distribution in the State. The overall goal of these plans was to establish a Jewish presence in most areas of the country, a goal that relied heavily on the State's control of land.¹¹⁸ As a result, these policies were implemented, without exception, from the northern border of Israel all the way to the southern tip of the Negev.¹¹⁹

On the legislative level, Israeli leaders strove to ensure the laws of the State were in line with the goals of the land control policies.¹²⁰ When the State adopted parts of Ottoman law and terms from the British Mandate for Palestine,¹²¹ it applied a legal policy that deprived Palestinian-Arabs, including the Bedouin, of their land.¹²² Over time, Israel amended or terminated many Ottoman and British laws and have enacted new property laws that deny Palestinian-Arab's land rights.¹²³ By adopting British Article 46 of the Palestine Order in Council-1922, which preserved part of Ottoman land

¹¹⁷ *See id.* at 340.

¹¹⁸ *See id.*

¹¹⁹ *See id.*

¹²⁰ *See id.* at 340-41.

¹²¹ *See id.*

¹²² *See id.* at 341.

¹²³ *See id.*

law, the State adopted the Ottoman law of the *Majallah* that included the Ottoman land code.¹²⁴

On the administrative level, tools, such as eviction orders, administrative relocations, service deprivation, recognition and urban planning, and zoning, provided additional methods for transferring Palestinian-Arab lands to the State.¹²⁵ Through planning laws and zoning regulations, the State allocated the majority of Arab land for Jewish settlement and development needs, while preventing or reducing land available for Arab-Israeli citizens.¹²⁶ This planning policy affected all Arab land dispossessions, but the Bedouin land in the Negev was disproportionately affected.¹²⁷

In conclusion, the Zionist-Israeli colonial project in Palestine was accomplished through a Jewish settlement project initiated during Ottoman and then continued during British rule; then exacerbated by the international community's partition of Palestine into a Jewish State and an Arab State in 1947; and later solidified through an Israeli military conquest of much of the land designated as an Arab State in 1948. After the establishment of the State, like many colonial powers, Israel came to rely on its legislative and administrative methods of land dispossession.

¹²⁴ *See id.*

¹²⁵ *See id.* at 346.

¹²⁶ *See id.* at 346-47.

¹²⁷ *See id.* at 347.

V. THE DISPOSSESSION OF BEDOUIN LAND ON THE SPECIFIC LEVEL

On the local level, Bedouin land in the Negev was subject to additional policies of land dispossession.¹²⁸ As mentioned above, the first phase of the Bedouin land dispossession began in the 1930s after the Peel Commission proposed a partition plan for Palestine that excluded the Negev from the Jewish State.¹²⁹ As a result, Zionist leaders established eleven small colonies in the Negev in order to show the land was settled by Jews.¹³⁰ Then in 1946, the Morrison-Grady international committee, appointed by the League of Nations, recommended a final partition plan that partitioned most of the Negev land to the Jewish state.¹³¹

The above-mentioned policies and acts of Palestinian land dispossession directly affected the Bedouin.¹³² Mainly, these policies were able to transfer most of the Bedouin's land to the State.¹³³ However, the Bedouin continue to possess and own about one and half million dunams, about 370,000 acres, in the Negev, an area the State considers essential for future settlement and development.¹³⁴ Thus, Israel has been subjecting the

¹²⁸ *See id.* at 348-349.

¹²⁹ *See id.*

¹³⁰ *See* Elsana, *supra* note 4 at 349.

¹³¹ *See* GILBERT, *supra* note 96.

¹³² *See* Elsana, *supra* note 4 at 349.

¹³³ *See id.*

¹³⁴ *See id.*

Bedouin to additional policies and acts of land dispossession that have been specifically designed for the Bedouin in the Negev. These policies were executed through various methods with the primary methods being administrative and legislative policies.¹³⁵

A. *THE ADMINISTRATIVE LAND DISPOSSESSION*

On the administrative level, the state first concentrated the Bedouin in a small area; second, it forced them to live in small number of towns within a designated area; and third, it declared all other Bedouin villages as illegal settlements.¹³⁶

1. *Concentrating the Bedouin in One Place*

After the establishment of Israel, in order to secure more land for Jewish settlement, the state gathered the remaining Bedouins into a small area called the *Siyag*.¹³⁷ Later, in 1956, the state and the military institute started discussing the “Bedouin Problem,” proposing a variety of possible ways to handle the Bedouin in the Negev.¹³⁸ Interestingly, as Swirski and Hasson mention “all of the proposals [the government]

¹³⁵ *See id.*

¹³⁶ *See* SHLOMO SWIRSKI & YAEL HASSON, *INVISIBLE CITIZENS: ISRAEL GOVERNMENT POLICY TOWARD THE NEGEV BEDOUIN* (2006).

¹³⁷ *See* Chanina Porat, *Israel's Policy on the Bedouin Issue and Left-Wing Alternatives, 1953-1960*, 10 *IYUNIM BI' TEKUMAT ISR.* 420-76, 454.

¹³⁸ *See* SWIRSKI & HASSON, *supra* note 136, at 15.

considered shared a common denominator – *reducing to a minimum the area on which the Bedouin would be settled in the Siyag region.*”¹³⁹ Minister of Agriculture, Moshe Dayan, who aimed to transform the Bedouin into an urban proletariat, suggested settling Bedouin in mixed Jewish-Arab localities at the center of Israel, along the lines of the cities of Jaffa and Ramleh, where they would become urban laborers.¹⁴⁰ The second proposal, which eventually the state adopted,¹⁴¹ suggested concentrating the Bedouin in two or three townships within the *Siyag* area in the Negev.¹⁴²

The plan to concentrate the Bedouin in smaller areas, all within the already contained area of the *Siyag*, was implemented gradually in several stages. In the first stage, the state recognized two Bedouin townships and required all Bedouin in the surrounding villages to relocate to the new townships.¹⁴³ During that time, Israel claimed that the purpose of the act was to *modernize* Bedouin society by putting an end to the Bedouin’s

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 16.

¹⁴¹ Oren Yiftachel & H. Yacobi, *Control, Resistance and Informality: Urban Ethnocracy in Be'er Sheva, Israel*, URBAN INFORMALITY 228 (Ananya Roy & Nezar AlSayyad eds., 2003).

¹⁴² Yair Bauml, *Yahasos shel hamimsad hayesrail il aaravim bayesrael: Mdeniot, Ekronot peolah, haasor hashini 1958-1968* [The Attitude of the Israeli Establishment to the Arabs in Israel: Policy, Principles and Action. The Second Decade, 1958-1968] 310-15 (Ph.D. dissertation, University of Haifa, 2002).

¹⁴³ *Id.* at 54.

nomadic way of life and provide them with modern services.¹⁴⁴

The majority of Bedouins, however, opposed leaving their villages, and the state's efforts to relocate the Bedouin failed.¹⁴⁵ The Bedouin who refused to leave their villages also refused to abandon their way of life and disrupt their traditional livelihoods.¹⁴⁶ Although some state officials claimed that the Bedouin were opposed to modernizing their society, in reality, according to many commentators, the Bedouin were mainly concerned that concentrating themselves in to small towns would destroy their culture and their traditional economy.¹⁴⁷ Since Bedouin economy relies heavily on a combination of cultivating land and raising livestock, land is essential to maintain their financial independence.¹⁴⁸ In addition, the Bedouin were also concerned that the policy would not only continue to discriminate against them in planning and land allocation, but also deprive them of their ability to live traditionally with their extended families and tribes.¹⁴⁹

¹⁴⁴ Ismael Abu Saad & Cosette Creamer, *Socio-Political Upheaval and Current Conditions of the Neqab Bedouin Arabs*, in CURRENT CONDITIONS OF THE NAQAB BEDOUIN ARABS 28 (Yiftachel et al. eds., 2012).

¹⁴⁵ See generally HUMAN RIGHTS WATCH, OFF THE MAP, *supra* note 64.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ Emanuel Marx & Avinoam Meir, *Land, Towns and Planning: The Negev Bedouin and the State of Israel*, GEOGRAPHY RESEARCH FORUM 45-46 (2005).

¹⁴⁹ *Id.*

With limited success of the first stage of forced sedentarization, the state continued to use every possible opportunity to evict Bedouins from their traditional lands and settle them into new townships.¹⁵⁰ One such opportunity appeared with the application of the Israel-Egypt Peace Treaty.¹⁵¹ In 1979, as part of the Israel-Egypt Peace Treaty, the state decided to relocate military facilities from the Sinai Peninsula (which Israel returned to Egypt as part of the treaty) onto the site of a large Bedouin community in the Tal-Almalah area.¹⁵² As part of this move, the state not only confiscated large segments of Bedouin land, but it also evicted every Bedouin living in the Tal-Almalah area.¹⁵³ The Bedouins were then relocated to two new towns,¹⁵⁴ created especially for the purpose of resettling the Tal-Almalah evacuees.¹⁵⁵ This relocation was legalized within Israeli law by the Negev Land Acquisition Act (peace treaty with Egypt) of 1980.¹⁵⁶

The four existing towns were insufficient incentive to drive out the Bedouins from their villages.¹⁵⁷

¹⁵⁰ See SWIRSKI & HASSON, *supra* note 136.

¹⁵¹ See Jamil Dakwar, *The Supreme Court and the Confiscation of Palestinian Lands: On the Politics of Legal Formalism*, 2 ADALAHS REV. 14, 14 (2000).

¹⁵² See SWIRSKI & HASSON, *supra* note 136 at 24-5

¹⁵³ See *id.*

¹⁵⁴ See *id.* at 25 (Kuseife and Ar'ara townships).

¹⁵⁵ See DAKWAR, *supra* note 151 at 14.

¹⁵⁶ See The Negev Land Acquisition Law, Isr.-Egypt. 5740-1980 34 LSI 190 (170-182) (represents a peace treaty with Egypt).

¹⁵⁷ See SWIRSKI & HASSON, *supra* note 136 at 35.

Thus, in the third stage, Israel recognized additional three Bedouin villages.¹⁵⁸ These villages were established on Bedouin lands, and although some Bedouins were living there already, the state expanded the villages into towns and planned for increased settlement of Bedouins from surrounding villages and rural areas.¹⁵⁹ Another time, Israel attempted to concentrate the Bedouins in now seven planned towns, which was met with very limited success.¹⁶⁰

Over the next decade, Israel refused to recognize or establish additional villages and continued its attempts to settle Bedouin from unrecognized villages in the seven existing, recognized towns.¹⁶¹ This fourth stage consisted of a two-part plan. The first part aimed to evict the remaining Bedouin population living in forty-five unrecognized villages (about 50% of the whole Bedouin population in the Negev) and relocate them to the seven recognized townships.¹⁶² As part of the state plan to force the Bedouin to relocate to the recognized towns, it deprived the Bedouin in these villages of basic services, such as housing, running water, electricity, education, and health services.¹⁶³ It also applied a tough housing demolition policy in order to force the Bedouin to leave

¹⁵⁸ *See id.*

¹⁵⁹ *See id.*

¹⁶⁰ *See* HUMAN RIGHTS WATCH, *supra* note 64.

