

Land Disputes Between the Negev Bedouin and Israel²

ABSTRACT

The conflict between the State of Israel and the Negev Bedouin over land is not new; State vs. nomadic land ownership is an on-going dispute originating as early as the Ottoman Empire. Illegal construction and land use are its widespread expressions, making it difficult for the State to supply basic needs to its citizens. Furthermore, the dispute creates obstacles to the development of the Negev for the benefit of all its inhabitants. This article will try to lay out the Government's approach, as the author perceives it, to the resolution of the land dispute, through reaching financial settlements with various Bedouin individuals and tribes. Monetary and land compensation have both been offered, along with the revival of the Land Title Settlement procedure, as part of a new Government policy.

THIS ARTICLE IS INTENDED TO tell the side of the story which is usually untold. The dispute between Israel and the Negev Bedouin has received considerable attention in the public square and in scholarly literature. Bedouin are portrayed by many as nomadic people whose rights have been continuously ignored and violated by the State of Israel.³ This article offers a far more complex picture and nuanced analysis. My view is a consequence of having become familiar with the relationship between the Bedouin and the State in the course of my work in the District Attorney's office, Southern District, first as a rank-and-file attorney and then as Head of the Land Title Settlement Unit.

The conflict over land between the state of Israel and its Bedouin citizens—that is, some of the Bedouin citizens—is a complex issue. The legal aspects are only part of the story. There are also historical, social,

financial, cultural, and ethnic issues. Moreover, particularly in the recent past, complaints have been lodged under the impact of an increasingly manifest nationalist temper. All these issues must be surveyed if we want to understand the nature of the dispute.

It is undeniable that Israel acted without sufficient sensitivity toward its Bedouin citizens, especially in the first three decades of statehood. However, the situation began to change markedly in the 1970s. While addressing complaints regarding an equitable distribution of national resources is far from complete, this is not the case with regard to the dispute over Negev lands. As I will explain, according to State legislation, the lands of the Negev are State lands; therefore, the claim that Israel is stealing the Bedouin's lands is patently not true. In the following, I shall present an alternative perspective. This account is succinct and must therefore offer pertinent generalizations. I would add that we are also dealing with individuals—individual Bedouin—and that not all of the generalizations apply in each individual case. Detailed arguments regarding the situation of the Bedouin in general, and of particular instances, are readily accessible in the numerous briefs that have been filed in the courts and adjudicated there.⁴

HISTORICAL ISSUES

Land disputes between nomads—in our case the Bedouin—and state authorities, are not specific to Israel, and exist in many countries with nomadic populations. The conflict started long before Israel was established. Neither the Ottoman Empire nor the British Mandate recognized the ownership of nomadic Bedouin over land in the Negev.⁵ The State of Israel not only followed previous attempts and reforms carried out by previous legislators to settle land ownerships, but also adopted the existing Ottoman and British land laws regarding those issues.

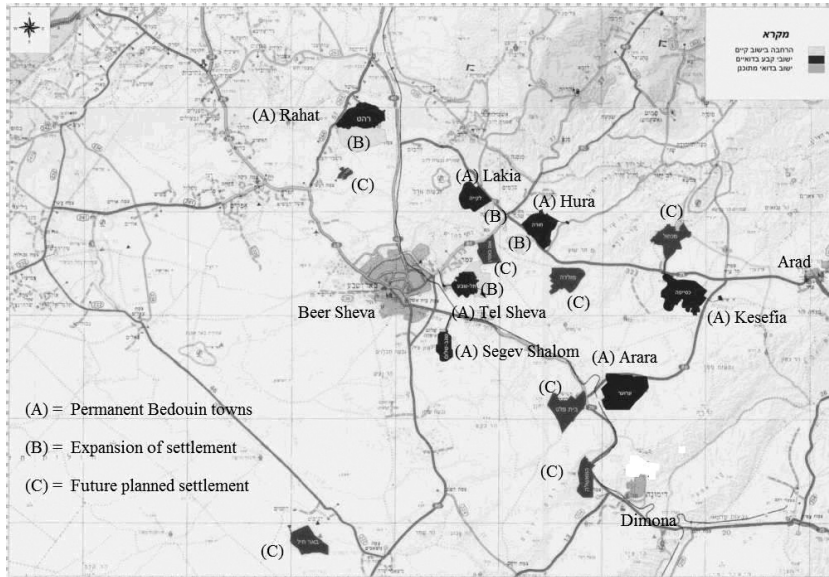
Until the beginning of the 20th century, the Bedouin of the Negev wandered between Saudi Arabia, the Sinai, and the south of Palestine. Each tribe was dispersed throughout the territory where it grazed its flocks, sometimes thousands of square miles, which the tribe influenced or controlled. The extent of the territory (*Dira*) depended on the power of each tribe, and from time to time the tribes fought over the control of territory.⁶ In that early period, there were no permanent towns or villages in the Negev.⁷ Beer-Sheva, the first settlement, was founded around 1900 by the Turkish authorities.⁸ As I will explain later, Israeli law, which is based on earlier Ottoman and British legislation, precludes granting owner-

