

A REVIEW OF THE STATE OF ISRAEL'S LAND DISPUTES WITH THE BEDOUIN COMMUNITY

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INTRODUCTION

Land disputes between the Negev Bedouin and the State of Israel have existed long before the establishment of the State of Israel. The Ottoman Empire and the British Mandate did not recognize the Bedouin's land ownership in the Negev, because the Bedouin did not register the required documents to prove land ownership.¹ From the State of Israel's early days, state authorities recognized the need to allocate free land for state use and were aware of individual Bedouin's land claims.² During the last twenty years, the State of Israel has implemented new policies regarding its land disputes with the

1. Havatzelet Yahel, *Land Disputes Between the Negev Bedouin and Israel*, 2 ISRAEL STUD. 1, 2 (2006) [hereinafter *Land Disputes*]; see generally Ruth Kark, *Landownership and Spatial Change in Nineteenth Century Palestine: An Overview*, TRANSITION FROM SPONTANEOUS TO REGULATED SPACIAL ORG. (1984) [hereinafter *Landownership and Spatial Change*]; see Morad Elsana, *The Recognition of Indigenous People's Land: Application of the Customary Land Rights Model on the Arab-Bedouin Case in Israel*, 7 GEOLOGY J.L. & MOD. CRITICAL RACE PERSP. 59 (2015) [hereinafter *The Recognition of Indigenous People*]. See generally Oren Yiftachel, *Naqab Bedouins and the (Internal Colonial Paradigm, in INDIGENOUS (IN)JUSTICE: HUM. RTS. L. AND BEDOUIN ARABS IN THE NAQAB/NEGEV* 281 (Ahmad Amara et. al. eds., 2013).

2. See *Bedouins in the State of Israel*, THE KNESSET (2010), https://www.knesset.gov.il/lexicon/eng/bedouim_eng.htm (last visited Nov. 21, 2018).

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Bedouin.³ The policies were implemented to address widespread, illegal construction and land use; and the State's need to develop the Negev for the benefit of its inhabitants.⁴ The State of Israel's policies led to land dispute claims in court, allowing for settlements providing Bedouin individuals with monetary and land compensation.⁵

This article reviews the Israeli Supreme Court's leading decisions on the Bedouin land disputes and outlines the historical facts that lead to these disputes. First, the article reviews the origin of the Bedouin tribes. Then, the article analyzes the Bedouin's claims and its arguments for land rights, which was based on traditional customary rights and indigenous people rights for the land. Finally, the article reviews the State of Israel's policies and the arguments in support and in opposition of the policies.

I. INDIGENOUS PEOPLE'S LAND CLAIMS UNDER INTERNATIONAL LAW: INTERNATIONAL RECOGNITION OF INDIGENOUS PEOPLE'S RIGHTS

To understand issues concerning indigenous people's rights and territorial land ownership, one must review the legal history and legal contentions during and after European colonizers discovered the New World in the fifteenth and sixteenth centuries. During European colonization, the "Doctrine of Discovery" justified the occupation and dispossession of indigenous peoples' land.⁶ The Doctrine of Discovery maintains that sovereignty and full ownership of territory belonged to

3. Havatzelet Yahel et al., *Fabricating Palestinian History: Are the Negev Bedouin an Indigenous People?*, 19.3 MIDDLE E. Q. 3, 11 (Summer 2012) [hereinafter *Indigenous People?*].

4. See *Bedouins in the State of Israel*, THE KNESSET (2010), https://www.knesset.gov.il/lexicon/eng/bedouim_eng.htm (last visited Nov. 21, 2018).

5. Yahel, *Land Disputes*, *supra* note 1, at 11; *Bedouins in the State of Israel*, THE KNESSET (2010), https://www.knesset.gov.il/lexicon/eng/bedouim_eng.htm (last visited Nov. 21, 2018).

6. Yahel et al., *Indigenous People?*, *supra* note 3, at 3-4; see generally Robert J. Miller et al., *Discovering Indigenous Lands: The Doctrine of Discovery in the English Colonies* 1, 2-3 (OXFORD UNIV. PRESS, 2010); see also Erica-Irene Daes (Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights), *Prevention of Discrimination and Protection of Indigenous Peoples and Minorities*, U.N. Doc. E/CN.4/Sub.2/2001/21, at 10-11 (June 11, 2001) [hereinafter Daes, *Protection of Indigenous Peoples*].

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the nation that discovered the new land.⁷ The British Crown used the *terra nullius* argument to justify its classification of unoccupied territory as “crown land.”⁸ *Terra nullius*, or “empty land,” refers to unoccupied territory with no sovereignty or recognized system of rights.⁹ The United States Supreme Court and the British Crown Courts in Australia and New Zealand upheld the doctrine of *terra nullius* in the nineteenth century.¹⁰ However, courts from various states were concerned that indigenous populations, living in a territory before European colonization, possessed ownership rights to the respective land.¹¹ Legal arguments focused on whether a system of land rights had existed before colonizers arrived at the disputed territories.¹² If a system did exist, then arguments focused on how the system determined indigenous population’s land rights.¹³

In 1920, indigenous people began bringing their cases before international forums.¹⁴ Decades later, the international community began recognizing and advancing indigenous people’s claims in three different ways. First, the International Labor Organization, a United Nations affiliate, adopted international conventions.¹⁵ Second, in 1990, organizations like the World Bank began listing indigenous rights as an

7. Miller et al., *supra* note 6, at 3.

8. *Id.* at 5; Yahel et al., *Indigenous People?*, *supra* note 3, at 3.

9. See generally Miller et al., *supra* note 6, at 7; see also Daes, *Protection of Indigenous Peoples*, *supra* note 6, at 11.

10. See generally *id.* at 5; Siegfried Wiessner, *Rights and Status of Indigenous Peoples: A Global Comparative and International Legal Analysis*, 12 HARV. HUM. RTS. J. 57, 72 (1999).

11. See, e.g., *The Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of Aug. 31, 2001, Inter-Am. Ct. H.R., (Ser. C) No. 79 (2001) (indigenous rights in Nicaragua); *Richtersveld Community and Others v. Alexkor Ltd and Another* 2001 (3) SA 1293 (S. Afr.) (indigenous rights in South Africa); *Mabo v Queensland [No. 2]* (1992) 175 CLR 1, 5 (Austl.) (indigenous rights in Australia).

12. Yahel et al., *Indigenous People?*, *supra* note 3, at 3; Yiftachel, *supra* note 1, at 304.

13. Yahel et al., *Indigenous People?*, *supra* note 3, at 3

14. *Id.*; see Daes, *Protection of Indigenous Peoples*, *supra* note 6, at 11-12.

15. *Id.*; see, e.g., *The Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries*, June 2, 1957, 328 U.N.T.S. 247; *Convention Concerning Indigenous and Tribal Peoples in Independent Countries*, June 27, 1989, 1650 U.N.T.S. 384.

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issue of concern, especially in the third-world countries.¹⁶ Finally, the issue of indigenous people's rights became internationally recognized after extensive research.¹⁷

In 1971, the United Nations created different forums and conferences and promoted studies concerning indigenous rights to lands.¹⁸ The United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities funded a study that focused on indigenous rights to land.¹⁹ The study was funded by United Nations Special Rapporteur Jose Martinez Cobo, who is a former Ecuadorian ambassador on discrimination against indigenous populations.²⁰ In addition to Cobo's study, the World Council of Indigenous Peoples ("WCIP") held its 1974 inaugural meeting in Guyana.²¹ Then, the United Nations Working Group on Indigenous Populations was formed in 1982.²² Next, the United Nations Voluntary Fund for Indigenous Populations was established in 1985.²³ Finally, the International Labor Organization ("ILO") adopted Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries in 1989.²⁴ Mexican sociologist Rodolfo Stavenhagen²⁵ prepared a report for the Inter-American Commission on Human Rights in July 1991 and the proclamation of the International Year of the World's Indigenous People in 1993.²⁶

16. Yahel et al., *Indigenous People?*, *supra* note 3, at 3; Wiessner, *supra* note 10, at 107.

17. *See generally* Daes, *Protection of Indigenous Peoples*, *supra* note 6, at 9–12.

18. *See generally* Seth J. Frantzman et al., *Contested Indignity: The Development of an Indigenous Discourse on the Bedouin of the Negev*, 17.1 *ISR. STUD.* 78, 92 (2012); Havatzelet Yahel et al., *Are the Negev Bedouin an Indigenous People?*, *MIDDLE E. Q.*, 19.3, Summer 2012, at 3.

19. *Id.* at 80.

20. *Id.*

21. *Id.*

22. Sarah. S. Matari, *Mediation to Resolve the Bedouin-Israeli Government Dispute for the Negev Desert*, 34 *FORDHAM INT'L L.J.* 1089, 1099 (2011).

23. Frantzman et al., *supra* note 18, at 80.

24. *Id.*; Siegfried Wiessner, *supra* note 10, at 100.