¹⁶¹ *See generally* SWIRSKI & HASSON, *supra* note 136.

¹⁶² *See id.* at 68.

¹⁶³ *See id.*

their lands and relocate into the designated townships.¹⁶⁴ The second part of the plan was to re-engage with greater intensity with the judicial process of settling Bedouin land title claims, which meant creating a legal fiction that officially dispossessed most Bedouin of their traditional land.¹⁶⁵

In 1996, the Bedouin established the Regional Council for the Unrecognized Villages (RCUV), the first organization devoted to the rights of those who live in the unrecognized villages.¹⁶⁶ The RCUV worked with human rights non-governmental organizations (“NGOs”) to advocate for Bedouin rights, opposing the State’s discrimination, oppression, and deprivation policies.¹⁶⁷ In addition, during the 1990s and early 2000s several human rights organizations started raising international awareness about the plight of the Bedouin of the Negev.¹⁶⁸ Eventually, the State realized that it was impossible to settle the remaining Bedouin population from forty-five villages into the existing seven townships.¹⁶⁹ As a result, Israel recognized an additional

¹⁶⁴ See generally HUMAN RIGHTS WATCH, *supra* note 64.

¹⁶⁵ See *id.*

¹⁶⁶ See Joseph Schechla, *The Invisible People Come to Light: Israel’s “Internally Displaced” and the “Unrecognized Villages”*, 31 J. PALEST. STUD. 20–31, 28 (2001).

¹⁶⁷ See *id.* at 28.

¹⁶⁸ See Seth J. Frantzman, Havatzelet Yahel & Ruth Kark, *Contested Indigeneity: The Development of an Indigenous Discourse on the Bedouin of the Negev, Israel*, 17 ISR. STUD. 78–104, 79 (2012).

¹⁶⁹ Many reasons could explain the decision, including the court’s desire to criticize State policy. In addition, the High Court of Justice issued

ten villages between 2000 and 2012, creating a total of seventeen Bedouin townships.¹⁷⁰

The State also made many changes to disconnect the Bedouin physically, economically, and emotionally from their land, like evicting Bedouins from their land, and preventing agriculture use.¹⁷¹ Such changes destroyed the Bedouins' traditional economy, undermined their traditional leadership, and literally changed the Bedouins' landscape by building many Jewish towns and other projects on their land.¹⁷² The State designed these changes to convey to the Bedouin a clear message: that restoring the land to the Bedouin is not an option. Instead, the only available solution is compensation.

2. *Planning and Zoning Policy*

As a part of the concentration plan, the State applied a planning and urbanization policy in order to prevent Bedouin re-settlement outside the designated

several decisions ordering the State to build schools, clinics, and streets for Bedouin in unrecognized villages. On the other hand, the seven recognized villages remained poor and many people could not secure building lots to live in the recognized parts of the villages.

¹⁷⁰ This number is not fixed. It is expected to increase each time the State recognizes additional Bedouin villages.

¹⁷¹ See generally, Ghazi Falah, *Israeli State Policy Toward Bedouin Sedentarization in the Negev*, 18 J. PALEST. STUD. 71–91 (1989) (Describes the State's policy of eviction and disconnecting Bedouin from their land).

¹⁷² See Terra Tolley, *Rising Voices: Bedouin Youth Navigating Education and the Future amidst Protracted Conflict*, 2015 (Citing Stewart 2011, *Bedouin vs. Israel's Bulldozers*, THE INDEPENDENT).

Siyag.¹⁷³ Planning and urbanization policy went hand-in-hand with the goal of land dispossession.¹⁷⁴ This policy aimed for placing “the maximum number of [Bedouin] on a minimum amount of land and [dispensing] a minimum number of Jews on a maximum amount of land.”¹⁷⁵ One particular part of the State policy would transform the Bedouin into an urbanized society of a few small towns.¹⁷⁶ Moshe Dayan, an Israeli leader and the former Israeli Minister of Agriculture, expressed his view and even wished to eradicate Bedouin culture altogether by settling them in permanent villages and transforming them into an urban people.¹⁷⁷ In an interview with *Haaretz* newspaper, Dayan stated:

We should transform the Bedouin into an urban proletariat in industry, services, construction, and agriculture...Eighty-eight percent of the Israeli populations are not farmers; let the Bedouins be like them. Indeed, this would be a radical move which means that the Bedouin would not live in this land with his herds, but

¹⁷³ See SWIRSKI AND HASSON, *supra* note 136 at 18.

¹⁷⁴ See HCJ 528/88 Eliezer Avitan v. Israel Land Admin. 43(4) PD 297 (1988) (Isr.) (indicating that the main purpose for settling the Bedouin is to protect the State land).

¹⁷⁵ SWIRSKI & HASSON, *supra* note 136, at 18; see Sawsan Zaher, *The Right of Arab Bedouin Women to Adequate Housing and Accommodation*, 23 ADALAH'S NEWSL. 1 (2006); AMER EL HUZEIL ET AL., A PLAN FOR THE TREATMENT OF THE BEDOUIN PROBLEM, CENTER FOR LEGAL AND ECONOMIC RESEARCH IN THE MIDDLE EAST 9 (1999).

¹⁷⁶ See Falah, *supra* note 61 at 72.

¹⁷⁷ See Moshe Dayan, *On Land Policy and the Bedouin Problem*, HA'ARETZ, July 31, 1963, (cited in ISSACHAR ROSEN-ZVI, TAKING SPACE SERIOUSLY: LAW, SPACE, AND SOCIETY IN CONTEMPORARY ISRAEL 60 (2004)).

would become an urban person who comes home in the afternoon and put his slippers on . . . the children would go to school with their hair properly combed. This would be a revolution, but it may be fixed within two generations. Without coercion but with government direction. . . this phenomenon of the Bedouin will disappear.¹⁷⁸

Planning and zoning laws were influential tools to prevent the Bedouin from returning and using their land. Especially, the Planning and Building Law of 1965¹⁷⁹ is used to evict many of Bedouin from their land, relocate them to townships, and strip them of their land.¹⁸⁰ The Law authorizes the State to use a speedy process of administrative orders to demolish any house or building in areas not designated for residential housing.¹⁸¹ At the same time, the State designated all Bedouin villages as nonresidential areas preventing any planning or development in Bedouin villages except the recognized townships.

These acts of dislocation continue to affect Bedouin land rights to this day, because they enable the State to practice different policies to evict or displace the Bedouin from their land. For example, the 2008 Goldberg Committee, a government committee that was formed to address ongoing Bedouin land claims, stated in its report that Bedouin who were not in possession of

¹⁷⁸ *Id.*

¹⁷⁹ See Planning and Building Law, 5725-1965, 467 SH 307 (Isr.).

¹⁸⁰ See HUMAN RIGHTS WATCH, *supra* note 64 at 71.

¹⁸¹ See Planning and Building Law, 5725-1965, 467 SH 307, art. 241 (Isr.).

their land (i.e., living on their land or cultivating it) were not eligible for any land substitute as part of their compensation.¹⁸² Instead, the Committee offered those Bedouin monetary compensation only, a type of compensation the Bedouin have rejected for a long time.¹⁸³

The Bedouin who lost possession of their land also lost their ability to bargain for land recognition or land compensation.¹⁸⁴ Significantly, the State law does not recognize Bedouin land rights; therefore, Bedouin cannot seek any judicial relief through the State judicial system; the only way to force the state to compensate them is through keeping their ground (i.e., possessing the land).¹⁸⁵

Additionally, the plan to concentrate the Bedouin in the *Siyag* zone drastically deteriorated Bedouin living conditions. To protect their possession of land, many

¹⁸² See Ministry of Construction & Housing, *supra* note 22 at 31–2.

¹⁸³ See Farah Mihlar, *Israel's Denial of the Bedouin* 8, http://scholar.googleusercontent.com/scholar?q=cache:PNa9ear0VNkJ:scholar.google.com/&hl=en&as_sdt=0,47 (last visited Aug 23, 2018); Bedouin reject compensation offer, accusing Israel of land grab - Haaretz - Israel News | Haaretz.com, <https://www.haaretz.com/1.5134697> (last visited Apr 19, 2019).

¹⁸⁴ See *e.g.* Ministry of Construction & Housing, *supra* note 22 (The report suggests offering compensation only for Bedouin who possess land [possessed land]).

¹⁸⁵ See Morad Elsana, DISPUTES THAT TAKE THE LIVES OF YOUTH IN THE NEGEV (خلافات تحصد أرواح الشباب في النقب) الجزيرة مباشر NEGEV, <http://mubasher.aljazeera.net/blog-post/-أرواح-الشباب-خلافات-تحصد-أرواح-الشباب-في-النقب> (last visited Jan 16, 2018).

Bedouins have been compelled to live in their unrecognized villages, sacrificing their standard of living and their basic rights due to limitations on housing rights, employment, and livestock grazing.¹⁸⁶ In these villages, Israel refuses to provide plans to recognize Bedouin villages or provide home building permits, running water, electricity, education, or health services.¹⁸⁷ When the Bedouin challenge this policy by building homes, the State reacts with home demolition orders: it destroys every new Bedouin home, files criminal charges, and punishes Bedouin with prison time, and heavy fines.¹⁸⁸

3. *The Goldberg Committee and its Report: Concentration is the Ultimate Plan*

Despite all of the State's efforts, Israel still found many Bedouin unwilling to yield their land.¹⁸⁹ In 2007, another committee was convened to deal with the situation in Bedouin.¹⁹⁰ The Goldberg Committee was

¹⁸⁶ See Ahmad Amara, *The Negev Land Question: Between Denial and Recognition*, 42 J. PALEST. STUD. 27–47, 29 (2013).

¹⁸⁷ The State of Israel has been refusing to recognize the majority of Bedouin villages.

¹⁸⁸ Referencing the history of Alaraqib Bedouin village that was demolished more than 150 times.

¹⁸⁹ See Harriet Sherwood, *The Israelis Keep Bulldozing Their Village, But Still The Bedouin Will Not Give Up Their Land* | Harriet Sherwood, THE GUARDIAN (Mar. 1, 2011), <https://www.theguardian.com/commentisfree/2011/mar/01/israelis-demolish-bedouin-village>.