ship rights over these huge territories to private individuals. Today, the Bedouin's private legal claims of ownership of these territories are handled by the Land Title Settlement Unit.

Before the War of Independence, about 65,000 Bedouin lived in the Negev.⁹ After the war about 11,000 remained.¹⁰ The rest went to Egypt or to the western and eastern banks of the Jordan River. Between 1951 and 1966, the Bedouin, like most of Israel's Arab population, lived under military authority in the northeastern area of the Negev called "The Sayig".¹¹

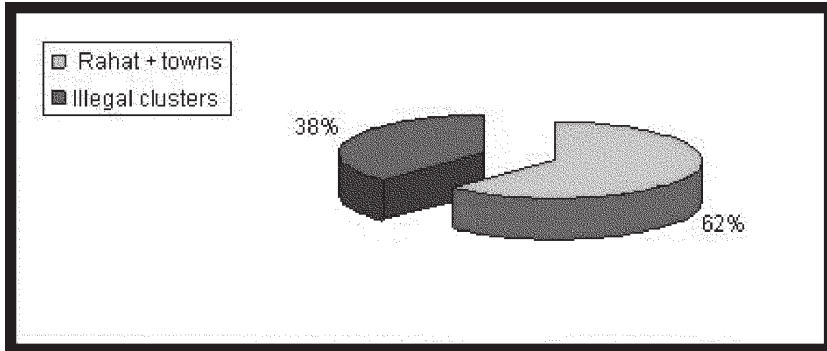
In 1968, the first Bedouin town—Tel-Sheva—was established just east of Beer-Sheva, initially for the settlement of only one tribe by the government.¹² In the thirty years that followed, Tel-Sheva was expanded to include others, while another six towns were built, thereby providing the opportunity for all who wished to settle communally.¹³

Today, almost 100,000 Bedouin¹⁴ (62% of the total Bedouin population) live in planned, urban towns, all of these built with government funds. They were planned for "low-rise construction." The members of the Bedouin community mentioned above were allocated large lots—about 800–1000 sq. meters each, free of charge.¹⁵ It should be noted that this is



The settlements map for 2006—the seven existing Bedouin towns,
the expansions, and the new towns

*Courtesy of the Authority for the Advancement of the Bedouin in the Negev,
Survey of Israel*



typically double the area of State land which other Israelis may normally purchase for a residence. The remaining 59,000 Bedouin (38%) reside in hundreds of illegal clusters over an area of more than half a million dunams (a dunam is 1000 sq. meters or one-quarter acre). Many of these clusters are obstructing the planned development of the greater Negev area.

The existing towns could accommodate most of the Bedouin population. As shown in the table below, there are approximately 3,700 vacant developed lots available for occupancy by Bedouin families. Another 4,000 lots can be readily developed upon demand.¹⁶ Nevertheless, the Government decided to build an additional nine Bedouin settlements and to expand the existing towns.¹⁷ All together, these towns, occupying tens of thousands of dunams, will eventually enjoy the best infrastructure and services that Israel offers its citizens. In light of past experience, the new villages are planned in full consultation with representatives of the prospective population,¹⁸ who provide input on their diverse wishes and needs.¹⁹ Furthermore, in December 2003, a new regional council (Abu-Basma) was appointed (by Avraham Poraz, the Minister of Interior) for the newly formed Bedouin settlements of the Negev, to ensure a high standard of municipal services to these new villages.²⁰

ILLEGAL CONSTRUCTION

Many residents of the Negev sometimes feel that they live on a different planet from the rest of Israel. No wonder it is sometimes referred to as the “Wild South.” The “wildness” is manifest above all in the illegal construction and the invasion of state lands by some Bedouin.