25. Rudolfo Stavenhagen was a former deputy director of UNESCO and United Nations Special Rapporteur.

26. Daes, *Protection of Indigenous Peoples*, *supra* note 6, at 9, n.10.

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In 1994, the United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities drafted the United Nations Declaration on the Rights of Indigenous Peoples.²⁷ Consequently, the United Nations Permanent Forum on Indigenous Issues was founded in 2000. Later in 2001, Erica-Irene A. Daes²⁸ wrote a paper for the United Nations regarding the discrimination and rights to land of indigenous peoples.²⁹ During that time, the United Nations General Assembly declared the years 1995 to 2004 as the “International Decade of the World’s Indigenous People” and established a permanent forum to prevent discrimination and protect minorities.³⁰ On December 20, 2004, the United Nations General Assembly declared the following years as another decade for indigenous people.³¹

The United Nations Declaration on the Rights of Indigenous Peoples elevated the international community’s recognition of indigenous rights after the United Nations General Assembly adopted it on September 13, 2007.³² One hundred forty three nations supported the declaration and four nations opposed.³³ Israel abstained from voting for the Declaration on the Rights of Indigenous Peoples.³⁴

Although indigenous people’s rights gained international recognition in 2007, the definition and scope of indigenous rights remains flexible. When the Declaration of the Rights of Indigenous Peoples was presented to the United Nations General Assembly in 2006, assembly members disputed over the definition of “indigenous people.”³⁵ Because assembly members could not agree on a definition, the final version of the Declaration on the Rights of Indigenous Peoples, which was adopted in 2007, omitted the definition of “indigenous

27. Frantzman et al., *supra* note 18, at 80.

28. *See generally* Daes, *Protection of Indigenous Peoples*, *supra* note 6.

29. *Id.*

30. Yahel et al., *Indigenous People?*, *supra* note 3, at 3; Wiessner, *supra* note 10, at 58 n.5.

31. *Id.*

32. Frantzman et al., *supra* note 18, at 80.

33. Miller, *supra* note 6, at 2; Yahel et al., *Indigenous People?*, *supra* note 3, at 2. The United States, Canada, Australia, and New Zealand voted against the United Nations Declaration on the Rights of Indigenous People, but later withdrew their opposition.

34. Yahel et al., *Indigenous People?*, *supra* note 3, at 3.

35. *Id.* at 3-4; Yiftachel, *supra* note 1, at 304.

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people.”³⁶ Based on the 2007 Declaration on the Rights of Indigenous Peoples and academic literature, the recurring parameters of indigenous people's land rights can be established through the following:

- original occupancy of the land, determining whether the indigenous people are the descendants of the people who were *first* in the particular territory;
- time duration, determining whether the indigenous people have lived on the land from time immemorial;
- pre-Colonial sovereignty, determining whether the indigenous people had sovereignty before European colonization;
- group attached to land, determining whether the indigenous people maintain a unique spiritual nature relationship to the land on which they live or have lived; and
- indigenous rights are collective unlike the minority rights that are individual.³⁷

II. THE LEGAL ARGUMENTS CONCERNING THE BEDOUIN'S CLAIM FOR INDIGENOUS RIGHTS

Although the 2007 Declaration on the Rights of Indigenous Peoples was not a legally-binding instrument under international law, it has become a benchmark document for future developments in indigenous rights.³⁸ In Israel, the Bedouin developed an identity in the late 1990's, which continued into the early 2000's. Israeli academics led the Bedouin identity development, which occurred in the context of the international discussion regarding indigenous people's land rights.³⁹ Recently, non-governmental organizations (“NGO's”), academic activists, and the Bedouin community have continued to lead this movement seeking international recognition.⁴⁰ The Bedouin in Egypt

36. Yahel et al., *Indigenous People?*, *supra* note 3, at 3-4; Frantzman et al., *supra* note 18, at 80.

37. Yahel et al., *Indigenous People?*, *supra* note 3, at 3-4; *see also* Yiftachel, *supra* note 1, at 301.

38. Alexandra Xanthaki, *Indigenous Rights in International Law Over the Last 10 Years and Future Developments*, 10 MELBOURNE J. OF INT'L L. 27, 27-35 (2009).

39. Frantzman et al., *supra* note 18, at 78-79.

40. *See ASS'N FOR CIV. RTS. IN ISR. ET AL., POL'Y BRIEF: PRINCIPLES FOR ARRANGING RECOGNITION OF BEDOUIN VILLAGES IN THE NEGEV 1* (June 2011)

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and South Arabia never sought the same recognition as the Bedouin in Israel.⁴¹

The Negev Bedouin asserted its land rights based on a new framework, because its land claims would likely fail under preceding case law.⁴² The new framework was premised on customary traditional rights, tribal law, and the status of indigenous people rights.⁴³ The Bedouin argued Israel, like other colonial regimes, dominated its territory, refused to acknowledge the Bedouin's lengthy presence in its private land, and denied the Bedouin's land rights.⁴⁴

Conversely, Israel argued that the Bedouin's land ownership rights were not registered with the State of Israel's Land Registry Office, and thus the Bedouin did not hold official Israeli documents proving their ownership under the state's laws.⁴⁵ In response, the Bedouin argued many of them held traditional documents recognized under tribal law.⁴⁶ The Bedouin individuals claimed these documents defined their land rights and described the land's borders, size, and owner's names.⁴⁷ However, the State of Israel maintained its position that the Bedouin did not have customary rights to land in the Negev.⁴⁸ The State of Israel's land laws, which developed from Ottoman and British Laws, did not recognize Bedouin customs as a legitimate source of private land rights.⁴⁹ In 2007, the Bedouin and the State of Israel initially raised

<https://law.acri.org.il/en/wp-content/uploads/2011/09/Prawer-Policy-Brief-FINAL-ENG.pdf>.

41. Frantzman et al., *supra* note 18, at 84-85.

42. See Yahel et al., *Indigenous People?*, *supra* note 3, at 3-4.

43. See Noa Kram, *State and Bedouin Claims for Land*, in *INDIGENOUS (IN)JUSTICE: HUM. RTS. L. AND BEDOUIN ARABS IN THE NAQAB/NEGEV* 129-30 (Ahmad Amara et. al. eds., 2013).

44. *Id.*

45. Morad Elsana, *The Role of the Judiciary in Dispossessing Indigenous Peoples' Land: The Bedouin Case in Israel*, 34 *J. JURISPRUDENCE* 333, 339 (2017) [hereinafter *Role of the Judiciary*].

46. Morad Elsana, *The Dispossession and Recognition of Indigenous Peoples' Land Rights-The Case of Bedouin in Israel*, *AM. UNIV.* 43, 61-62 (2013) [hereinafter *Dispossession and Recognition*].

47. *Id.*

48. *Id.* at 130-31.

49. See generally Land Law, 5729-1969, 5 *ISR. L. REV.* 292 (1970). The law abolishes the Ottoman classifications and contains no mention of traditional use to

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their arguments at the District Court of Beer Sheba in the Al Uqbi family cases, which comprised of six consolidated cases.⁵⁰ After the district court dismissed the Bedouin's cases, the Supreme Court of Israel affirmed the district court's decision in a thorough opinion.⁵¹

III. THE DISPUTED LAND'S HISTORICAL BACKGROUND

To better understand the details of the Bedouin's cases and the Israeli Supreme Court's decision, it is important to review the historical impact of land legislation on the Bedouin community and the Negev.

A. Sovereign Influence over the Disputed Land

Throughout human history, several cultures and civilizations have exercised their sovereignty and control over the disputed land. Approximately 2,000 years ago, after the destruction of Jerusalem's Second Temple and the Jewish exile, the Roman Empire ruled the disputed land for seven centuries.⁵² In the seventh century, when Muslims conquered the disputed land, Arab tribes began to rapidly migrate north from the desert of South Arabia in search of water and food for their livestock.⁵³ Then, during the sixteenth century, the Ottoman Empire or Ottoman Turks took control over the disputed land and used Islamic principles as a framework to bring Arab tribes together.⁵⁴ Consequently, tribal lifestyle became an integral part of both the systems of government and law, which remained prominent until World War I.⁵⁵ During World War I, Britain conquered the disputed

register land ownership; *see also* Havatzelet Yahel et al., *Are the Negev Bedouin an Indigenous People?*, 19.3 MIDDLE E. Q. 3, 11 (Summer 2012).

50. *See generally* C.C. 7161/06 Al Uqbi et al. v. State of Israel (2012) (Isr.) (Hebrew) (on file with author).

51. *See generally* C.A. 4220/12 Al Uqbi et al. v. State of Israel (2015) (Isr.).

52. Negev Desert, NEW WORLD ENCYCLOPEDIA, http://www.newworldencyclopedia.org/entry/Negev_Desert (last updated Sept. 30, 2016).