¹⁹⁰ See Ahmad Amara, *The Goldberg Committee: Legal and Extra-legal Means to Solving the Naqab Bedouins Case*, HAGAR STUDIES IN CULTURE POLITY AND IDENTITIES (2008).

established for many reasons.¹⁹¹ Some reasons related to the Bedouin struggle and their living conditions, while other reasons related to Israel's settlement project and policy of land control, including Israel's plan to transfer military facilities from the center of the State, near Tel-Aviv, to the Negev.¹⁹² Additionally, the strengthening Bedouin struggle and the growing appearance of Bedouin issues in national and international media shamed and embarrassed Israel.¹⁹³ In some cases, the visible struggle even changed and impeded Israel's settlement plans.¹⁹⁴

In the past two decades, the Bedouin struggle for their rights was notably strengthened.¹⁹⁵ Several national and international organizations started to work for the Bedouin cause and advocate for their rights.¹⁹⁶ The

¹⁹¹ See *id.*

¹⁹² See *id.*

¹⁹³ See U.N. Econ. & Soc. Council, Comm. on Economic, Social, and Cultural Rights, 30th Sess., May 5-23, 2003, U.N. Doc. E/C.12/1/Add.90 (2003), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1%2fAdd.90&Lang=en.

¹⁹⁴ See Yehezkel Lein, *Land Grab: Israel's Settlement Policy in the West Bank*, B'TSELEM (2002), https://www.btselem.org/download/200205_land_grab_eng.pdf.

¹⁹⁵ See Ahmad Amara, Ismael Abu-Saad & Oren Yiftachel, *Indigenous (In)Justice*, HARVARD UNIVERSITY PRESS (2012) <http://www.geog.bgu.ac.il/members/yiftachel/books/Indigenous%20%28In%29Justice.pdf>.

¹⁹⁶ See Moran Elsana, *The Dispossession and Recognition of Indigenous Peoples' Land Rights—The Case of Bedouin in Israel*, AMERICAN UNIVERSITY (2013),

organizations began to submit petitions to local courts, the Supreme Court, and other tribunals, file reports to international bodies, and approach local and international media to raise awareness of Bedouin issues, including their living conditions, unrecognized villages, and land dispossession.¹⁹⁷ Human rights organizations started to urge Israel to provide basic services to Bedouin in the unrecognized villages, such as health services, education, infrastructure such as roads, and electricity for schools.¹⁹⁸ When Israel refused these services, the organizations submitted petitions to courts and litigated for Bedouin rights.¹⁹⁹ In many cases, they succeeded in forcing Israel to establish health clinics, build schools, pave roads, and provide many other rights and services.²⁰⁰

On the planning and building level, many NGOs, along with community leaders, challenged Israel's planning policy.²⁰¹ Through several Supreme Court

<https://auislandora.wrlc.org/islandora/object/thesesdissertations%3A95/datastream/PDF/view>.

¹⁹⁷ *See id.*

¹⁹⁸ *See id.*

¹⁹⁹ *See id.*

²⁰⁰ *See, e.g.*, HC 786/04, Ahlam el-Sana v. Ministry of Health (unpublished manuscript) (2004) (Isr.) (petition for family health clinics in Laqiya and Hura in the Naqab).

²⁰¹ *See* HCJ 6672/00, Jazi Abu Kaf v. Minister of the Interior PD (2000) (Isr.); Pador 02-2-790, 2 TAKDIM ELION 2002(3), 2935 (dismissing a petition to prevent the expansion of the jurisdiction of the Omer Municipality that would encompass the land of Bedouin villages of Tarabin and Mkemen).

petitions, NGOs managed to get decisions that canceled the expansion of the master plans of some Jewish towns that aimed to annex lands that belonged to Bedouin villages.²⁰² In other petitions, NGOs succeeded in freezing parts of the National Master Plan that ignored the Bedouin villages.²⁰³ which ignore the Bedouin villages. Further, the organizations were able to get a decision that required the National Planning and Building Council to amend the Master Plan in a way that must take into account the existence of Bedouin villages in future planning.²⁰⁴ These achievements forced the State to take the Bedouin villages into consideration when planning the Beer-Sheva Metropolitan Plan.²⁰⁵

In January 2008, the Minister of Construction and Housing (MOCH) appointed a committee of eight members, headed by emeritus Supreme Court Justice Eliezer Goldberg.²⁰⁶ However, instead of focusing on the Bedouin development problems, the Committee focused on additional ways to evict and displace the Bedouin from the unrecognized villages to the Bedouin townships

²⁰² *See id.*

²⁰³ Known in Hebrew as *tama* 4/14.

²⁰⁴ *See* H CJ 1991/00 Abu-Hamad vs. the National Planning Council PD (2007) (Isr.); TAKDIM ELION 2007(3), 2542.

²⁰⁵ *See id.*

²⁰⁶ *See* Shahar Ilan & Yanir Yagna, *Committee: Government Should Formally Recognize Bedouin Villages in Negev*, HAARETZ (2008), <http://www.haaretz.com/news/committee-gov-t-should-formally-recognize-bedouin-villages-in-negev-1.259322>.

and settle their land claims.²⁰⁷ The Bedouins disputed the composition of the Goldberg Committee because six of the eight members were Jews who represented the Israel's interests.²⁰⁸ Two Bedouin representatives were appointed by the minister, but these members were affiliated with the government cause rather than Bedouin rights.²⁰⁹ Neither of the members came from Bedouin NGOs or Bedouin rights groups.²¹⁰

The Goldberg Committee issued a report after a year-long process of deliberations, during which the Committee heard from State officials, representatives from local and international organizations, and some Bedouins who did not boycott the Committee.²¹¹ In November 2008, a report was submitted to the Israeli Prime Minister that drew up general guidelines and recommendations for the government on how to deal with Bedouin settlement.²¹² Although the report is the first official document to recognize the historical

²⁰⁷ See Ahmad Amara, *The Battle for the Land and Housing Rights of the Negev Bedouin*, http://www.academia.edu/235048/The_Battle_for_the_Land_and_Housing_Rights_of_the_Negev_Bedouin (last visited Feb. 6, 2013).

²⁰⁸ See *id.*

²⁰⁹ See *id.*

²¹⁰ See *id.*

²¹¹ See Ahmad Amara, *The Goldberg Committee: Legal and Extra-legal Means to Solving the Naqab Bedouins Case*, HAGAR STUDIES IN CULTURE POLITY AND IDENTITIES (2008), https://www.researchgate.net/publication/269141091_The_Goldberg_Committee_Legal_and_extra-legal_means_of_solving_the_Naqab_Bedouin_case.

²¹² See Ministry of Construction & Housing, *supra* note 22 at 31–2.

injustices imposed upon the Bedouin, the recommendations did not meet the minimum expectations of the Bedouin community.²¹³

According to leading human rights organizations, the Goldberg Committee failed to recognize Bedouin land rights and did not suggest any solution.²¹⁴ Instead, it suggested similar mechanisms and methods that had failed in the past.²¹⁵ The Committee even added new methods and mechanisms that further discriminate against Bedouin and deprive them of some of their compensation rights, namely ownership of 20% of their land.²¹⁶ As for the recognition of Bedouin villages, the Committee failed to specify clear recommendations.²¹⁷ Instead, it suggested that only villages with a sufficient population in locations that do not conflict with other plans could be recognized.²¹⁸ Ultimately, the Committee's report did not suggest any major change for the Bedouin problem and did not propose any substantial solution for any of the three issues in conflict: recognition of Bedouin land, recognition of their villages, or demolition of their

²¹³ See Elsana, *supra* note 196.

²¹⁴ See *id.*

²¹⁵ See *id.*

²¹⁶ See *id.*

²¹⁷ See *id.*

²¹⁸ See Etta Prince-Gibson, *The Bedouin Dilemma*, MOMENT MAGAZINE (2019) <https://www.momentmag.com/bedouin-dilemma/>.

houses.²¹⁹ The report was a disappointment in regard to Bedouin land rights, recognition of their villages, and demolition of their homes.²²⁰

Furthermore, many Bedouins consider the Report to be the major source of their current troubles.²²¹ It accelerated the process of the Bedouin land confiscation, supported the policy of house demolition, and encouraged the uprooting their villages.²²² Most importantly, it established the platform for the Praver Plan, which was used to execute the recommendations of the Goldberg Committee.²²³ These recommendations

²¹⁹ See Regional Council for the Unrecognized Villages in the Negev, *Principles Paper Submitted to the Committee for Bedouin Settlement in the Negev*, GOLDBERG COMMITTEE (Feb. 7, 2008) (copy on file with author).

²²⁰ See Regional Council for the Unrecognized Villages in the Negev, *A Response to Goldberg Commission Report* (Dec. 28, 2008) (copy on file with author).

²²¹ See Harriet Sherwood, *Bedouin's Plight: 'We Want to Maintain Our Traditions. But It's A Dream Here'*, THE GUARDIAN (2011) <https://www.theguardian.com/world/2011/nov/03/bedouin-plight-traditions-threat-israel>.

²²² See Ben Fargeon & Michal Rotem, *Enforcing Distress: House Demolition Policy in the Bedouin Community in the Negev*, NEGEV COEXISTENCE FORUM FOR CIVIL EQUALITY (2016), https://www.dukium.org/wp-content/uploads/2016/06/HDR_2016_ENG-1.pdf.

²²³ See *The Arab Bedouin in the Unrecognized Villages in the Naqab (Negev): Between the Hammer of Praver and the Anvil of Goldberg*, ADALAH'S NEWSLETTER, (Apr. 2011), https://www.adalah.org/uploads/oldfiles/upfiles/2011/Thabet_English_2.pdf.

causes the eviction of the Bedouin from their villages and confiscation of their land.²²⁴

4. *The Praver Plan*

Later, in the same year, Israel established another team to examine the execution of the committee's recommendations and suggested guidelines for a policy on the Bedouin settlement in the new townships, including their land claim settlements.²²⁵ The government also asked the Committee to provide recommendations on policies to regulate the Bedouin settlement and provide proposals for new legislation for this matter.²²⁶

In 2009, a short time after the Goldberg Committee's Report, the government established the Praver Committee, headed by Ehud Praver, the former deputy chairman of the National Security Council.²²⁷

²²⁴ See *id.*

²²⁵ See *Recommendations of the Implementation Team for the Goldberg Report for the Regulation of Bedouin Settlement in the Negev*, ISRAEL PMO, (המלצות צוות היישום לדו"ח גולדברג להסדרת התיישבות הבדואים), בנגב,

<http://www.pmo.gov.il/policyplanning/hevra/Documents/goldberg1012.pdf> (last visited Aug. 19, 2017).

²²⁶ PRIME MINISTER'S OFFICE, *The Establishment of a Commission to Draft Policy for Regulating Bedouin Settlement in the Negev*, <http://www.pmo.gov.il/Secretary/GovDecisions/2007/Pages/des2491.aspx> (last visited July 10, 2017).