Until recently, Bedouin lived in tents, and later in temporary huts. Most of the Bedouin accepted the government’s offer and built their houses

Lots in Bedouin Towns

<i>Town</i>	<i>Total No. of Lots</i>	<i>Lots Not Yet Developed</i>	<i>Lots Allotted</i>	<i>Lots Available for Allotment</i>
Hura	2,899	543	1,351	1,004
Keseifa	2,776	1,671	897	208
Lakia	2,401	1,192	728	480
Arara Negev	2,040	266	1,067	707
Rahat	4,119	43	3,900	175
Segev Shalom	1,746	264	886	596
Tel Sheva	2,170	159	1,477	535
Total	18,151	4,138	10,306	3,705

Data source: The Bedouin Administration, 2002.

Table source: 10th, 11th, 12th, 13th, Periodic Reports Concerning the Implementation of the International Convention on the Elimination of all forms of Racial Discrimination (Compiled by the Department for International Agreements and International Litigation, Ministry of Justice—Submitted in 2005 to the United Nations CERD Committee May 4, 2005)

in towns, while others began building illegal structures, hiding their building blocks under existing temporary structures to hoodwink government inspectors. Now, sad to say, some of them build without concealment or hesitation. We are facing three to four new illegal buildings every day, in all more than 1,500 a year.²¹ Although most of the illegal buildings display low standards of construction, some of the newer buildings are neither small nor modest. We see a lot of large scale houses—300 sq. meters with expensive construction. The picture below even indicates a home with a swimming pool. The buildings are sometimes constructed well beyond existing settlements and some jut out from hilltops. The large investments in many such structures serve as proof that owners fear neither prosecution nor demolition.

These illegal buildings are not just for residential purposes. There is also illegal commercial construction [picture 3] throughout the Negev, including gasoline stations [picture 4], stores, and supermarkets, all erected on public lands. In other words, thousands of Bedouin are breaking the law.

The State is of course obligated to provide education, welfare, medical treatment, health, and security, to all its citizens, but it is almost impossible to provide these services to each Bedouin family that settles down illegally, in one of the small clusters, often far from the road, on a hilltop, or otherwise dispersed wherever they choose in the Negev.



Illegal estate on state lands.
*Courtesy of the Ministry of Interior—
National Unit for Planning, Law Supervision and Enforcement.*

While most have taken advantage of the special terms offered by the state and have built their homes and businesses legally, a significant minority clearly feel they are not obliged to obey Israeli law. As a consequence, to put it bluntly, there is no feeling of law and order in the open lands of the Negev.

This rampant flouting of the law is taking place despite the fact that every Bedouin citizen living in the Negev—and no one else²²—is entitled to receive a free plot of building land from the state (800–1,000 sq. meters) on condition that he settles in one of the legal Bedouin towns. That is one of the unique provisions of a policy that offers incentives to Bedouin to move to these legal towns.²³

The government provides the land free of charge, while the families receive significant compensation for any abandoned attached structures such as buildings and sheds. Compensation is awarded both in monetary terms and in land, as quantified by construction and crop value. In addition, grants are awarded to families who choose to move to existing or new towns.²⁴

It is important to note that compensation is given irrespective of the economic situation of the family, its income, or its assets. What is more,



Illegal commercial constructions.
*Courtesy of the Ministry of Interior—
National Unit for Planning Law Supervision and Enforcement.*



Illegal gasoline station.
*Courtesy of the Ministry of Interior—
National Unit for Planning Law Supervision and Enforcement.*

it is given regardless of the fact that, in the eyes of the law, the recipients were trespassers on the land that they might abandon. Moreover, as will be explained later, those with individual ownership claims over land receive higher compensation both in money and in land. Despite all these incentives, the government has not succeeded in putting an end to illegal settlement.

THE BASIS FOR BEDOUIN RESISTANCE

The core issue is a fundamental dispute over title to lands in the Negev. Although the State's position is that lands in the Negev belong to the State and, as such, it is public land,²⁵ some Bedouin maintain that the land belongs to them. Accordingly, they refuse to move elsewhere and they prevent others (especially other Bedouin) from settling on the land they claim as their own.²⁶ That happens even where they are not actually occupying the specific lands to which they claim ownership. It must be emphasized that not all Bedouin claim ownership of land. However, there are about 2,700 claims with over 650,000 dunams in dispute.²⁷ Moreover, many Bedouin simply ignore the law that prohibits construction without approved plans and building permits. Illegal building is not limited to land in which ownership is disputed; it occurs with no hesitation throughout the northeastern part of the Negev.²⁸ Furthermore, we should not forget that the Bedouin have a long history of living outside permanent settlements, and have not adjusted to State legislation—from the Ottoman and British periods to the present. Some Bedouin want to preserve their traditional way of life. They have their own traditional code, which is often unlike the law of conventional or modern states. Moreover, living outside an established town can be considered as *worthwhile* due to direct and indirect factors:

First, there is no need to pay for the land. Second, there is no limit on how much land can be taken [see illustration 5]. Third, one can build whenever one chooses. There is no bureaucracy of any sort, and therefore no need to obtain building permits or pay for them. Fourth, there are no municipal or governmental property taxes of any kind. Fifth, some of the illegal clusters have become almost inaccessible to any official representative, including the police, due to violent resistance.²⁹

It is not rare, in the Negev, to see a chase by a police car that stops at the edge of a Bedouin cluster, as if it were extra-territorial. The sixth factor is indirect, and relates to different aspects of the official compensation policy:

the above-mentioned decision that every Bedouin who moves to a legal town gets compensation for abandoned attached structures (including illegally built houses)³⁰ can become the incentive for illegal construction. Ironically, this obtains due to the steady increase in the compensation rate,³¹ both for abandoned attached structures and for settlement of ownership disputes. Some believe it may be worthwhile to reject government offers, remain stubborn, and mark time in the hope of a more lucrative arrangement in the future.

The seventh factor is that, due to ministerial policy, between, 2000 and 2001 there was almost no enforcement of the law regarding illegal building in the Bedouin sector.³² Hence, during this period there was a steep rise in illegal construction.

Support and encouragement for remaining in the illegal clusters comes both from inside and outside the Bedouin community. First, there are several active non-governmental organizations (NGOs) and others that share the belief that the illegal actions are justified and that the authorities will eventually accept the Bedouin demand to keep most of them at



The photograph shows an upgrade and extension of an illegal cluster. This cluster is located near the main highway connecting Be'er-Sheva to Tel-Aviv.

*Courtesy of the Ministry of Interior—
National Unit for Planning Law Supervision and Enforcement.*

their present location.³³ Second, there is an intra-Bedouin phenomenon whereby some of the Bedouin who already live in towns³⁴ prevent other Bedouin from joining them, as they want to keep the vacant lots for their own families and their descendants.³⁵

It is important to clarify that under Israeli law, any citizen can buy a lot (lots for building individual houses are usually expensive) and build a house after acquiring a permit from the planning authorities. These permits are granted within typical regulations defined by urban planning legislation.³⁶ Appreciating this, it is easy to imagine how a citizen of any town in the Negev feels when he is brought to court and punished for adding a balcony to his three-room second-floor apartment without a permit, while from his window he can see the Negev covered day after day by thousands of illegal structures. There is, of course, a feeling of frustration among the general public because of what might seem to be unequal enforcement of the law.

The consequences of these illegal settlements are severe and extensive. Their existence makes it hard to plan new settlements for Bedouins or for others. They create many problems regarding the expansion of existing towns; and they generate difficulties in planning national projects due to the unplanned and irrational way in which the Negev is being settled.

Many attempts by state authorities to develop necessary and basic infrastructure are challenged in court by the representatives of the illegal builders, trying to stop or delay such work. For example, the building of a major and essential road south of Rahat was delayed;³⁷ obstacles have been created to the laying of high power lines to Eilat; and construction has been impeded for sewage and water pipes that were planned for exclusive Bedouin use. The main road to the Bedouin town of Keseifa is too narrow due to the resistance of a Bedouin family, and so on, and so forth.³⁸ Such illegal behavior takes no account of the fact that the intended beneficiaries of the project may be Bedouin. This situation clearly requires change.³⁹

WHY ARE OWNERSHIP DISPUTES OVER NEGEV LANDS ONGOING?

It is a fundamental principle, concerning land ownership, that one cannot transfer (willfully or not) more than one has⁴⁰—meaning that if a person has ownership rights he can pass ownership or less (leasing for instance) but if he only has leasing rights he cannot transfer ownership. The decision as to whether ownership rights exist over land is taken on the basis

of substantive law. This law obliges⁴¹ the ownership claimant to prove an allocation from the authorities—whether the Ottoman authorities, the British Mandate, or the State of Israel. When founded, the State of Israel did not change previous laws regarding land ownerships. As I will explain, it continued to implement the existing laws: the substantive land law and the procedure land law. While the first is basically an Ottoman law with British adaptation and additions, the latter is mainly a British creation—The Land (Settlement of Title) Ordinance 1928.