53. *Id.*

54. *Id.*

55. Kark, *Landownership and Spatial Change*, *supra* note 1, at 194-95; Yahel et al., *Indigenous People?*, *supra* note 3, at 8.

land from the Ottoman Turks and became the mandatory administrator for Palestine in 1922 until the State of Israel was established in 1948.⁵⁶

B. Sovereign Land Regulations That Established Ownership over Disputed Lands

The civilizations that occupied the disputed lands enacted land regulations that established requirements for land ownership. During Ottoman occupancy over the disputed land, the Ottomans formalized and codified The Ottoman Land Code of 1858.⁵⁷ The Ottoman Land Code of 1858 provided the State with ownership over unclaimed lands unless land claimants can prove their ownership through registration.⁵⁸ The British Mandate in Palestine continued utilizing most of the existing Ottoman legal system, including the laws related to the land.⁵⁹ These existing laws, combined with British adaptations and additions, developed into “The Land (Settlement of Title) Ordinance of 1928.”⁶⁰

The Ottoman and British land regulations established a process for claimants to assert ownership over land. According to Ottoman regulations, ownership of “free land” or “waste land” belonged to the State.⁶¹ This type of land, also known as “mewat” land (meaning “dead land”), is land that was “owned by no one and assigned to no one.”⁶² Further, this type of land is “so far away from the edge of the adjacent community that the ‘loudest voice of a person standing at the closest inhabited place is not heard there.’”⁶³ Under the Ottoman classification, the Negev was classified as a mewat land, which belongs to the State.⁶⁴

56. Yahel et al., *Indigenous People?*, *supra* note 3, at 8.

57. Ruth Kark & Seth J. Frantzman, *The Negev: Land, Settlement, the Bedouin and Ottoman and British Policy 1871-1948*, 39(1) BRIT. J. MIDDLE E. STUD. 53, 55 (Apr. 2012).

58. *Id.*; see Kark, *Landownership and Spatial Change*, *supra* note 1, at 192-93.

59. Kark & Frantzman, *supra* note 57, at 55. Elsana, *The Recognition of Indigenous People*, *supra* note 1, at 58.

60. See Kark, *Landownership and Spatial Change*, *supra* note 1, at 192-95.

61. See Yahel et al., *Indigenous People?*, *supra* note 3, at 11; Kark & Frantzman, *supra* note 57, at 59.

62. See generally *id.* at 11; Kark & Frantzman, *supra* note 57, at 59.

63. Nir Shalev, *Under the Guise of Legality: Israel’s Declarations of State Land in the West Bank*, THE ISRAELI INFO. CTR. FOR HUM. RTS. 1, 15 (2012), https://reliefweb.int/sites/reliefweb.int/files/resources/Full%20Report_651.pdf.

64. See Yahel, *Land Disputes*, *supra* note 1, at 11.

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Under this concept, one who asserts land rights must prove two things. First, a claimant must show that the land is not a mewat land, but rather a “miri land” or “inhabited land.”⁶⁵ Second, the claimant must prove the specific allocation of land rights to grant ownership, and the source of that right, such as long time possession, heritage, or purchase.⁶⁶ When the land is treated as a mewat land, one must also prove he revived the mewat land by means of continuous cultivation, and that, before 1921, he received consent from the state authorities of either the Ottoman Empire or the British Mandate to revive that land.⁶⁷ If he successfully proves that he received such consent, he gains a conclusive “Title Registration” that is open to the public.⁶⁸

After the State of Israel's establishment in 1948, the Israeli Parliament enacted a land regulation called “The Law and Administrative Ordinance,” which maintained the Ottoman legal system.⁶⁹ Thus, unlike colonies in which Western countries have imposed a foreign legal system, the Israeli judicial system was grounded on Muslim regulation practiced by the Ottomans.⁷⁰ This means the State of Israel has continued using the same land regulations practiced by the Ottomans and the British Mandate.⁷¹

Nevertheless, the Bedouin were aware of registration requirements to assert land ownership, and some private ownerships were in fact registered.⁷² However, majority of the Bedouin failed to register or address state authorities with land ownership claims.⁷³

65. See generally Elsana, *Role of the Judiciary*, *supra* note 45, at 355.

66. See Elsana, *Dispossession and Recognition*, *supra* note 46, at 59.

67. See Elsana, *Role of the Judiciary*, *supra* note 45, at 356.

68. See Yahel, *Land Disputes*, *supra* note 1, at 10-11.

69. *Id.* at 19; see generally Law and Administration Ordinance, 5708-1948 (Isr.).

70. See Kram, *supra* note 43, at 129-30.

71. Yahel, *Land Disputes*, *supra* note 1, at 2.

72. *Negev Desert Region, Israel*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/place/Negev> (last visited Nov. 16, 2018).

73. Elsana, *The Recognition of Indigenous People*, *supra* note 1, at 58.

C. Who Are the Negev Bedouin?

The Negev is located in the southern region of Israel, primarily a desert region.⁷⁴ This triangular piece of land is bordered in the east by Jordan and in the west of Egypt's Sinai Desert.⁷⁵ Historically, the Negev shared a border with South Arabia, who had swapped land to provide Jordan with access to the sea.⁷⁶ Bedouin Tribes in the Negev view themselves as the descendants of nomadic tribes from the Arabian Peninsula.⁷⁷ Nomadic Bedouin Tribes dominated the Arabian Peninsula before the rise of Islam.⁷⁸ Most of these tribes arrived to the Negev as recent as the late eighteenth and nineteenth centuries.⁷⁹ They came from the Arabian Desert, the Sinai Peninsula, and Egypt.⁸⁰ Then, they wandered with their livestock between Israel's neighboring lands and the Negev in search for water and food.⁸¹

The extent of the tribes' territory was dictated by the power of the tribe or by the agreements made between the leaders of the tribes.⁸² Occasionally, fights broke out between tribes over control of the land.⁸³ A gradual transition from animal husbandry to agriculture changed the tribes' need for land.⁸⁴ During this time, the Negev did not consist of any permanent towns or villages.⁸⁵

The State of Israel's establishment has dramatically affected the Bedouin population in the Negev. In 1900, the Ottoman established Beer Sheba as the first governing town in the Negev.⁸⁶ Before the State

74. *Negev Desert Region, Israel*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/place/Negev> (last visited Nov. 16, 2018).

75. *Id.*

76. *Id.*

77. A Nomad – is a member of a community of people who live in different locations, moving from one place to another in search of grass land for their animals. *See Bedouins in the State of Israel*, *supra* note 2.

78. Yahel, *Land Disputes*, *supra* note 1, at 9.

79. *Id.*

80. *Id.*

81. *See id.* at 9-10.

82. *See* Yahel, *Land Disputes*, *supra* note 1, at 2.

83. *Id.*

84. *See generally Bedouins in the State of Israel*, *supra* note 2.

85. Yahel, *Land Disputes*, *supra* note 1, at 2.

86. Yahel, *Land Disputes*, *supra* note 1, at 2.

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of Israel was established in 1948, 65,000 to 95,000 Bedouins lived in the Negev.⁸⁷ During the Israeli War of Independence and its immediate aftermath, most of the Bedouin fled to neighboring states.⁸⁸ The remaining Bedouin fought against Israel during the war, while others were forced to leave the Negev.⁸⁹ After the war, the State allowed thousands of Bedouin to return to the Negev.⁹⁰ Most of the returning Bedouin were tribes who settled in the Northern part of the Negev.⁹¹ By 1954, the Bedouin population consisted of 11,000 people; most of them were concentrated into an area of the Negev called Siyag.⁹² This concentration of Bedouin in Siyag was caused by the State of Israel's military regulation and security policy following its War of Independence and war with Egypt in 1954.⁹³ Since the State of Israel's establishment, the Bedouin population has significantly increased to approximately 200,000 to 230,000.⁹⁴

*D. Settlements of Bedouin in the Negev and the
Approach for a Solution*

From the early days of the Israel's establishment, the Bedouin land rights issue in the Negev raised concerns about the Bedouins' way of life. In 1962, the State of Israel appointed committees to study the Bedouin land rights issue.⁹⁵ The committees recommended establishing

87. *Id.* at 3; Elsana, *Role of the Judiciary*, *supra* note 45, at 338; Kark & Frantzman, *supra* note 57, at 75.

88. *See generally* Yahel, *Land Disputes*, *supra* note 1, at 3; *see also* *Bedouins in the State of Israel*, *supra* note 2.

89. *See* *Bedouins in the State of Israel*, *supra* note 2; *see also* Yahel, *Land Disputes*, *supra* note 1, at 3.

90. Yahel, *Land Disputes*, *supra* note 1, at 3.

91. *Id.*

92. Elsana, *Role of the Judiciary*, *supra* note 45, at 338; *see generally* Yahel, *Land Disputes*, *supra* note 1, at 3.

93. *See* Yahel, *Land Disputes*, *supra* note 1, at 3.

94. *See generally* Havatzelet Yahel et al., *Are the Negev Bedouin an Indigenous People?*, 19.3 MIDDLE E. Q. 3, 10 (Summer 2012); *see also* Elsana, *Role of the Judiciary*, *supra* note 45, at 356.