²²⁷ See *The Praver Plan and Analysis* (2011), <https://www.adalah.org/uploads/oldfiles/upfiles/2011/Overview%20and%>

The government asked the Committee to prepare a plan for the implementation of the Goldberg Committee's recommendations, which include:²²⁸ (1) the settlement of Bedouin land claims; (2) the planning of new towns for Bedouin; and (3) the enforcement of the law in regard to the Bedouin illegal house construction (i.e. house demolition).²²⁹

In May 2011, the Praver Committee submitted its recommendations in a report known as the Praver Report.²³⁰ The Report suggested new compensation offers for Bedouin claimants.²³¹ It distinguished the compensation of the Bedouin for claims of possessed land, land designated as agricultural land, and unpossessed land (Bedouin have to give up possession of the land, which means they have to evacuate their

20Analysis%20of%20the%20Praver%20Committee%20Report%20Reco
mmendations%20Final.pdf.

²²⁸ See *The Arab Bedouin in the Unrecognized Villages in the Naqab (Negev): Between the Hammer of Praver and the Anvil of Goldberg*, ADALAH'S NEWSLETTER, (2011), http://www.adalah.org/uploads/oldfiles/ufiles/2011/Thabet_English_2.pdf (last visited Mar. 15, 2019).

²²⁹ See Anat Raskin, *Shel Me Hadamah Hazu? Baekvot Doah Praver Lehasdarat Hahityashvout Habedouit Banegev [Whose Land? Following The Praver Report On The Regulation Of Bedouin Settlement In The Negev]*, MEZRAH, <http://www.goarad.co.il/?pid=15&t=mFinal&L1=41&L2=144&item=1847> (last visited July 10, 2017).

²³⁰ See Ze'ev Binyamin "Benny" Begin, *Regulating Bedouin Settlement in the Negev Report*, <http://www.pmo.gov.il/BranchesAndUnits/beduin/Documents/DOCHbegin.PDF> (last visited Sept. 24, 2016).

²³¹ See *id.*

land).²³² Regarding only possessed land, the Report suggested offering Bedouin claimants parcels of land up to 50% of their claimed land as compensation.²³³ As discussed *supra*, during the last sixty years, Israel displaced most of the Bedouin from their land and deprived their possession; therefore, the number of current landholders is very small.²³⁴ For claims regarding land not possessed by claimants, which is the majority of Bedouin claimants, the Report suggested only offering Bedouin monetary compensation.²³⁵ This means depriving this group of any part of their land as compensation.²³⁶

With respect to the issue of planning arrangements for Bedouin settlements and recognition of Bedouin villages, the Report stated: “solutions for the existing population will be in the existing seven government-planned townships, in the Abu Basma villages (or by expanding the jurisdiction of such

²³² See *Israeli Land Authority Destroys Bedouin Fields In Negev*, MA'AN NEWS AGENCY (2014), <http://www.maannews.com/Content.aspx?id=671036>.

²³³ See INTER-MINISTERIAL TEAM TO IMPLEMENT REPORT RECOMMENDATIONS FOR REGULATING BEDOUIN SETTLEMENT- FURTHER DISCUSSION AND TRANSFER OF ACTIVITIES FROM ONE OFFICE SPACE, PRIME MINISTER'S OFFICE, <http://www.pmo.gov.il/Secretary/GovDecisions/2011/Pages/des3707.aspx> (last visited Mar. 15, 2017).

²³⁴ See *Israeli Land Authority Destroys Bedouin Fields In Negev*, MA'AN NEWS AGENCY, (Feb. 5, 2014), <http://www.maannews.com/Content.aspx?id=671036>.

²³⁵ See *id.*

²³⁶ See *id.*

villages), and in new settlements.”²³⁷ In this regard, the Report suggests beginning a process of planning that would cover the total Bedouin population in the unrecognized villages.²³⁸ The process of the settlement regulation would include planning expansions for the existing towns to absorb the additional Bedouin concentrations, and establishing new townships as deemed necessary.²³⁹

With regard to recognition of new Bedouin villages, the Report set a high bar of requirements for recognition.²⁴⁰ It stated: “[T]he establishment of new settlements is contingent upon the ‘criteria of population density and continuity’, as well as ‘an examination of size and economic capacity.’”²⁴¹ For years, similar criteria have prevented the recognition of Bedouin villages.²⁴² The Report also included several other

²³⁷ See A Report of the Inter-Ministerial Team for the Implementation of the Recommendations to Regulate Bedouin Settlement in the Negev (hereinafter *Praver Report*), Art. 2.5.2, (2011), http://moch.gov.il/Gov_Decisions/Pages/GovDecision.aspx?ListID=f33e0a4b-aa35-4b12-912e-d271a6476a11&WebId=fe384cf7-21cd-49eb-8bbb-71ed64f47de0&ItemID=289 (last visited July 10, 2017).

²³⁸ See *id.*

²³⁹ Concentrations are the unrecognized Bedouin villages, as the State prefers to call them.

²⁴⁰ See *The Arab Bedouin in the Unrecognized Villages in the Naqab (Negev): Between the Hammer of Praver and the Anvil of Goldberg*, ADALAH’S NEWSLETTER, http://www.adalah.org/uploads/oldfiles/upfiles/2011/Thabet_English_2.pdf (last visited Mar. 15, 2019).

²⁴¹ *Praver Report*, *supra* note 237.

²⁴² See *id.*

elements like a strict timetable and strict implementation of rules to ensure completion.²⁴³ Additionally, the proposal includes “a plan for the economic development and growth of [the] Bedouin population in the Negev.”²⁴⁴

Many human right organizations believe that the results of the Praver Plan would be disastrous for the Bedouin if implemented, since the plan suggests the eviction of the majority of the Bedouin from their villages in the Negev.²⁴⁵ The Report reveals that only one-third of the Bedouin of the unrecognized villages will remain in their current places, while two-thirds will be uprooted from their villages and resettled in other Bedouin towns.²⁴⁶ The Report proposed to displace nearly 20,000 to 30,000 Bedouins from their villages and transfer them to other Bedouin towns such as Rahat, Kseifa, and Hura.²⁴⁷ Many villages such as Assir,

²⁴³ *See id.*

²⁴⁴ *Id.* at 32-34.

²⁴⁵ *See The Praver Plan and Analysis*, <https://www.adalah.org/uploads/oldfiles/upfiles/2011/Overview%20and%20Analysis%20of%20the%20Praver%20Committee%20Report%20Recommendations%20Final.pdf>.

²⁴⁶ *See id.*

²⁴⁷ *See* Zafrir Rinat, *Israel Approves Plan to Relocate 30,000 Bedouin from Unrecognized Villages*, HAARETZ, (Sept. 11, 2011), <http://www.haaretz.com/news/national/israel-approves-plan-to-relocate-30-000-bedouin-from-unrecognized-villages-1.383772>.

Alssera, and Um Alhiraan—with respective populations of 1500, 1000, and 500—would be demolished.²⁴⁸

Additionally, the plan suggested implementing a new segregation protocol in the Negev.²⁴⁹ It arranges for Bedouin settlements within a clearly demarcated and separate region in the Negev; it separates the Bedouin population from the rest of the State's population.²⁵⁰

After the Report's publication, many right wing political parties protested against the plan.²⁵¹ They claimed that the government was giving out the Negev to the Bedouin.²⁵² As a result of the amounting pressure from these right wing political groups, Prime Minister Benjamin Netanyahu ordered the National Security Advisor, Jacob Amidror, to review the Report.²⁵³ Accordingly, Amidror reviewed the plans and made

²⁴⁸ See Adalah, *Nomads Against Their Will*, THE ATTEMPTED EXPULSION OF THE ARAB BEDOUIN IN THE NAQAB:THE EXAMPLE OF ATIR-UMMAL-HIERAN (Soshana London Sappir trans.), <https://www.adalah.org/uploads/oldfiles/eng/publications/Nomads%20Against%20their%20Will%20English%20pdf%20final.pdf> (last visited Sept. 24, 2016).

²⁴⁹ See *id.*

²⁵⁰ See *id.*

²⁵¹ See Ronen Medzini, *On The Way To Approval: Large Cut in Lands for Bedouin*, YNET, (Dec. 31, 2012), <http://www.ynet.co.il/articles/0,7340,L-4116414,00.html>.

²⁵² See *id.*

²⁵³ See *Netanyahu Tries to Turn Arab Peace Initiative on its Head*, THE TIMES OF ISREAL, (June 1, 2016), <https://www.timesofisrael.com/netanyahu-tries-to-turn-arab-peace-initiative-on-its-head/>.

several amendments that affect the location of the resettlement, land ownership claims, and the amount of compensation.²⁵⁴ Amidror's amendments further decreased the area designated for the Bedouin settlement.²⁵⁵ He state "no land [compensation] will be given to Bedouin and no Bedouin settlement will be planned west of Highway 40."²⁵⁶

In addition, Amidror's amendments decreased the amount of land the Bedouin were supposed to receive as part of their compensation as claimants.²⁵⁷ The amendment specifies that the proposed arrangement would only apply to Bedouin who filed a lawsuit prior to October 1979, and whose claims were not rejected by the Land Settlement Officer or the court.²⁵⁸ Another amendment provides that the proposed arrangement will apply only to land, which the Bedouins held and cultivated, rather than claims for grazing lands, which constitute most of the claimed land.²⁵⁹ Further, the amendments held that the determination of land area for purposes of providing compensation shall be made

²⁵⁴ *See id.*

²⁵⁵ *See id.*

²⁵⁶ Medzini, *supra* note 251.

²⁵⁷ *See The Association for Civil Rights in Israel*, TEL AVIV HEADQUARTERS (Oct. 2011), https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/ISR/INT_CESCR_NGO_ISR_47_9137_E.doc.

²⁵⁸ *See id.*

²⁵⁹ *See Ahmad Amara, The Negev Land Question: Between Denial and Recognition*, 42 INST. FOR PALESTINE STUDIES, 4 (2013), <https://www.palestine-studies.org/jps/fulltext/162935>.

according to evidence of cultivation of the land, or living on the land close to the time of filing the original claim, provided that the land was not held at that time or in the future by the State.²⁶⁰

Bedouin, who earlier objected to the Praver Plan, claimed that Amidror's amendments made the proposal totally unacceptable, mainly because the amendments dramatically reduced the land Bedouin could get in compensation as part of the land settlement.²⁶¹ The original Praver Plan proposed an area of 45,220 acres (183,000 dunams) for Bedouin living in the unrecognized villages in exchange for settlement of their land claims, but after the amendments, the area was reduced by almost half.²⁶²

In summary, the Praver Plan outlines implementation of the Goldberg Commission Report to deal with the Bedouin settlement issue in the unrecognized villages, rather than recognizing their villages. The Plan was prepared without any consultation with Bedouins of the unrecognized villages, and it could

²⁶⁰ See Rinat Zafrir, *Ben-Gurion Government Recognized Bedouin Rights*, HAARETZ, <http://www.haaretz.co.il/news/education/1.1473104> (last visited Jul 10, 2017).