The Land Title settlement⁴² aims at investigating the transfer (called the “chain”) of rights according to specific procedures until it reaches back to the allocation’s source. The outcome of the process is “Title Registration” which is decisive, conclusive, and open to the public.⁴³

In Israel, ownership disputes are settled according to special land legislation.⁴⁴ As explained, the Israeli legislators adopted⁴⁵ the Mandatory law,⁴⁶ which in turn had adopted the substantial Ottoman law.⁴⁷ According to that legislation, the majority of the Negev is State land since it was classified by the Turkish definition as *mawat* land.⁴⁸ This classification means that unless one proves specific allocation of land rights, he cannot be granted ownership.⁴⁹ The Bedouin ownership claims are not based on legal grounds but rather on their own tradition and the period of time they have occupied the land, with limited documentation.⁵⁰ All disputes over land ownership are settled by court decision⁵¹ and some cases regarding the Negev land were brought to the courts.⁵²

The conclusion that the Bedouin do not have ownership rights over their past pasture territories was upheld by the Supreme Court⁵³ after earlier decisions by the district court.⁵⁴ In a ruling relating to 16 cases, the Supreme Court accepted the State’s argument that the Bedouin have no valid claim to ownership of Negev lands located near Dimona, a development town to the east of Beer-Sheva.

Nevertheless, the State agreed to take into consideration the strong attachment that the Bedouin have towards the land they occupied.⁵⁵ Hence, in spite of this unequivocal legal ruling, the government decided,⁵⁶ as State policy, to adopt a compromising approach towards the private ownership claims of Bedouin. Therefore, *beyond the letter of the law*, the State offered them money and land compensation with regard to their claims.⁵⁷ Accordingly, any Negev Bedouin who has an ownership claim can receive money and land compensation if he withdraws his claim, with no need to prove its validity. As shown, today the compensation is in terms of land—between 20 and 30% of the claim (for claims of more than 400,000 sq. meters). For the rest of the claim, they can receive monetary compensation. The amount

changes from one type of land to the other. The sums are universally very high.⁵⁸

A complicating factor arose in 1977, just a year after the government's move to accommodation, when there were elections and a changeover of government with the Likud coming to power.⁵⁹ Shortly afterwards, the peace agreement with Egypt was signed.⁶⁰ It obliged Israel to withdraw from the Sinai Peninsula and therefore to move air bases from there to the Negev. In 1980, the Knesset passed a law⁶¹ which included evacuation of the land for the proposed airbase, and granted the Bedouin higher compensation only for the area related to the airbase.⁶² Some Bedouins consequently hoped that the compensation rate for lands outside the airbase would rise to the same high level as for the area designated for the base. This was an accurate assessment. It proved worthwhile to exercise patience as the compensation rate increased over time. The last increase was made but a few years ago.⁶³

In sum, from 1978 until 2003, agreed settlements of claims were achieved with regard to over 140,000 dunams,⁶⁴ most of them in the area of the airfields; 650,000 dunams remain in dispute.

AVOIDING CONFRONTATION

Although there was no specific government decision on this matter, for a long time the State of Israel did not confront the Bedouin and refrained from enforcing its rights over disputed lands.⁶⁵ During this same period, the face of the Negev was changing. Some of the land claimants exploited the time to strengthen their possession of the land, including the uncontrolled building of illegal construction.⁶⁶

When I came to work at the District Attorney's office in the Negev, several years ago, I started to ask why there were no title settlements in the Negev, as required by Israeli legislation. The answers I received were far from satisfactory. I familiarized myself with the extent of the problem and my colleagues and I have initiated the revival of the land title settlement process according to legislation. Our office saw it as a necessary trigger that, amongst other things, could change the unacceptable and tense situation in the Negev.

We initiated a new policy in 2001. In June 2002, Mr. Elyakim Rubinstein, the Attorney General—now a Supreme Court justice—brought the subject before the government,⁶⁷ which appointed Ms. Tsipi Livni, who would become Minister of Justice, to formulate a plan. In 2003, the



Aerial photograph of the Negev (2005).
Courtesy of the Land Settlement Unit, Southern District Attorney.

Government approved a broad investment plan regarding the Bedouin of the Negev.⁶⁸ This important Government plan can be seen, in practice, as *the* turning point regarding the Bedouin issue.