95. *See* Elsana, *Dispossession and Recognition*, *supra* note 46, at 81.

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new towns for the benefit of the Bedouin communities.⁹⁶ The committees also recommended resolving the Bedouin land claims according to the British Mandate's The Land (Settlement of Title) Ordinance of 1928, which the State of Israel adopted.⁹⁷ Thus, the first Bedouin town, Tel Sheva, was established in 1968.⁹⁸ Over the next year thirty years, six more towns were built providing the Bedouin the opportunity to settle communally and enjoy civilized services, such as education and health.⁹⁹ Today, nearly 100,000 Bedouin live in designated urban towns built with government funds.¹⁰⁰ The remaining Bedouin population reside in hundreds of illegal clusters covering more than half a million Dunams.¹⁰¹

Later, the State provided the Bedouin a ten-year period to file land claims consistent with committee recommendations and new regulations.¹⁰² Bedouin individuals filed nearly 3,330 land claims to land registration authorities by the end of 1979.¹⁰³ In response, the State filed counter claims alleging the disputed land was *mawat* land; meaning it is state-owned under Israeli law, because the Bedouin could not prove they used the land.¹⁰⁴

IV. THE IMPACT OF BEDOUIN LAND CLAIM CASES AND ISRAEL'S LAND POLICIES

Courts could not rely on any precedent in deciding the land claim disputes between the Bedouin and the State of Israel. Therefore, the

96. Havatzelet Yahel & Ruth Kark, *Land and Settlement of Israel's Negev Bedouin: Official (Ad Hoc) Steering Committees, 1948-1980*, BRIT. J. MIDDLE E. STUD., 716, 729-30 (2018) [hereinafter *Steering Committees*].

97. *Id.* at 729-36.

98. Yahel, *Land Disputes*, *supra* note 1, at 3; *see generally Bedouins in the State of Israel*, *supra* note 2.

99. *Bedouins in the State of Israel*, *supra* note 2.

100. *Id.*

101. Yahel, *Land Disputes*, *supra* note 1, at 4. One Dunam equals 1,000 square meters.

102. Yahel & Kark, *Steering Committees*, *supra* note 96, at 724.

103. SHLOMO SWIRSKI & YAEL HASSON, INVISIBLE CITIZENS: ISRAEL GOV'T POL'Y TOWARD THE NEGEV BEDOUIN 19 (2006).

104. *See generally* Talia Berman-Kishony, *Bedouin urbanization legal policies in Israel and Jordan: similar goals, contrasting strategies*, 17 TRANSNAT'L L. & CONTEMP. PROBS., 393, 402-03 (2008).

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State sought to create precedent, starting with the Al Hawashella family's cases.¹⁰⁵

A. The Al Hawashella Cases: 1974-1984

In 1974, the Al Hawashella family brought cases to the Beer Sheba District Court claiming land rights around the city of Dimona.¹⁰⁶ The district court denied the claims.¹⁰⁷ Later, in 1984, the Supreme Court denied the Bedouin's appeals and accepted the State's argument that the Bedouin family failed to prove its ownership claims over the Negev lands.¹⁰⁸ The Israeli Supreme Court held the disputed lands in the case were *mawat* land or "waste land," which was recognized by Ottoman law as public land that cannot be classified as private land.¹⁰⁹ The Court determined the lands were *mawat* land because no permanent settlements existed in the Negev when the Ottoman Land Code was enacted in 1858.¹¹⁰ The Court also held the plaintiffs failed to prove that they revived and continuously used the land for private purposes before 1921, and that they gained the Ottoman Empire or British Mandate's consent to own the land.¹¹¹ The Supreme Court's landmark decision established precedent for determining Bedouin land rights.

Despite the Court's decision, the State of Israel refused to proceed with 3,000 other claims that were filed and placed on hold for a long time.¹¹² These claims remained with the land registration authorities

105. C.C. 1/69 (BS) *Salim Al-Hawashella and Others v. State of Israel*, (1974) (on file with author, in Hebrew) (Isr.); C.C. 3/69 (BS) *Salim Al-Hawashella and Others v. State of Israel*, (1974) (on file with author, in Hebrew) (Isr.); C.C. 17/69 (BS) *Salim Al-Hawashella and Others v. State of Israel*, BS (1974) (on file with author, in Hebrew) (Isr.).

106. C.A. 218/74, *Al-Hawashella v. State of Israel*, P.D. 38(3) 141, 141-143 (1984) (on file with author, in Hebrew) (Isr.).

107. *Id.*

108. See Yahel, *Land Disputes*, *supra* note 1, at 11.

109. See Elsana, *Dispossession and Recognition*, *supra* note 46, at 112.

110. *Id.*; C.A. 218/74, *Salim Al-Hawashella v. State of Israel*, P.D. 38(3) 141, 151 (1984) (on file with author, in Hebrew) (Isr.).

111. C.A. 218/74, *Salim Al-Hawashella v. State of Israel*, P.D. 38(3) 141, 151 (1984) (on file with author, in Hebrew) (Isr.).

112. NEGEV COEXISTENCE F. FOR CIV. EQUALITY, PROCESSES OF DISPOSSESSION IN THE NEGEV-NAQAB: THE ISRAELI POL'Y OF COUNTER CLAIMS AGAINST THE BEDOUIN-ARABS 11 (2006).

until early 2003, because the State preferred a compromise over the Bedouin's private land claims.¹¹³

B. The 2001 Conflict Caused the Creation of a New Policy

The State realized the Bedouin's land right claims were an immediate concern, because illegal construction significantly increased throughout the Negev.¹¹⁴ A 2005 report showed that 40,000 illegal construction projects had spread throughout the Negev.¹¹⁵ Between 1948 and 2000, the Negev's landscape dramatically changed.¹¹⁶ After residing in tents and temporary huts for several years, many Bedouin, who lived in unrecognized clusters, started building houses and commercial centers; ignoring the law prohibiting the Bedouin from construction without the State's approval.¹¹⁷ Throughout those years, the State of Israel refused to confront the Bedouin and refrained from enforcing its rights, orders, and regulations over the disputed lands.¹¹⁸ Some critics believe the State was very tolerant of the Bedouin communities and their illegal structures.¹¹⁹ Other critics may believe the Bedouin claims were complicated and that the Israeli government postponed any potential confrontation with the Bedouin, because the government understood the Bedouin's needs and did not have an official land designation plan at the time.¹²⁰

113. See *Bedouins in the State of Israel*, *supra* note 2.

114. See *id.*

115. NEGEV COEXISTENCE F. FOR CIV. EQUALITY, THE ARAB-BEDOUINS OF THE NAQAB-NEGEV DESERT IN ISRAEL 17 (2012).

116. See generally *Bedouins in the State of Israel*, *supra* note 2.

117. See *Bedouins in the State of Israel*, *supra* note 2; see Yahel, *Land Disputes*, *supra* note 1, at 4-5.

118. *Id.* at 12.

119. See Ben Sales, *Bedouin Relocation Faces Opposition Left and Right*, THE TIMES OF ISRAEL (Dec. 12, 2013), <https://www.timesofisrael.com/bedouin-relocation-faces-opposition-left-and-right/>; see *Issue Summary: Negev Bedouin*, INTER AGENCY TASK FORCE ON ISRAELI ARAB ISSUES (Jan. 2018), <http://www.iataskforce.org/issues/view/2>.

120. See, e.g., Martin Raffel, *Negev Bedouins: Challenge for Israel, Priority for the Jewish People*, NEW JERSEY JEWISH NEWS (May 11, 2017), <https://njewishnews.timesofisrael.com/negev-bedouins-challenge-for-israel-priority-for-the-jewish-people/>.

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The Israeli government approved a broad investment plan for the Bedouins in the Negev because it acknowledged the urgency to address the spread of illegal settlements and construction throughout the Negev's hills.¹²¹ The Israeli government also recognized that it must provide the Bedouin with towns and legal villages.¹²² To accomplish this goal, the Israeli government believed court decisions or legal settlements were necessary to resolve the Bedouin's land rights claims in the Negev.¹²³ In 2004, under the government's new policy, 500 cases were filed in the Beer Sheva District Court, demanding that the State of Israel recognize Bedouin's land ownership in the Negev.