²⁶¹ See Elsana, *supra* note 196.

²⁶² See Rinat Zafrir, *Israel Approves Plan to Relocate 30,000 Bedouin From Unrecognized Villages*, HAARETZ.COM, (2011), <http://www.haaretz.com/news/national/israel-approves-plan-to-relocate-30-000-bedouin-from-unrecognized-villages-1.383772> (last visited July 10, 2017) (noting that Bedouin representatives define the program "a declaration of war on the Bedouin.").

lead to the uprooting of tens of thousands of Bedouin from their homes.²⁶³

5. *The Legislative Method of Land Dispossession and the Ordinance Regime*

On the legislative level, after the establishment of Israel, it was less acceptable than it had been during the War, but also illegal, to evict the Bedouin, who became citizens of the State from their villages.²⁶⁴ Therefore, the State began using another, less aggressive, and more politically acceptable means to evict the Bedouin from their lands: the law. Thus, the State started relying more on legislation in order to continue to the “wholesale takeover” of Bedouin lands.²⁶⁵ Legislation not only enabled the dispossession of Bedouin land but also legitimized the dispossession in legal terms and in eyes of many Israeli citizens and international community.²⁶⁶ These legislations can be divided into two groups. The first group were national/general laws, which applied to all the Arabs in Israel, facilitated the dispossession of Bedouin land as part of the general policy of Arab lands

²⁶³ See *ACRI: Discriminatory Praver Plan Approved*, NEW ISRAEL FUND AUSTRALIA (Sept. 13, 2011), http://www.nif.org.au/acri_discriminatory_praver_plan_approved (last visited July 10, 2017).

²⁶⁴ See *Elsana*, *supra* note 196.

²⁶⁵ See *id.*

²⁶⁶ See Amer El Huzeil et al., *A Plan for the Treatment of the Bedouin Problem*, CENTER FOR LEGAL AND ECONOMIC RESEARCH IN THE MIDDLE EAST 9 (1999).

dispossession.²⁶⁷ These laws include the Absentee Property Law (1950) and the Land Acquisition Law (1953).²⁶⁸ The second group of laws, which this Article focuses on, specifically focused on Bedouin land dispossession, including: The Land Rights Settlement Ordinance (1969), the Negev Land Acquisition Act (Peace Treaty with Egypt) of 1980 (The Peace Law), and the Public Land Law (Trespasser Eviction) of 1981 (Amendment 2005).²⁶⁹

This second group of laws, especially Land Rights Settlement Ordinance (1969), “created the ‘alleged’ mechanism and framework for the investigation for Bedouin land rights,”²⁷⁰ which resulted in the dispossession of most of their land, and continue to serve for such purpose.²⁷¹

²⁶⁷ See Joshua Weisman, *The Land Law, 1969: A Critical Analysis*, 5 ISR. L. REV., 379 (1970), available at <https://www.cambridge.org/core/journals/israel-law-review/article/land-law-1969-a-critical-analysis/CB85A330BFD6D551D3210C8A197C6970>.

²⁶⁸ See Land Acquisition Law, 5740-1980, 34 LSI 190, 170-182 (Isr.).

²⁶⁹ See Weisman, *supra* note 267.

²⁷⁰ ISSACHAR ROSEN-ZVI, TAKING SPACE SERIOUSLY: LAW, SPACE, AND SOCIETY IN CONTEMPORARY ISRAEL 46 (2004) (they created a “complex web of legal mechanisms that imposed insurmountable procedural and evidentiary obstacles that preventing the indigenous Bedouin from effectively protecting their land.”).

²⁷¹ See Ahmad Amara, *The Battle for the Land and Housing Rights of the Negev Bedouin*, HOUSING & ESC RTS. L. Q. 1 (Mar. 2008) http://www.academia.edu/235048/The_Battle_for_the_Land_and_Housing_Rights_of_the_Negev_Bedouin.

B. *LAND RIGHTS SETTLEMENT ORDINANCE OF 1969*

The Land Rights Settlement Ordinance (1969) is the first major legislation that disproportionately impacted Bedouin land rights.²⁷² During the late 1970s, as part of Israel's policy of land registration, the State legislated the Ordinance to register and determine the ownership of land in Israel.²⁷³ As part of this procedure, Israel initiated a process for settling all Bedouin land claims.²⁷⁴

The Bedouins filed 3,220 land-title settlement lawsuits asking the State to recognize their land ownership for about 245,000 acres of land.²⁷⁵ Many Bedouin, however, were excluded from this process. The Alazazimah tribes, for example, who owned about 55,500 acres, located in Sahl-Albagar (*Har-Hanegev* region), were prevented from filing land settlement claims due to the fact that the State had previously expropriated their land for military needs.²⁷⁶ In this lone step, the State dispossessed about 20% of Bedouin

²⁷² See AMARA, *supra* note 195.

²⁷³ See Havatzelet Yahel, *Land Disputes Between the Negev Bedouin and Israel*, 11 ISR. STUD. 1–22, 11 (2006).

²⁷⁴ See Porat, *supra* note 46 at 457; PORAT, *supra* note 77 at 19.

²⁷⁵ See SWIRSKI AND HASSON, *supra* note 136 at 19.

²⁷⁶ See Yiftachel, *supra* note 4.

land.²⁷⁷ Thus, as several scholars indicate the Bedouin land claims reached as many as 300,000 acres.²⁷⁸

Surprisingly, all of the 3,220 Bedouin land settlement claims were rejected by the Land Settlement Officer.²⁷⁹ Therefore, per the Ordinance requirement, the Settlement Officer forwarded all Bedouin lawsuits to the District Court for final judgment.²⁸⁰ The Settlement Officer claimed that the Bedouin do not possess the required documents, namely British or Ottoman title deeds to prove their land ownership.²⁸¹ The Land Settlement Officer refused to accept the Bedouin's traditional documentation, such as contracts for land

²⁷⁷ See Dan Rabinowitz & Sliman Khawalde, *Demilitarized, then Dispossessed: The Kirad Bedouins of the Hula Valley in the Context of Syrian-Israeli Relations*, 32 INT'L J. OF MIDDLE EAST STUD., 511, (2000) <http://www.jstor.org/stable/259423>.

²⁷⁸ See Ronen Shamir, *Suspended in Space: Bedouins Under the Law of Israel*, 30 LAW SOC. REV. 231–257, 244, 250 (1996).

²⁷⁹ See Suhad Bishara, *Adalah's Position Paper on "Prayer II"*, THE LEGAL CENTER FOR ARAB MINORITY RIGHTS IN ISRAEL (Jan. 2017), https://www.adalah.org/uploads/uploads/Adalah_Position_Paper_Prayer_II_23.1.2017.pdf.

²⁸⁰ See LAND RIGHTS SETTLEMENT ORDINANCE [REVISED] 5729, (1969), https://www.nevo.co.il/law_html/Law01/286_031.htm (last visited Aug 25, 2018) (according to article 43 of the Ordinance when the Land Settlement Officer decides to dismiss a land settlement claim he has to forward it for the District Court, for a final decision).

²⁸¹ See *Land and Housing Rights Violations in Israel's Unrecognized Bedouin Villages, OFF THE MAP*, <https://www.hrw.org/report/2008/03/30/map/land-and-housing-rights-violations-israels-unrecognized-bedouin-villages> (last visited Mar. 23, 2019).

purchase (*Sanadat*) and other evidence as sufficient proof of their land rights.²⁸²

When Bedouin reached the District Court, as part of their appeal, it as well, rejected their lawsuits and refused to recognize any of their land rights, thus they appealed to the High Court.²⁸³ The High Court also rejected their land claims and ordered the land to be registered under the name of the State.²⁸⁴ In the precedential case of the *Alhawashelah v. State of Israel*, the High Court rejected the appeal and decided that Bedouin land was *Mawat* land,²⁸⁵ and thus ruled that Bedouin lands were to be registered as State land, indicating that the Bedouin had no legal right to the land.²⁸⁶ Since *Alhawashelah* is case precedent, all courts have rejected all subsequent Bedouin land claims.²⁸⁷ To this day, no court has ruled in favor of Bedouin claimants for a single land-claim lawsuit.²⁸⁸

²⁸² See Elsana, *supra* note 196.

²⁸³ *Id.* at 56.

²⁸⁴ See *id.*

²⁸⁵ See CA 218/74 Salim El-Huashlla v. State of Israel (*Alhawashelah*) 38(3) PD 141 (1974) (Isr.).

²⁸⁶ See HCJ 84/83 El-Wakili v. State of Israel 37(4) PD 173 (1983) (Isr.).

²⁸⁷ See Ron Kelley, *Israel's Bedouin: The End of Poetry*, AM. FOR MIDDLE EAST UNDERSTANDING (AMEU) 3 (1998) ("To date, no Bedouin has ever won a land claim. This includes some 3,000 lawsuits by the Bedouin over the past two decades.").

²⁸⁸ See *Palestinian Bedouin IDPs, Ongoing Displacement and Land Rights: Israel Poisons Bedouin Land in Abda Unrecognized Villages*, AL MAJDAL 37 (2003) (reporting that no Bedouin has ever won a land claim to

I. The Ordinance Regime: The Effect of Legislation

Indeed, the laws that Israel passed created a new regime for Bedouin land dispossession, but among the many laws, the Land Rights Settlement Ordinance is particularly notable.²⁸⁹ The Ordinance eliminates the previous land regime, introduces a new regime that regulates Bedouin land, and effectively ensures Bedouin land dispossession.²⁹⁰ Instead of settlement and land title registration, the Ordinance initiated a new process that established the basic legal elements that ensured the long-term dispossession of Bedouin lands.²⁹¹ Through sophisticated and extraordinary steps, the Ordinance established new rules for land settlement claims, determined the jurisdiction of courts, and articulated the applicable law for the land settlement process.²⁹²

The administrative and legal steps that the Ordinance requires for Bedouin land claims is challenging for most Bedouin.²⁹³ It requires them to submit a “land title settlement claim” to the Land Rights

any of the more than 3000 lawsuits filed over 50 years, and this places the burden of proof regarding Bedouin land claims on Bedouin).

²⁸⁹ See DAVID KRETZMER, *THE LEGAL STATUS OF THE ARABS IN ISRAEL* (1990).

²⁹⁰ See *Elsana*, *supra* note 196.

²⁹¹ See *id.*

²⁹² See *id.* (It started by describing the process, defining the settlement areas, and drafting the orders and notices for the towns).

²⁹³ See Land Rights Settlement Ordinance (Revised), 5729- 1969, 13 OSI 293, 293, Art. 17 (Isr.).

Settlement Officer (part of the Ministry of Justice).²⁹⁴ Then, the Land Settlement Officer investigates and assesses the claims.²⁹⁵ If the Officer approves the claim, he registers the land in the name of the Bedouin claimant.²⁹⁶ However, when the Officer rejects the lawsuit, he declares it a disputed claim and transfers the case to the District Court for a final judgment.²⁹⁷ According to the Ordinance, only the Court is authorized to settle disputes concerning land rights and to make final decisions that dismiss their land claim.²⁹⁸ Article 17(a) of the Ordinance states: “[u]pon publishing a settlement notification in a town, every person who claims land rights shall appear [in court]. . . and submit his memorandum of claim in the prescribed form.”²⁹⁹ Articles 43 and 44 of the Ordinance determine both the appropriate court jurisdiction and the applicable law to be applied where there is a dispute between claimants.³⁰⁰

Relying on the *claim* that the Bedouin do not hold any land rights, the Ordinance requires Bedouins to go

²⁹⁴ *Id.*

²⁹⁵ *See id.* at Art. 22.

²⁹⁶ *See id.*

²⁹⁷ *See id.* at Art. 53.

²⁹⁸ *See id.* at Art. 43 (“The court only is authorized to hear and adjudicate any dispute about land in a settlement area, and if there were conflicting claims between two or more plaintiffs, the settlement officer shall transfer the dispute to court.”)

²⁹⁹ *Id.* at Art. 17(a).

³⁰⁰ *See id.* at Art. 43, 44 (Article 43 of the Ordinance provides that only courts shall have jurisdiction over disputes regarding land settlement, and if there are any conflicting claims between two or more claimants, the Land Settlement Officer shall transfer the dispute to court).

through a legal process to prove their rights.³⁰¹ The Ordinance disregards Bedouin traditional land rights and sets the platform for the policy of land dispossession in the Negev.³⁰² The Ordinance ignores customary law or land rights based on international customary law.³⁰³

The Ordinance establishes a set of rules that ensure the supremacy of the State and the inferiority of Bedouin legal rights.³⁰⁴ It supports Israel's legal position and undermines the Bedouin's position.³⁰⁵ Specifically, Article 135 of the Ordinance "classifies all [*M*]awat lands as State property, unless formal legal title could be produced."³⁰⁶ Since the State classifies Bedouin land as *Mawat* land, it essentially classifies, or considers Bedouin land as State property.³⁰⁷ Such articles give a clear privilege to the State over Bedouin claimants and facilitate the expropriation of their land by legal means.³⁰⁸

Further, the Ordinance preserves the State's right to object to any Bedouin claim without requiring that the

³⁰¹ See Elsana, *supra* note 196, at 58.

³⁰² See *id.*

³⁰³ See Land Rights Settlement Ordinance, *supra* note 293.

³⁰⁴ See Elsana, *supra* note 196, at 58.

³⁰⁵ See *id.*

³⁰⁶ Tawfiq S. Rangwala, *Inadequate Housing, Israel, and the Bedouin of the Negev*, 42 OSGOODE HALL LAW J. 415, 440–41 (2004).

³⁰⁷ See PLIA ALBECK, *DOAH MESAKEM SHEL TZEVEV HAMOMHIM LEANYAN HESDER MEKARKIEN EZOR HASYAG HANGEV HTSFONI* [REPORT OF THE TEAM OF EXPERTS ON THE ISSUE OF LAND SETTLEMENT IN THE SIYAG AREA AND THE NORTHERN NEGEV], ISR. MINISTRY OF JUST. (Oct. 20, 1975).

³⁰⁸ See Elsana, *supra* note 196, at 58.

State prove any rights or connection to the Bedouin land.³⁰⁹ Article 22 of the Ordinance adds “[t]he State’s rights in land shall be investigated and will be settled whether officially sued or not, all rights in land that have not been proven by other claims shall be registered in the name of the State.”³¹⁰ In addition, Article 53 grants the State the ultimate right to object to the settlement of title claims.³¹¹ The Article states:

[i]f an objection was filed in one of the matters mentioned in Articles 51 and 52, the Settlement Officer shall transfer the matter to the court, and the court may order the registration of the possessor as the owner of the land, if it finds that the mentioned conditions were met.³¹²

In traditional legal procedure, the party who claims rights against the possessor generally submits the claim, serves as the plaintiff, and proves his claim.³¹³ The new order, however, reverses the traditional rule.³¹⁴ Instead of asking the state (to submit a claim and prove it) it requires the Bedouin—who possess the land—to submit the claim, serve as the plaintiff, and carry the burden of proof.³¹⁵

³⁰⁹ *See id.* at 59.

³¹⁰ *See* Land Rights Settlement Ordinance, *supra* note 293.

³¹¹ *See id.* at Art. 53.

³¹² *Id.*

³¹³ *See* Elsana, *supra* note 4, 354-57 (Oct. 2017).

³¹⁴ *See id.*

³¹⁵ *See id.* at 351.

According to Article 43 of the Ordinance, for either side to be able to own the land, both the Bedouin and the State must prove their rights.³¹⁶ Under Article 45 of the Ordinance, when neither the Bedouin nor the State agrees to serve as plaintiff, the court decides which side should be the plaintiff and subsequently bear the burden of proof.³¹⁷ In Bedouin land cases, however, the Ordinance changes the traditional order and demands the Bedouin plaintiffs to submit lawsuits for land settlement.³¹⁸ Then, the State then summons the Bedouin to court and, once again, forces them to serve as plaintiff and carry the burden of proof.³¹⁹

The Ordinance also transforms the status of the Bedouin people from “owners of land,” or “possessors of land,” to “claimants of land,” or “claimants for land rights.”³²⁰ This transformation has a tremendous effect on Bedouin land adjudication in courts, which results in a long, complicated legal process that denies Bedouin

³¹⁶ See Land Rights Settlement Ordinance, *supra* note 293 at Art. 43.

³¹⁷ See *id.* at Art. 45.

³¹⁸ See *id.* at Art 43 (The Bedouin must defend their land in court. If they do not appear in court, they automatically lose their claims and their land).

³¹⁹ Many Bedouins were surprised to find that when they came to defend their land they were summoned to court as plaintiffs rather than defendants. Some Bedouins did not know about the claims their parents had submitted filed in the land registry long time before legal action had been taken by the State.

³²⁰ See Land Rights Settlement Ordinance, *supra* note 293 at Art. 17(a).

land rights.³²¹ The process requires Bedouins who appeal for land ownership to prove their rights, while those who agree to accept compensation are not required to do so.³²² In other words, the process denies the recognition of land rights for those who insist on asking courts to recognize their land ownership, while at the same time, recognizes land ownership for those who agree to sell their land to the State. In latter cases, the State recognizes Bedouin rights *mainly* based on their traditional law.³²³ The State's "acceptable paradox" does not find any representation in the legal process.³²⁴ Such changes contradict basic rules of due process and law of evidence (rules of evidence), delay adjudication, and prevent Bedouins from effectively bringing forth evidence to prove their claims.

A careful analysis of the situation on a macro level reveals that the State, rather than the Bedouin, deserves to serve as the plaintiff. The State is the party that acts and behaves as the plaintiff in the general adjudicatory process. The State is the one interested in obtaining or acquiring rights through the legal process; It claims rights against the Bedouin who is in possession

³²¹ Compare Joseph William Singer, *Nine-Tenths of the Law: Title, Possession & Sacred Obligations*, 38 CONN. L. REV. 605 (2006) (explaining the land settlement dispute between the Onieda Indian Nation and New York's non-Indian citizens).

³²² See Land Rights Settlement Ordinance, *supra* note 293 at Art. 43.

³²³ See Morad Elsana, *The Recognition of Indigenous Peoples' Land: Application of the Customary Land Rights Model on the Arab-Bedouin Case in Israel*, 7 GEO. J. L. & MOD. CRIT. RACE. PERSP. 45, 61 (2015).

³²⁴ See Elsana, *supra* note 196.

of the land.³²⁵ The State claims rights, summons Bedouins to court, and controls the legal process, while the Bedouin (defined as the plaintiff) behave as defendants and attempt to defend their rights in court. Also, in the land settlements process, the State is the party who initiates the legal process and forces the Bedouin to file their claims. In the 1970s the State forced the Bedouin to file land title settlement claims; in 2003, the State filed counterclaims and forced the Bedouin to adjudicate their land settlement claims in court.³²⁶ Therefore, the State, rather than the Bedouin, should serve as the plaintiff and carry the burden of proof.

Israel's control of the legal process is another factor that should be taken into consideration. The State decides when to start the process, when to freeze it, and against which tribe or tribes to submit claims. The State controls many important elements of the process such as the time passed, and the statutes of limitation. Only through colonial "legal magic" does the impossible become possible against indigenous peoples.³²⁷ The timing of such acts proves to have a tremendous effect on the Bedouin claims, since it defines and controls the ability of the Bedouin to provide evidence and call witnesses to court. These limitations eventually lead to the Bedouin's inability to prove their cases.

³²⁵ See generally Kent McNeil, *The Onus of Proof of Aboriginal Title*, 37 OSGOODE HALL L.J. 775, 776 (1999).

³²⁶ See Morad Elsana, *The Role of the Judiciary in Dispossessing Indigenous Peoples*, AM J. JURIS. 333, 350-51 (2018).

³²⁷ See Elsana, *supra* note 323 at 61.

One blatant example of how the State undermines the Bedouin position can be found in Israel's ability to delay adjudication of Bedouin land claims for a long time. The State has kept Bedouin claims pending for about forty years after the Land Settlement Process began in the early 1970s. That delay is one of the elements that severely undermined the Bedouin's ability to bring evidence, especially witnesses, to the court, particularly because of the Bedouin oral culture³²⁸ During the delay, many Bedouin claimants lost the ability to prove their land rights due to the death of many claimants and witnesses to traditional, pre-State life.³²⁹ Much of the major evidence was lost with them.³³⁰ This is significant because the Court requires evidence from 1921, the year of the British *Mawat* Ordinance, or before to be available.³³¹ Further, the Ordinance places the ultimate power to adjudicate Bedouin land in the hands of the State.³³² The State then abuses that power by managing and manipulating the process in order to weaken the Bedouins' legal position and undermine their ability to prove their land rights.

Finally, one must notice that Article 44 of the Ordinance outlines the substantive law courts should apply when evaluating a land settlement claim, provides that: (a) A court shall judge by land laws that are in effect

³²⁸ *See id.*

³²⁹ *See id.*

³³⁰ *See id.* at 62.