Despite the Israeli government's position regarding proof of ownership, it sought to adopt a policy that considers the Bedouin's strong connection to the land.¹²⁴ Accordingly, many Bedouin cases were settled.¹²⁵ However, courts rejected many unsettled claims by applying the existing land regulation, proof requirements, and the Israeli's Supreme Court's precedent in the Al Hawashella cases.¹²⁶ Consequently, about 300 cases were closed. Today, several cases remain pending in courts and at the Land Registration office; however, some cases have not been filed.¹²⁷

C. The Al Uqbi Cases

The Al Uqbi family's land claims are the most important Bedouin land claim cases heard by the Israeli Supreme Court. In 2006, the Al Uqbi family members insisted on pursuing their six pending cases in the Beer Sheva District Court and asserting their family's land rights in the Negev.¹²⁸ The family members raised five arguments to assert their land rights over the Negev land. First, they argued Israel's land law,

121. See generally Yahel, *Land Disputes*, *supra* note 1, at 13.

122. See generally *Bedouins in the State of Israel*, *supra* note 2.

123. See generally Yahel, *Land Disputes*, *supra* note 1, at 1, 11.

124. Yahel, *Land Disputes*, *supra* note 1, at 11.

125. See *id.* at 11-12.

126. See Elsana, *Dispossession and Recognition*, *supra* note 46, at 72-77.

127. See HUM. RTS. WATCH, OFF THE MAP: LAND AND HOUSING RTS. VIOLATIONS IN ISRAEL'S UNRECOGNIZED BEDOUIN VILLAGES 104-05 (2008), <https://www.hrw.org/reports/2008/iopt0308/iopt0308webwcover.pdf>.

128. See generally C.C. 7161/06 *Al Uqbi et al. v. State of Israel* (2012) (Isr.) (Hebrew) (on file with author).

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following Ottoman regulations, provided them land rights.¹²⁹ Second, because the Al Uqbi family members had a long history of occupying the land through settlement and cultivation, they claimed land rights based on length of occupation.¹³⁰ Third, the family members claimed they gained land rights through customary tribal law, which recognized agreements made between the tribes in bordering lands.¹³¹ Fourth, they claimed the British Mandate recognized their land rights based on the Bedouin way of life.¹³² Finally, the family members asserted they had indigenous rights that are recognized by international law through the 2007 United Nations Declaration of Indigenous Rights.¹³³

The district court heard extensive academic expert testimony from both sides.¹³⁴ Professor Yiftachel spoke on behalf of the Al Uqbi family, while Professor Kark spoke on behalf of the State.¹³⁵ Specifically, the experts reviewed the land's history and geography, and traditional Bedouin tribal customs.¹³⁶ The Beer Sheba District Court denied the Al Uqbi family's arguments.¹³⁷ Ultimately, the district court's order granted the State with ownership over the disputed land.¹³⁸ The Israeli Supreme Court reviewed the district court's order.

The Israeli Supreme Court reviewed the district court's order. Justice Hayut wrote the leading opinion, joined by Justice Rubinshtein and Justice Gubran, emphasizing that the Al Uqbi family's claims failed to demonstrate its land rights according to Israeli land laws.¹³⁹ The

129. CA 4220/12 *Al Uqbi v. State of Israel*, ¶ 2 (May 14, 2015) *translated in* The State of Israel, The Judiciary Authority Supreme Court (Isr.), <https://supremedecisions.court.gov.il/Home/Download?path=EnglishVerdicts\12\200\042\v29&fileName=12042200.V29&type=4>.

130. *Id.* ¶ 2, 3.

131. *Id.* ¶ 36.

132. *Id.* ¶ 12.

133. *Id.* ¶ 80.

134. *See id.* ¶ 3.

135. *See id.*

136. CA 4220/12 *Al Uqbi v. State of Israel*, ¶ 3 (May 14, 2015) *translated in* The State of Israel, The Judiciary Authority Supreme Court (Isr.), <https://supremedecisions.court.gov.il/Home/Download?path=EnglishVerdicts\12\200\042\v29&fileName=12042200.V29&type=4>.

137. *See id.* ¶ 2.

138. *See generally id.*

139. CA 4220/12 *Al Uqbi v. State of Israel*, ¶ 3 (May 14, 2015) *translated in* The State of Israel, The Judiciary Authority Supreme Court (Isr.),

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Court accepted the State's contention that there was no type of Bedouin settlement nor cultivation on the land under the Ottoman land regulation.¹⁴⁰ Thus, the Court decided the disputed land was mewat land acknowledging the State's land ownership rights.¹⁴¹

Like the Al Hawashella cases, the Al Uqbi family members failed to prove that they revived and continuously used the land for private purposes before 1921, and attained consent from the Ottomans or the British Mandate to the revive the land.¹⁴² The Court denied the family's argument that the British Mandate had recognized or respected the Bedouin rights to the land, according to customary tribal law tradition.¹⁴³ The Court ruled that, according to the British Mandate's mewat land regulation, individuals had to register their claims to assert their land rights, and that the Al Uqbi family members failed to prove they registered accordingly.¹⁴⁴ The Court's ruling was expected, because nothing proved that the Bedouin community knew of the registration requirements, let alone asserting land rights claims.

The Al Uqbi family claimed its land rights arose from customary tribal law. The family argued the Ottoman government and the British Mandate respected the Bedouin's customary tribal law by granting it autonomy to practice tribal law in land matters.¹⁴⁵ However, the Court denied the family's argument holding that, even if the Bedouins effectively controlled the land, there was no evidence that the Ottoman or British Mandate granted the Bedouin some autonomy to practice tribal law in a way that asserts land ownership rights over the Negev.¹⁴⁶

Conversely, historical evidence proved that the Ottoman government enforced its land regulations on the Bedouin.¹⁴⁷

<https://supremedecisions.court.gov.il/Home/Download?path=EnglishVerdicts\12\200\042\v29&fileName=12042200.V29&type=4>.

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.* ¶ 3.

144. *Id.* ¶ 46.

145. CA 4220/12 *Al Uqbi v. State of Israel*, ¶ 5 (May 14, 2015) translated in The State of Israel, The Judiciary Authority Supreme Court (Isr.), <https://supremedecisions.court.gov.il/Home/Download?path=EnglishVerdicts\12\200\042\v29&fileName=12042200.V29&type=4>.

146. *Id.* ¶ 47.

147. Kark, *Landownership and Spatial Change*, *supra* note 1, at 194-95.

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Additionally, the Court held evidence of internal agreements dividing lands among Bedouin tribes insufficiently proved that the governing authority recognized customary tribal law.¹⁴⁸ In fact, most of the family's evidence proved that governing authorities did not recognize Bedouin land rights arising out of customary tribal law.¹⁴⁹

The Court also denied the family's argument that the practice of purchasing land to build cities, such as Beer Sheba and Dorot Kibbutz, was evidence of Bedouin land ownership.¹⁵⁰ The Court distinguished the family's cases with its evidence showing private cases where Bedouin individuals registered their land establishing ownership.¹⁵¹ Thus, the family's evidence did not prove the Ottoman government recognized Bedouin tribal law.¹⁵²

The Al Uqbi family also claimed its indigenous rights arose from the 2007 United Nations Declaration of Indigenous Rights.¹⁵³ This was the first time that this argument was brought to the Israeli Supreme Court.¹⁵⁴ However, the Israeli Supreme Court denied the family's argument because Israeli law provided that an international declaration has no legal effect unless adopted by state under legislation or agreement.¹⁵⁵ As to indigenous rights, the State of Israel has neither joined the 2007 U.N. Declaration of Indigenous People nor adopted its regulations.¹⁵⁶ Like the State of Israel, many countries have not adopted 2007 United Nations Declaration of Indigenous Rights or recognized the existence of indigenous rights.¹⁵⁷ Before other countries are

148. CA 4220/12 *Al Uqbi v. State of Israel*, ¶ 35 (May 14, 2015) translated in *The State of Israel, The Judiciary Authority Supreme Court (Isr.)*.

149. *Id.*

150. *Id.* ¶ 37.

151. *Id.* ¶¶ 22-23.

152. *Id.*

153. *Id.* ¶¶ 14-15.

154. Frantzman et al., *supra* note 18, at 80.

155. See CA 4220/12 *Al Uqbi v. State of Israel*, ¶¶ 80, 81 (May 14, 2015) translated in *The State of Israel, The Judiciary Authority Supreme Court (Isr.)*, <https://supremedecisions.court.gov.il/Home/Download?path=EnglishVerdicts\12\200\042\v29&fileName=12042200.V29&type=4>.

156. See *id.* ¶ 81.

157. *Declaration on the Rights of Indigenous Peoples*, U.N. HUM. RTS.: OFF. OF THE HIGH COMM'R, <https://www.ohchr.org/en/issues/ipeoples/pages/declaration.aspx> (last visited Nov. 27, 2018).

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required to adopt a customary legal practice, international law requires the practice be recognized by a majority of countries.¹⁵⁸ The Al Uqbi family did not present any evidence proving an international convention or customary international law applies to its cases.¹⁵⁹ As a result, the Supreme Court refused to conduct an extensive analysis on the issue of whether the Bedouin are indigenous people in the Negev.¹⁶⁰

The Supreme Court also determined the family's argument that it constituted private individual claims and not a collective tribal claim for indigenous rights.¹⁶¹ The Supreme Court distinguished the Al Uqbi cases from the Australian Supreme Court's decision in *Mabo v. Queensland*.¹⁶² Unlike the collective tribal claim for recognition of land rights in *Mabo*, the Al Uqbi case involved individual claims.¹⁶³ Thus, the Israeli Supreme Court determined disputed land was owned by the State.

D. Reaction to the Al Uqbi Case

The Al Uqbi case fueled academic research and writing regarding whether the Bedouin are indigenous people of the Negev and whether their land claims should be recognized under traditional tribal law.¹⁶⁴ Some scholars argued the Bedouin are not the only people who can

158. Christopher Greenwood, *Sources of International Law: An Introduction*, U.N. OFF. OF LEG. AFF., http://legal.un.org/avl/pdf/ls/greenwood_outline.pdf (last visited Nov. 27, 2018).

159. CA 4220/12 *Al Uqbi v. State of Israel*, ¶¶ 80, 81 (May 14, 2015) translated in The State of Israel, The Judiciary Authority Supreme Court (Isr.), <https://supremedecisions.court.gov.il/Home/Download?path=EnglishVerdicts\12\200\042\v29&fileName=12042200.V29&type=4>.

160. *See id.*

161. *Id.* ¶ 81.

162. *Id.* (citing *Mabo v Queensland [No. 2]* (1992) 175 CLR 1, 5 (Austl.)); *see also* Yiftachel, *supra* note 1, at 304.

163. *See* CA 4220/12 *Al Uqbi v. State of Israel*, ¶ 81 (May 14, 2015) translated in The State of Israel, The Judiciary Authority Supreme Court (Isr.), <https://supremedecisions.court.gov.il/Home/Download?path=EnglishVerdicts\12\200\042\v29&fileName=12042200.V29&type=4>.

164. Ahmad Amara, *Colonialism and Cause Advocacy in the Naqab*, in THE NAQAB BEDOUIN AND COLONIALISM: NEW PERSPECTIVES 173 (Nasasra et al. eds., 2015).

claim to the notion of being the “first people” in the land of Israel.¹⁶⁵ For example, Jewish people’s attachment to the Negev predates Arab presence.¹⁶⁶ While countless other groups lived in the Negev for different periods of time, none of their presence compares to Jewish presence, because of their uninterrupted presence on the land since biblical times.¹⁶⁷ Some archaeological evidence has shown that Jewish people have lived in the land from the Negev to the Golan three thousand years ago.¹⁶⁸

Additionally, the Bedouin tribes have never asserted indigenous rights for lands in Egypt or South Arabia. Although the critical element for indigenous rights is the original occupation of the land, the Bedouin tribes migrated from their historical homeland in the Arabian Desert to the Negev.¹⁶⁹ However, some scholars still argue the Bedouin tribes lived in the Negev for hundreds of years while the Negev was a free land.¹⁷⁰ They believed the Bedouin ruled the desert by occupying land.¹⁷¹ Many academics and NGOs support the Bedouin’s claim for indigenous rights in the Negev.¹⁷²

V. THE ISRAELI GOVERNMENT’S COMPROMISE TO RESOLVE THE BEDOUIN LAND DISPUTES

The Negev land disputes must be resolved to develop and advance the Negev’s infrastructure for the benefit of its inhabitants. Since the early 1970’s, Bedouin families, who were willing to move, were offered compensation in both land and money to settle their claims.¹⁷³ The amount of compensation depended on the type and size of the land claimed.¹⁷⁴ The families that moved to towns benefited from

165. See generally Yahel et al., *Indigenous People?*, *supra* note 3, at 6.

166. See generally *id.*

167. See *id.* at 8; see also Elsana, *Role of the Judiciary*, *supra* note 45, at 340.

168. Yahel et al., *Indigenous People?*, *supra* note 3, at 5-6.

169. Yahel, *Land Disputes*, *supra* note 1, at 11.

170. See Avika Bigman, *Why the Bedouin’s Claims to the Negev are Outrageous*, THE TOWER (Jan. 2014), <http://www.thetower.org/article/why-the-bedouins-claims-to-the-negev-are-outrageous/>

171. Yahel, *Land Disputes*, *supra* note 1, at 8.

172. Frantzman et al., *supra* note 18, at 82, 91.

173. See *Bedouins in the State of Israel*, *supra* note 2.

174. See *id.*

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government infrastructure and services, including education and health care.¹⁷⁵

Through recent years, specifically after 2001, the Bedouin land dispute also encompassed historical, social, financial, cultural, and ethnic issues.¹⁷⁶ To resolve such issues, the State of Israel considered the Bedouin's strong attachment to the land it occupied.¹⁷⁷ Hence, despite the Supreme Court's rulings in the Al Hawashella case and the cases that followed, the Israeli government adopted a state policy of compromising with Bedouin.¹⁷⁸ The government believed it needed to develop more towns in the Negev to benefit the Bedouin.¹⁷⁹ In planning the construction of new Negev Bedouin towns, the Israeli government cooperated with Bedouin community leaders and identified the needs of the Bedouin communities.¹⁸⁰

A. *The Government's Proposal Committee*

In October 2007, the Israeli government formed a public committee to create the Proposal of Bedouin Settlement Arrangement Policy for the Negev.¹⁸¹ The committee was chaired by Supreme Court Justice Goldberg, two members from the general public, and two members from the Bedouin community.¹⁸² According to the government's resolution, the committee's mandate states:

The committee [brought] forward its recommendations in order to form a comprehensive plan, which is large-scale and attainable, which [defined] the conditions for the settlement of the Bedouin in the Negev in general, the amount of compensations, the regulations

175. *See id.*

176. *See id.*

177. *See id.*

178. *See id.*; ZE'EV V. BEGIN, REGULARIZATION OF BEDOUIN COMMUNITIES IN THE NEGEV: SUMMARY OF THE PUB. HEARING ON THE DRAFT L. AND RECOMMENDATIONS FOR POL'Y AND FOR AMENDMENTS TO THE DRAFT 2 (2013).

179. *See Bedouins in the State of Israel, supra* note 2.

180. *See id.*

181. THE REGIONAL COUNCIL FOR THE UNRECOGNIZED VILLAGES IN THE NEGEV-RCUV, GOLDBERG COMMISSION'S RECOMMENDATIONS 3-5 (2011) [hereinafter *Goldberg Commission*], http://www.landpedia.org/landdoc/Analytical_materials/Goldberg_recommendations-english.pdf.

182. *Id.* at 3.

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for allocation of alternative lands, urban amenities and a time schedule to translate the regulations in legal directives, as required.¹⁸³

The following year, in December 2008, the committee submitted its proposals to the Minister of Housing.¹⁸⁴ The committee recommended one declaration recognizing the Bedouin's historical link to the land, a second declaration emphasizing respect for equal rights, and a third declaration showing the Bedouin's respect and obligation to the State of Israel's laws.¹⁸⁵

The committee's recommendations also included alternatives to resolve the Bedouin's land claims and the illegal settlements in the Negev.¹⁸⁶ The committee also recommended the formation of a land claims committee that would provide compensation to people who could prove long-standing land possession or agriculture use of land since 1948.¹⁸⁷ The committee provided a lengthy criteria to calculate the compensation amount based on the claimed land's size.¹⁸⁸ However, a minority of the committee, mainly comprised of Bedouin members, were not satisfied with the measure of compensation.¹⁸⁹ To resolve the illegal settlements in the Negev, the committee recommended a solution to legalize the main Bedouin communities; while still vigilantly enforcing the law to prevent further illegal construction in the Negev.¹⁹⁰

B. The Prawer Plan

In January 2009, the government decided that the committee's report would provide the basis for a new policy resolving the Bedouin

183. *Id.* at 69.

184. *Id.* at 70.

185. *See id.* at 25; ASS'N FOR CIV. RTS. IN ISR. ET AL., *supra* note 40, at 3.

186. ASS'N FOR CIV. RTS. IN ISR. ET AL., *supra* note 40, at 4.

187. *Goldberg Commission*, *supra* note 181, at 38.

188. *See id.* at 39-40, 62; ASS'N FOR CIV. RTS. IN ISR. ET AL., *supra* note 40, at 4.

189. *See* Arik Rudnitzky & Thabet Abu Ras, *The Bedouin Population in the Negev: Social, Demographic and Economic Factors*, THE ABRAHAM FUND INITIATIVE, 113-14 (2012).

190. *Goldberg Commission*, *supra* note 181, at 28-31; ASS'N FOR CIV. RTS. IN ISR. ET AL., *supra* note 40, at 2.