³³¹ *See id.*

³³² *See id.*

during the trial, *and take into an account the rights of real estate by law and by equity.*³³³ However, despite this, the state and courts have ignored such options and insists the Bedouin have no land rights.³³⁴

2. *The Bedouins' Limited Understanding of the Land Title Settlement Process*

Bedouins' limited understanding of Israel's legal system and of the Hebrew language are other factors that limit their ability to advocate their land rights, and indirectly facilitate confiscation of their land.³³⁵ Land title settlement was an unfamiliar process for the Bedouin; many of them did not really understand the process, its goals, or the documents they received from the Land Registrar Officer, such as application forms for land claims.³³⁶ Many mistakenly thought that the State wanted to register their land in the Land Registry to recognize their ownership.³³⁷ During the process of submitting the land title settlement applications, the Bedouin were required to provide evidence of their land rights, which they did in the form of *Sanadat* or witnesses' statements.³³⁸ They also had to define the

³³³ *See id.* at 54.

³³⁴ *See id.* at 43.

³³⁵ *See id.* at 20.

³³⁶ *See id.* at 57.

³³⁷ *See id.*

³³⁸ *See id.* at 19.

borders and the size of their land.³³⁹ At the end of each application for land title settlement, they received official documents signed by the State Officer of the Land Registration Office, under the Ministry of Justice, acknowledging receipt of those documents, but not confirming land ownership.³⁴⁰ However, many Bedouins were illiterate and could not read the content of the documents they received.³⁴¹ To this day, some Bedouins mistakenly think that the application forms or the confirmation of their traditional documents, that they receive from the Land Settlement Officer, are Israeli title deeds for their land.³⁴² Therefore, many Bedouin mistakenly refer to the documents as title deeds or official documents that prove their land ownership.³⁴³

In addition, during the late 1970s, when Israel started the land settlement process, the Bedouin did not trust the new State, especially in issues related to their land.³⁴⁴ In the beginning, many of them refused to submit land settlements claims through this process.³⁴⁵ The State, only after making extraordinary efforts, was able to convince the Bedouins to submit settlement

³³⁹ *See id.*

³⁴⁰ *See id.* at 57.

³⁴¹ *See id.*

³⁴² *See id.* at 58.

³⁴³ *See id.*

³⁴⁴ *See id.* at 56.

³⁴⁵ *See* SWIRSKI AND HASSON, *supra* note 136 at 5 (discussing Bedouin suspicions and attitudes toward state authorities).

claims.³⁴⁶ The State also sent officers to tribal leaders to convince them to submit claims on behalf of their tribes³⁴⁷. Furthermore, when such efforts did not suffice, the State warned the Bedouins about the consequences of not submitting claims.³⁴⁸

3. *The Government Committee and the Mawat Land Doctrine*

In 1975, Israel appointed a special committee to inquire into the legal status of Bedouin land rights (which became known as the Albeck Committee).³⁴⁹ In October the same year, the Committee issued its report about Bedouin land rights.³⁵⁰ The report stated three main points: first, all lands of the Negev (*Siyag* area) are *Mawat* lands because when the Ottoman Lands Code of 1858 was published, there was no permanent settlement in the Negev; second, no Bedouin can acquire any land

³⁴⁶See Farah Mihlar, *Israel's Denial of the Bedouin*. BRIEFING LONDON: MINORITY RIGHTS GROUP INT'L. 1, 8 (2011).

³⁴⁷See Aron Medzini, *Bedouin Settlement Policy in Israel: Success or Failure?* HORIZONS GEOGRAPHY 79/80, 37, 39 (2012).

³⁴⁸See LAWS OF THE STATE OF ISRAEL ORDINANCE ART. 5(B)(2) (a warning of the expected results to a person who does not file his claim at the required time, and will not delimit the plot he is claiming and the penalties that are due to him for this failure) (translation).

³⁴⁹See Ahmad Amara, *The Goldberg Committee: Legal and Extra-legal Means to Solving the Naqab Bedouins Case*, HAGAR STUDIES IN CULTURE POLITY AND IDENTITIES 8 (2): 227, 229 (2008), https://www.researchgate.net/publication/269141091_The_Goldberg_Committee_Legal_and_extra-legal_means_of_solving_the_Naqab_Bedouin_case.

³⁵⁰See *id.*

rights, even under possession and continuous cultivation; third, all Bedouin land is State land.³⁵¹

The report further established the principles of the policy applicable to Bedouin land to this day, particularly the non-recognition of Bedouin land ownership.³⁵² As a result of the Committee's recommendations, the State did not bring any further Bedouin land claim lawsuits to be adjudicated in courts until 2003.³⁵³ Instead, "[t]he State started to push the Bedouin to relinquish their lands by offering them compensation and convincing them to settle their land claims through different methods of pressure and negotiations."³⁵⁴

4. *Halt on Bedouin Land Settlement 1984-2003 and The Negev Plan of 2003*

Between 1984 and 2003, Israel continued to refuse to recognize the Bedouin land rights and continued to expropriate their land when the Bedouin refused to accept the State's offers for land settlement.³⁵⁵ Meanwhile, the majority of Bedouin refused to either relinquish their lands or settle their land lawsuits.³⁵⁶ Some Bedouin refused as a matter of principle and others

³⁵¹ See SWIRSKI AND HASSON, *supra* note 136 at 20–21.

³⁵² See *id.* at 21.

³⁵³ See Elzana, *supra* note 4.

³⁵⁴ *Id.* at 31.

³⁵⁵ See *id.* at 31–32.

³⁵⁶ See *id.* at 33.

refused due to inadequate offers of compensation.³⁵⁷ As a result, this situation became a deadlock, with no solution that both the Bedouin and State could accept. Israel started to claim that the halt in the land rights settlement process was impeding the development of the Negev.³⁵⁸ This created another excuse for the State to continue to promote more aggressive plans and policies to end the Bedouin land issue; specifically, the State pursued adjudicating the Bedouin long-time pending land settlement lawsuits (completion of the land title settlement process), obtained favorable decisions in courts, and disposed the Bedouin land.³⁵⁹

For many years, Israel claimed the Bedouin land issue was the main obstacle for the development of the Negev.³⁶⁰ In fact, State officials and political leaders continue to promote the idea that Bedouin land claims are the main reason behind their refusal to leave their land and move to settle in the new townships.³⁶¹ The State started to claim in the media that solving or eliminating the land settlement issues is the only way to develop the Negev.³⁶²

³⁵⁷ See Havatzelet Yahel, *Land Disputes Between the Negev Bedouin and Israel*, 11 ISR. STUD. 1–22, 12 (2006) (stating “from 1978 until 2003 agreed settlements of claims were achieved with regard to over 140,000 dumans, most of them in the area of airfields”).

³⁵⁸ See *id.* at 8.

³⁵⁹ See *id.* at 10–12.

³⁶⁰ See ADALAH, *supra* note 248.

³⁶¹ See *id.* at 22–24.

³⁶² See Ghazi Falah, *Israeli State Policy Toward Bedouin Sedentarization in the Negev*, 18 J. OF PALESTINE STUDIES, 71–91 (1964).

In 2003, the government decided to confront the Bedouin issue through the Negev Plan of 2003.³⁶³ According to the government, the plan aimed to improve services and infrastructure in the recognized townships and to guard the State's land in the Negev against Bedouin trespassing or theft.³⁶⁴ In practice, the plan sought to relocate Bedouin from their villages into designated townships and settle Bedouin land claims.³⁶⁵

Bedouin were also concerned that their land would be taken from them to serve Jewish development needs and settlement programs in the Negev, rather than to serve their own urgent development needs, that have been ignored for more than sixty years, as it did in Umm al-Hiran Village, and Azzarnouge.³⁶⁶ Bedouin claimed that the main goal of the plan is to evict them from their land, concentrate them in large towns, and dispossess them of their land.³⁶⁷ Therefore, the Bedouin opposed

³⁶³ See SWIRSKI AND HASSON, *supra* note 136 at 12.

³⁶⁴ See Israeli Government Resolution No. 216 (ARB/I) (14 April 2003).

³⁶⁵ See Noam Sharvit, *When the State sues Bedouin compromise Globes*, <http://www.globes.co.il/news/article.aspx?fbid=1000174638> (last visited July 10, 2017); SWIRSKI AND HASSON, *supra* note 136 at 29.

³⁶⁶ See IAN LUSTICK, ARABS IN THE JEWISH STATE: ISRAEL'S CONTROL OF A NATIONAL MINORITY 50 (1980) (describing the State policy of control of the Arab minority through land control).

³⁶⁷ See Interview with Oren Yiftachel, Prof. at Ben Gorion University, at Ben Gorion University (2011), *available at* http://www.dirasat-aclp.org/arabic/files/Oren_Yiftachel_Kitab_Dirasat_2011.pdf (discussing the Bedouin boycott of the Goldberg Committee).

the plan, refused to cooperate, and advocated against the plan.³⁶⁸

C. *COUNTERCLAIMS: THE ENDLESS EFFECT OF THE
ORDINANCE*

In 2004, as part of the Negev Plan—in a step designed to put additional pressure on Bedouin to coerce them to settle their land claims—the State renewed the adjudication of Bedouin land claims in courts and started to submit mass counterclaim lawsuits against Bedouin.³⁶⁹ Israel vowed to adjudicate all Bedouin land claims and settle the Bedouin land issue.³⁷⁰ To make the plan more effective and assertive Israel allocated special budgets, and hired a special team of lawyers and experts to complete the task as soon as possible.³⁷¹

These counterclaims compel the Bedouin to either settle their land claims or appear in court for adjudication.³⁷² If claimants do not appear in court to adjudicate their claims, the court would dismiss their

³⁶⁸ See *Qiadat Alawasat Alar Abi Tarfud Attaanul Ma' Lajnat Goldberg Letasweat Alaradi [Arab Sector Leadership Refuses To Deal With The Goldberg Committee To Resolve The Issue Of Land]*, ARABS 48 (Jan. 20, 2008), available at <http://www.pls48.net/?mod=print&ID=25973> (reporting on the final statement of the Peace Tent Conference for land and housing protection).

³⁶⁹ See *Elsana*, *supra* note 4 at 34.

³⁷⁰ See *id.*

³⁷¹ See *ADALAH*, *supra* note 248 at 10.