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settlements in the Negev.¹⁹¹ The government arranged a team of eight individuals, headed by Mr. Ehud Praver, to implement the Goldberg Committee's recommendation and to resolve the land disputes between the Negev Bedouins and the State.¹⁹² There were no Bedouin members on Praver's team. On May 31, 2011, the Praver Committee's report presented a declaration that keeps the Goldberg Committee's policies, emphasizing the need for an immediate solution and enforcement of law.¹⁹³

However, in addressing the Bedouin land claims, the Praver Committee adopted the Bedouin members' minority position in the Goldberg Committee and proposed new parameters for compensation.¹⁹⁴ The new proposal provided that the villagers should be offered compensation between the amounts of \$1.7 billion and \$2.4 billion, including \$365 million for expanding the townships.¹⁹⁵ The compensation would be reduced to zero after five years and, if agreements could not be reached, the land would be forfeited and designated as the State's land.¹⁹⁶

In addressing the illegal settlements, the Praver Committee adopted the Goldberg Committee report's guidelines.¹⁹⁷ The Goldberg Committee found that an estimated fifty percent of illegal settlements were built within Jewish planning areas.¹⁹⁸ The Praver Committee recommended that the 30,000 inhabitants¹⁹⁹ of the illegal

191. *The Praver Plan*, NEGEV COEXISTENCE F. FOR CIV. EQUALITY, <https://www.dukium.org/the-praver-plan/> (last visited Nov. 27, 2018).

192. See ASS'N FOR CIV. RTS. IN ISR. ET AL., *supra* note 40, at 2.

193. NEGEV COEXISTENCE F. FOR CIV. EQUALITY, ALTERNATIVE NGO REP.: INFO. FOR ESTABLISHING LIST OF ISSUES FOR THE STATE OF ISRAEL BEFORE THE COMMITTEE ON CIV. AND POL. RTS. 23-24 (2012).

194. See ASS'N FOR CIV. RTS. IN ISR. ET AL., *supra* note 40, at 2.

195. Yori Yanover, *Pro Bedouin Land Grab Hooligans send 10 Police to Hospital*, JEWISHPRESS (Dec. 1, 2013), <http://www.jewishpress.com/news/breaking-news/pro-bedouin-invaders-land-grab-hooligans-send-10-police-to-hospital/2013/12/01/>.

196. *Id.*

197. See ASS'N FOR CIV. RTS. IN ISR. ET AL., *supra* note 40, at 2-3.

198. *Goldberg Commission*, *supra* note 181, at 29.

199. These 30,000 inhabitants were forty percent of the total Negev Bedouin population unrecognized by Israel. The *Bedouin in Israel*, ISR. MINISTRY OF FOREIGN AFF. (Oct. 30, 2013), <https://mfa.gov.il/MFA/AboutIsrael/Spotlight/Pages/The-Bedouin-in-Israel.aspx>.

settlements should be relocated to the seven existing government-built Bedouin towns.²⁰⁰

C. Minister Begin's Report

On September 2011, the Israeli Cabinet adopted the "Praver Plan Outline"²⁰¹ and published a draft of a law regarding the status of the Bedouin in the Negev, which incited public protest.²⁰² The Cabinet Resolution called for a special "public hearing" that would be conducted for a six-week period.²⁰³ This process was extended to more than three months, and included dozens of meetings with Bedouin leaders, private individuals, groups, and organizations, generally originating from the Negev.²⁰⁴ The public hearing's purpose was to consider people's comments, input, and reservations.²⁰⁵ In the end, Minister Begin presented a report that listed recommendations, corrections or changes that related to land or monetary compensation increases for the Bedouins.²⁰⁶ Minister Begin's report also recommended saving land inside Bedouin towns for future generations.²⁰⁷ Also, Minister Begin emphasized the immediate need to accelerate the compensation process and the need to enforce the law against illegal construction. Minister Begin's report concluded as follows:

The Government of Israel views the accelerated development of the Negev as a most important national goal, and to this end, it intends to implement far-reaching programs in the coming years. Improving the social and economic situation of the Negev Bedouin, mainly in education and employment, while enhancing the rule of law in the

200. *Id.*

201. BEGIN, *supra* note 178, at 2.

202. Daniel Tepper & Samuel Gilbert, "Day of Rage" over Bedouin Displacement Plan, Al Jazeera (Aug. 2, 2013), <https://www.aljazeera.com/indepth/inpictures/2013/08/20138216944374202.html>.

203. BEGIN, *supra* note 178, at 2.

204. *Id.* at 2.

205. *See id.* at 3 ("While listening to the public, we heard many expressions of solidarity with the State among the Bedouin and . . . of injustice and demands that it be rectified, as well as serious reservations . . . we also heard proposals.").

206. *Id.* at 12-13.

207. *Id.* at 14.

area, is an inseparable part of this effort, and the Bedouin'[s] integration into the prosperity of the Negev will benefit all its residents. The proposal presented here relies on three solid components: a budget for improving the physical infrastructure and socio-economic development; the planning principles for regularizing the status of Bedouin settlement in the Negev; and a legal mechanism, to be legislated, to regularize Bedouin ownership claims in the Negev. With regard to these three components of the Government program to resolve the issue of the Negev Bedouin, this document addresses the main points that were raised in the discussions with groups and individuals during the public hearing which took place during 2012. The scope of this overall program and an understanding of its far-reaching implications for the future of the children constitute a solid foundation for broad consensus among those Bedouin who claim land ownership and 16 Bedouin who reside in places that are not regularized for residence, with the support of other groups among the Negev Bedouin. The Government's goal in this important field should be advanced as soon as possible by legislating the "Law for the Regularization of Bedouin Settlement in the Negev". This law will determine, *inter alia*, a binding and time-limited framework for the process of regularizing settlement, so that five years after the law comes into effect, land which was not awarded to ownership claimants in the framework of the special regularization procedure will be registered to the State. Time is pressing, and without such framework, we will fail to realize the purpose of this entire move – regularizing settlement in the short period time during which it is still possible. The process of implementing the plan and the law will take several years, and we cannot ignore the obstacles that will undoubtedly arise. However, given the terms outlined here, there is a real chance now that good progress can be made towards resolving this complex issue – a resolution that will greatly contribute to all the residents of the Negev. All those involved should mobilize to fulfill this important task.²⁰⁸

VI. THE LEGISLATIVE RESOLUTION TO SETTLE THE BEDOUIN LAND CLAIMS

Minister Begin's recommendations were implemented in a legislative draft (the "Bill") to resolve the Bedouin land settlement in

208. *Id.* at 15-16.

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the Negev.²⁰⁹ According to the Bill's legislative plan, the Bedouin would control sixty-two percent of its claimed lands, while the remaining thirty-eight percent shall be recognized as the State's land; any Bedouin structures within the State's land would necessarily be demolished.²¹⁰ This decision met significant criticism from civil rights organizations and Bedouin representatives, who claim the plan ignores Bedouin rights.²¹¹ Conservative Jewish groups also criticized the plan because it generously conceded to Bedouin pressure.²¹² On June 24, 2013, the new Parliament received a draft of the legislation and got it passed the first reading with a 40-43 majority vote.²¹³

A. The Bill's Main Principles

According to the Bill's introduction, the Israeli government saw the Negev's development as one of the decade's most important national tasks.²¹⁴ Accordingly, the plan would provide socio-economic support and growth opportunities for the Negev Bedouin, as it constitutes Israel's poorest population and live in harsh conditions.²¹⁵ The plan recognized Bedouin individuals are entitled to these provisions, because they are citizens of the State of Israel.²¹⁶ As Israeli Defense Forces moved into the Beer Sheba region and waves of investments permeated into north Negev, the Bedouins were in a great position to benefit from the region's anticipated prosperity.²¹⁷ The plan's framework offered a systemic solution to the Bedouin communities' land, settlement, employment, education and living conditions.²¹⁸

209. See *Legislative Update: The Bill on the Arrangement of Bedouin Settlement in the Negev ("Praver-Begin Plan")*, INTER AGENCY TASK FORCE ON ISRAELI ARAB ISSUES (July 2013), <http://iataskforce.org/sites/default/files/resource/resource-1058.pdf> [hereinafter *Praver-Begin Plan*].

210. See Yahel, *Land Disputes*, *supra* note 1, at 3-4.

211. *Praver-Begin Plan*, *supra* note 209, at 2.

212. *Id.*

213. *Id.* Legislation in Israel has to pass 3 readings of the Parliament.

214. BEGIN, *supra* note 178, at 2.

215. *Id.*

216. *Id.*

217. *Id.* at 3.

218. *Id.*

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To achieve its goals, the Bill seeks to establish institutional and procedural safeguards. The Bill's purpose was to resolve and settle the Negev Bedouin's land ownership disputes to develop the land and provide the Bedouin with settlement solutions.²¹⁹ To help facilitate the Bedouin's land claims and its economic development, the Bill established new administrative bodies, such as the "Implementation Authority," the Headquarters of Economic and Community Development of the Negev Bedouin, and the Compensation Committee.²²⁰

The Bill established detailed procedures allowing the Bedouin to claim land ownership and created a complex formula that helps calculate the Bedouin's land and monetary compensations for the land claims.²²¹ The Bill also defined the conditions that would make a land claimant eligible to receive compensations, including the claimant's ability to show that the disputed land was claimed and registered during the "deciding period."²²² The Bill also established complex procedures for registering and approving land claims with the Compensation Committee.²²³ The Bill's compensation formula is based on a criteria that considers the claimant's ability to continuously cultivate the land and reach an agreement with at least fifty percent of other claimants, who are descendants of an original claimant.²²⁴ If less than fifty percent of the descendants agree to join the new plan, then the Compensation Committee would use a much lower compensation formula, which considers the land's geographic characteristic (location or steepness of slope), its current use, and the time period of the claim's filing.²²⁵

B. Liberal Response to the Bill

Liberals believed the Bill failed to consider objections from the Bedouin and human rights organization. Individuals claim the Bill

219. *Id.* at 6-7.

220. *Praver-Begin Plan*, *supra* note 209, at 3.

221. *Id.* at 12-13.

222. *Id.* Between 1971 to 1979, the State invited the Bedouin to submit land ownership claims. In the 1970s, 3,200 claims were submitted, while there are 12,000 land claimants.

223. *Praver-Begin Plan*, *supra* note 209, at 3.

224. *Id.*

225. *Id.*

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failed to: (1) recognize the Bedouins' historical connection with the Negev, (2) account for unrecognized villages in the Negev, and (3) account for practical considerations when it altered legal procedures.

Liberals criticized the Bill, because the Bedouin community did not partake nor was consulted during the drafting of the new Bill. Moreover, the "listening period," which occurred after the Bill was finalized, did not lead to substantial changes to the Bill's original recommendations, despite the detailed objections voiced by the Bedouin community and human rights and planning organizations.²²⁶ Liberals believed Minister Begin's changes were mostly rhetorical and the few changes adopted did not substantially alter the logic, assumptions, or content of the Bill; aside from the type of land and amount of monetary compensation.²²⁷

Liberals said the Bill did not address the historical connection between the Bedouin and the Negev, because it refused to allow the Bedouin to actually own Negev land.²²⁸ Instead, the Bill generally recognized the Bedouin individuals as "trespassers," despite the existence of Bedouin villages before the establishment of the State of Israel.²²⁹ This belief derived from the fact that Bedouin villages had existed before other non-Bedouin villages were created and before the Bedouin were relocated to the Siyag region in the 1950's.²³⁰ Thus, as original inhabitants of the Negev, some Bedouin individuals have continued to live on their ancestral land before the State of Israel's establishment while other Bedouin were displaced many decades ago.²³¹

The Bill is also criticized because it does not sufficiently recognize villages and it gave little regard to the Goldberg Committee's recommendations, which called for extensive recognition of Bedouin villages.²³² Liberals believed the Bill purports to create a new legal reality that rejects any recognition of the Bedouin's history and land

226. *Id.* at 5.

227. *Id.*

228. *Prawer-Begin Plan, supra* note 209, at 5.

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.*

claims.²³³ Therefore, the Bill purports to assume that land and monetary “compensations” are “beyond the letters of the law.”²³⁴ Consequently, the new Bill would result in the destruction of the unrecognized villages and the expulsion of village residents into new communities.

The Bill's provisions have failed to account for practical considerations when it altered legal procedures.²³⁵ Although the Bill allows administrative bodies to implement the law, the new law suspended and overruled existing planning laws and demolition procedures for Bedouin homes.²³⁶ The Bill also limits the scope of the courts' authority to intervene in technical procedures, as it creates a new legal reality.²³⁷ In sum, the Bill would create a status similar to “emergency legislation,” which drastically limits the principle of equality before the law.²³⁸

C. Conservative Response to the Bill

Conservatives believed the Bill excessively catered to the Bedouin's demands and that it allowed the Bedouin to violate existing laws. Conservatives also believed the Bill's plan created a more lenient legal and justice system for the Bedouin than the system was for existing Jews, who are subject to strict planning and zoning regulations.²³⁹ Further, due to natural reserves and military zones in the Negev, the Bedouin land claims involved twenty-three percent of the Negev land, not the five percent the Bedouin and human rights groups represented.²⁴⁰ Twenty-three percent of the Negev is substantially higher than the Bedouin's share according to the proportionality of their population in the Negev.²⁴¹ Therefore, Conservatives believe the plan excessively catered to the Bedouins more than what the Bedouins deserved.

233. *Prawer-Begin Plan*, *supra* note 209, at 6.

234. *Id.*

235. *Id.*

236. *See id.*

237. *Id.*

238. *Prawer-Begin Plan*, *supra* note 209, at 6.

239. *Id.*

240. *Id.*

241. *Id.*

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Conservatives also claimed the Bill “abolishes, in theory and practice, numerous court judgments” to legalize the Bedouin’s “land thefts” and is therefore unconstitutional.²⁴² Further, the new plan would enable the retroactive legalization of tens of thousands of illegally-constructed houses, thus “whitewashing” law breaking.²⁴³ Critics believed the new plan failed to address the need to halt all illegal construction and expansion of Bedouin settlements in the Negev.²⁴⁴ Therefore, Conservatives believed the new Bill merely permitted the Bedouin to break the law.

D. The Bill’s Legacy

In 2011, the Israeli State’s attorney stopped proceeding with Bedouin cases in court.²⁴⁵ Later in 2012 and 2013, the State of Israel did not proceed with transforming the Bill into law.²⁴⁶ Today, the Bedouin land dispute remains stagnant, because Bedouin land claims are no longer in courts and legislation has not been created to implement the Goldberg and Prawer committees’ recommendations for the Bedouin’s land claims.

Despite the halt in the dispute, the Israeli government decided to invest in the Negev’s development, including the development of Bedouin communities.²⁴⁷ A development plan sought to build additional Bedouin towns and invest millions of Israeli shekels into new Bedouin settlements.²⁴⁸ Some of the new settlements were planned for

242. *Id.*

243. *Prawer-Begin Plan, supra* note 209, at 7.

244. *Id.*

245. See Press Release, Be’er Sheva District Court Rejects State’s Appeal; Demolition Orders against Arab Bedouin Village of Alsira Remain Cancelled, The Legal Ctr. for Arab Minority Rights in Israel (Dec. 12, 2013), <https://www.adalah.org/en/content/view/8273>.

246. Press Release, Adalah: The Government’s Decision to Cancel the Prawer Plan Bill is a Major Achievement, The Legal Ctr. for Arab Minority Rights in Israel (Dec. 12, 2013), <https://www.adalah.org/en/content/view/8228>.

247. See *The Negev 2020 Plan*, Keren Kayemeth Lelsrael Jewish National Fund, <http://www.kkl-jnf.org/about-kkl-jnf/kkl-jnf-year-to-year/112-years/negev-2020-plan/> (last visited Nov. 27, 2018).

248. *Israel to build new towns for Bedouins, the disabled*, JEWISH TELEGRAPHIC AGENCY (Aug. 13, 2018), <https://www.jta.org/2018/08/13/top-headlines/israel-build-new-towns-bedouins-disabled>.

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agricultural development.²⁴⁹ In February 2017, the Israeli government decided to invest about one billion dollars in existing Bedouin towns for the next five years.²⁵⁰ This investment would promote better quality of life for the Negev Bedouin. However, despite the government's commitment to investments and developments, the Bedouin's land claims and the illegal construction in the Negev will remain in dispute for the State of Israel and Negev Bedouins.

CONCLUSION

The Bedouin's land claims entangled complicated historical and cultural questions with legal issues. During the first years of its establishment, the State of Israel was busy dealing with its survival issues and thus avoided the Bedouin's land claims. As Bedouin communities grew larger in the Negev without recognition from the Israeli government, the Bedouin illegally constructed necessary housing. Consequently, the Israeli government believed it needed to establish order in the Negev. As a legal matter, it was also important for courts to adjudicate the Bedouin's land claims. Based on the ruling from the Al Hawashella case and the Al Uqbi case, the Bedouin understood the unlikelihood of succeeding in its land disputes; thus, the Bedouin needed a more comprehensive approach.

Although the Supreme Court adopted the State of Israel's legal arguments in the Al Hawashella case and Al Uqbi case, the State recognized the need to invest in the Negev for the benefit of its inhabitants, including the Bedouin Population. The State acknowledged that building new towns will expedite the settlements process with Bedouin individuals and adhere to the Goldberg and Praver Committees' recommendations. Ultimately, the government realized that a settlement approach is more beneficial than passing a highly-criticized law.

249. *Strategy for Agricultural Development in Bedouin Villages in the Negev*, ZENOVAR, <http://www.zenovar.com/en/project/strategy-for-agricultural-development-in-bedouin-villages-in-the-negev/> (last visited Nov. 27 2018).

250. See generally *The Future is Beautiful: One Billion Dollar Roadmap for the Next Decade*, JEWISH NATIONAL FUND, http://usa.jnf.org/assets/pdf/thebilliondollarroadmap_digital_v-1.pdf (last visited Nov. 27, 2018).

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Because the Israeli government previously denied a suggested international mediation, the idea of mediation would be impractical today. However, the State of Israel's current policy to compromise with the Bedouin hopefully will resolve the Bedouin land disputes in the near future.