³⁷² See *Yahel*, *supra* note 69.

claim and confiscate the land.³⁷³ The government also raised the compensation offer, for a limited time of three years, in order to speed up the process, and increased the land component compensation from 20% to 30%.³⁷⁴ At the same time, it warned that those who refuse to settle their land claims would be deprived of both their land and compensation.³⁷⁵

The results have been devastating for Bedouin land rights. Shortly after 2004, the State brought more than 130 counter-claims to Bedouin land claims; the State won forty cases, relating to about 6177 acres (25,000 dunams) that were registered in the name of the State.³⁷⁶ As of April 2016, Bedouins have lost every land case that has come to trial.³⁷⁷ In an effort to extinguish

³⁷³ See *The Negev Coexistence Forum for Civil Equality, THE ARAB-BEDOUINS OF THE NAQAB- NEGEV DESERT IN ISRAEL (SHADOW REPORT) 1*, 11–12 (2006).

³⁷⁴ See *Decisions of the Council at its Meeting on 04/03/04*, ISRAEL LANDS ADMINISTRATION, http://www.mmi.gov.il/hodaotmmiint/show_h.asp?key=525&CodeMaarec et=1 (last visited July 10, 2017) (outlining compensation land prices and construction fields regarding the Negev Bedouin).

³⁷⁵ See *id.*

³⁷⁶ See Yahel, *supra* note 69 at 13.

³⁷⁷ See *Supreme Court Rejects Appeal by Bedouin Land Rights Activist Convicted of Trespassing*, HAARETZ, November 22, 2018, <https://www.haaretz.com/israel-news/supreme-court-rejects-appeal-by-bedouin-land-rights-activist-1.6677523> (last visited Apr 20, 2019); Jillian Kestler-D'Amours, ISRAEL'S BEDOUIN BATTLE DISPLACEMENT, <https://www.aljazeera.com/indepth/features/2013/08/2013828125945288209.html> (last visited Apr 20, 2019) (Israeli courts have ruled in favor of the Israeli government in 100 percent of bedouin land ownership cases to date); C.A 4220/12 Al-Uqbi vs. State of Israel, , Nivo 2015.

the Bedouin land issue, the State summons Bedouin claimants to the Land Settlement Office one by one, or tribe by tribe, to settle Bedouin land claims.³⁷⁸

D. NEGEV LAND ACQUISITION (PEACE TREATY) 1980

Israel also utilized Negev Land Acquisition legislation to dispossess Bedouin land. In 1979, the State signed the Camp David Peace Agreement with Egypt.³⁷⁹ According to the agreement, Israel agreed to withdraw from the Sinai Peninsula and remove its military bases from Egypt.³⁸⁰ Rather than selecting alternative available places in the Negev, Israel decided to relocate the military airport and the military bases on Bedouin land in the Tal-Almalah region, where a major concentration of Bedouin tribes and lands are located.³⁸¹

In order to avoid legal intervention by Bedouin or human rights groups, Israel passed the Negev Land Acquisition Law of 1980, known as the Peace Treaty with Egypt (“Peace Treaty Law”).³⁸² The Peace Treaty Law imposed Bedouin eviction and land dispossession, and established the compensation process by law.³⁸³ This

³⁷⁸ See Ronit Levine-Schnur, *Regulating Bedouin Settlement: A Disengagement Plan for the Negev*, ISR. DEMOCR. INST. 22–23, https://www.academia.edu/5348554/Regulating_Bedouin_Settlement_A_Disengagement_Plan_for_the_Negev (last visited July 4, 2017).

³⁷⁹ See HUMAN RIGHTS WATCH, *supra* note 64, at 15.

³⁸⁰ See David K. Shipler, *Israelis Approve Sinai Withdrawal*, N.Y. TIMES, (April 22, 1982).

³⁸¹ See ROSEN-ZVI, *supra* note 270, at 64–65.

³⁸² See The Negev Land Acquisition, *supra* note 156.

³⁸³ See HUMAN RIGHTS WATCH, *supra* note 64, at 15-16.

law allowed the State to evict all Bedouin people in the Tal-Almalah area and exile them to the designated townships of Arara and Ksyefeh.³⁸⁴ It also allowed the State to confiscate their land in exchange for small amounts of compensation, with a price fixed by law.³⁸⁵

Although it was designed specifically for the Tal-Almalah region, the State applied the Peace Treaty Law to all Bedouin land settlement matters, especially to matters regarding land compensation.³⁸⁶ Today, the law defines both the monetary and land components of compensation.³⁸⁷

The Peace Treaty Law not only physically dispossessed Bedouins of their land, but also subjected them to inadequate and discriminatory compensation rules. Compensation paid to other settlers highlights inequity: the State paid Jewish settlers evacuated from the Negev in the same year more than ten times the amount paid to the dislocated Bedouin.³⁸⁸ Twenty-four years later, when the State evicted Bedouin and Jewish residents from Gaza Strip, compensation reflected a comparable disparity.³⁸⁹ Following the 1980 Peace

³⁸⁴ *See id.*

³⁸⁵ *See id.*

³⁸⁶ *See Amara, supra* note 78, at 77.

³⁸⁷ *See id.*

³⁸⁸ *See* Elezer Goldberg, HAVADA LEHATSAAT MDINIOT LEHASDARAT HITYASHVUT HABEDOUIM BANEDEV [PROTOCOL OF GOLDBERG COMMITTEE], MINISTRY OF CONSTRUCTION & HOUSING 75 (May 6, 2008).

³⁸⁹ *See* Ezra Hezikia, *The Evacuees Act Passed Third Reading*, ARUTZ SHEVA (Aug. 4, 2011) <http://www.inn.co.il/News/News.aspx/223902>.

Agreement, the State worked to confiscate as much Bedouin land as possible with these inequitable compensation terms.³⁹⁰

*E. PUBLIC LAND ACT (REMOVAL OF SQUATTERS) OF
2005*

In 2005, the government enacted additional legislation aimed to further dispossess Bedouin land. The law, part of an amendment to the Public Land Act, gives local authorities the power to issue orders for the removal of squatters from public land without judicial review, a previously mandatory step.³⁹¹ The obvious purpose of the Act is to prevent Bedouins from using their traditional land—which the State defines as public land—and to evict them quickly if they do use it.³⁹²

VI. CONCLUSION

Through administrative activities and various legislation, Israel established a system that dispossesses Bedouin land³⁹³ and targets Bedouin land rights on multiple levels.³⁹⁴ Such laws not only facilitate Bedouin

³⁹⁰ See ROSEN-ZVI, *supra* note 270 at 3.

³⁹¹ See Amara, *supra* note 78, at 38-39.

³⁹² See Adalah, *Discriminatory and Anti-Democratic Laws*, ADALAH'S NEWS L. 1, (Feb. 2008) available at <http://www.adalah.org/newsletter/heb/feb08/2.php>.

³⁹³ See Amara, *supra* note 78, at 29.

³⁹⁴ See *id.*

land dispossession, but also enable and legitimize land dispossession by the executive and judiciary branches.³⁹⁵

The case of Bedouin land dispossession mirrors the systematic dispossession of indigenous peoples by colonial powers, who employed methods of invasion, occupation, removal, concentration, denial of land rights, legislation initiatives, and strategic policies, to dispossess land.³⁹⁶ Additionally, the Israeli State, also made many physical changes to the Bedouin landscape, further disconnecting the Bedouins physically, economically, and emotionally from their land.³⁹⁷ Such changes destroyed the Bedouins' traditional economy,³⁹⁸ undermined their traditional leadership, and literally changed the Bedouins' landscape by building towns and projects on their land.³⁹⁹ These changes were designed to convince the Bedouins that restoring the land to the

³⁹⁵ See Jeremy Forman & Alexandre Kedar, *Colonialism, Colonization and Land Law in Mandate Palestine: The Zor al-Zarqa and Barrat Qisarya Land Disputes in Historical Perspective*, 4 THEOR. INQ. LAW, 496 (2003), <http://www.degruyter.com/view/j/til.2003.4.issue-2/til.2003.4.2.1074/til.2003.4.2.1074.xml?onlyResultQuery=chinese> (last visited July 10, 2017).

³⁹⁶ See Walid Salem, *Jerusalem: Reconsidering the Settler Colonial Analysis*, 21 PALESTINE-ISR. J. OF POL., ECON. AND CULTURE (2016), <http://www.pij.org/details.php?id=1706>.

³⁹⁷ See *id.*

³⁹⁸ See Moshe Dayan, *On Land Policy and the Bedouin Problem*, HAARETZ, (July 31, 1963), cited in ISSACHAR ROSEN-ZVI, *TAKING SPACE SERIOUSLY: LAW, SPACE, AND SOCIETY IN CONTEMPORARY ISRAEL*, 60 (Ashgate Publ'g Ltd., 2004).

³⁹⁹ See Amara, *supra* note 78, at 279-80.

Bedouins is not an option,⁴⁰⁰ and that the only available solution to Bedouin land claims is through financial compensation.⁴⁰¹ This is created a psychology that keeps pushing many Bedouins toward settling their land rights and giving up their longtime struggle.

The most important consideration is the way Israel's actions and legislations were able to manipulate legal rights and eliminate the Bedouins ability to advocate for their land.⁴⁰² The State changed procedures, changed the burden of proof, delayed the adjudication process until witnesses died, and ignored a substantial law that could recognize Bedouin rights under the principle of equity.⁴⁰³ In addition, Bedouin professional and economic disadvantages, coupled with linguistic

⁴⁰⁰ See *Mabo v Queensland (No. 2)* (1992) 175 CLR 1 (Austl.); *Wik Peoples v Queensland* (1996) 187 CLR 1 (Austl.) (addressing the difficulties of recognizing Aboriginal rights due to the new realities surrounding their land).

⁴⁰¹ See Admin C (BS) 257/04 Ass'n for Support and Prot. Of Bedouin Rights in Israel v. The Nat'l Planning and Constr., PM 2004(2) 7038 (2004) (Isr.) (finding no connection to land after the State evicted Bedouin from their land in the 1950s and refusing to interfere in the State's project to build a Jewish town on Bedouin land).

⁴⁰² See *id.*; Elisabeth Marteu, *Some Reflections on How Bedouin Women of the Negev Relate to Politics: Between Political Marginalization and Social Mobilization*, 16 BULL. OF THE FRENCH RES. CTR. IN JERUSALEM, 271, 273-74 (2005) (discussing Israeli nationalization of Bedouin land).

⁴⁰³ See Yahel, *supra* note 69 (stating "from 1978 until 2003 agreed settlements of claims were achieved with regard to over 140,000 dumans, most of them in the area of airfields").

obstacles, are eliminating Bedouin chances to win in courts.⁴⁰⁴

⁴⁰⁴ See Ismael Abu-Saad, *Education as a Tool for Control vs. Development Among Indigenous Peoples: The Case of Bedouin Arabs in Israel*, 2 HAGAR INT'L SOC. SCI. REV., 241, 245, 256 (2001) (discussing socio-economic, linguistic, and educational challenges Negev Bedouin community faces).