According to this government plan, more than NIS 1 billion are to be invested in the expansion and improvement of the Bedouin towns, as well as in the land title settlement process, law enforcement, and other important issues relating to the Bedouin. A special budget of hundreds of millions of shekels was allocated to compensate Bedouin moving into towns. Mr. Ehud Olmert, then Deputy Prime Minister, was appointed to follow and inspect the progress of this Government plan.⁶⁹

In July 2005⁷⁰ an extra sum was added and in October, as part of the new Government Plan for Developing the Negev and Galilee,⁷¹ special attention was given to the Bedouin population. According to these plans, billions of shekels are to be invested to effect the required changes, and one can only hope that they will materialize in a relatively short time. Our role has to do with reinitiating the land title settlement procedure, almost 30 years after it was suspended.

Since 2004, the Unit which I head has brought to court more than 130 cases and more will follow.⁷² We have already won about 40 rulings in favor of the State, relating to about 25,000 dunams. Parallel to the court

procedures compromise agreements have been signed over an additional 4,000 dunam.⁷³ Large parts of the land whose title will be registered in the name of the State will be used in the coming years for the benefit of 16 Bedouin towns and communities: the building of the nine new ones and the expansion of the seven existing ones. Moreover, some of the land will be used for new industrial zones.

Currently, the Ministry of Justice is working along with other authorities⁷⁴ to implement the Government decision regarding land issues in the Negev. This is done by enforcement of the law, by legal procedures, or alternatively by compromise, which is the preferable way to end this dispute. But as history shows, and according to my experience, the parallel method of implementing the legal procedure is essential as it encourages compromise and agreed-upon settlements.

NOTES

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1. This article is based on a lecture given at the Summer Institute for Israel Studies, Brandeis University, 4 January 2006, representing the author's opinion.

2. Department Director and Head of the Land Title Settlement Unit, Ministry of Justice, Attorney's Office, Southern District (civil matters).

3. Avinoam Meir, *As Nomadism Ends: The Israeli Bedouin of the Negev* (Boulder CO, 1977); Oren Yiftachel, "The Shrinking Space of *Citizenship*: Ethnocratic Politics in Israel," *Middle East Report*, 223 (Summer 2002) 38–42; Shamir Ronen, "Suspended in Space: Bedouin under the Israeli Law," *Law and Society Review*, 30(2) (1996) 231; Alexander (Sandy) Kedar, "The Jewish State and the Arab Possessors: 1948–1967," in Ron Harris, Alexander (Sandy) Kedar, Asaf Likhovsky, Pnina Lahav (eds.), *The History of Law in a Multi-Cultural Society: Israel 1917–1967* (Hanover, NH, 2002).

4. For example, see AAC, 8354/04 *The Association for Civil Rights in Israel, El-Ukbi and Others v. The Israeli National Planning Council* (25.1.06); H.C. 8062/05 *Inas El-Atrash v. the Health Minister and Others* (23.11.05).

5. Sec. 103 of the Ottoman Land Code 1858. CA, 218/74 *Alhawashla and Others v. The State of Israel*, 38(3) P.D. 141; Ruth Kark, *Pioneering Jewish Settlement in the Negev, 1880–1948* (Jerusalem, 2002) 38–44 [Hebrew]; Chanina Porat, *From Wasteland to Inhabited Land* (Jerusalem, 1996) 16–18 [Hebrew].

6. Yitzhak Ben-Zvi, *The Bedouin of Eretz Israel* (Jerusalem, 1932) 236 [Hebrew]; Kark, *Pioneering Jewish Settlement in the Negev*, 35; Moshe Sharon, "The Bedouin

in Eretz Israel between the 18th and 19th Centuries” (master’s thesis, The Hebrew University of Jerusalem, 1964) 51–54, 67–73 [Hebrew]; Yosef Suad, “The Bedouin in “Eretz Israel” between the Years 1804–1904” (master’s thesis, Bar-Ilan University, 1992) 25, 41–45 [Hebrew]; *Encyclopedia Hebraica* (Jerusalem, 1954) 7: 623–630, 24:91 [Hebrew]; Joseph Braslavi, *Know the Country—The Negev* (Tel-Aviv, 1956) 259–262 [Hebrew]; Aref El-Aref, *Bedouin Love, Law and Legend: Dealing Exclusively with the Badu of Beersheva* (Tel-Aviv, 1937) 6 [Hebrew].

7. Emmanuel Marx, *Bedouin of the Negev* (Tel-Aviv, 1974) 16 [Hebrew] (also in English: Emmanuel Marx, *Bedouin of the Negev* (Manchester, 1967); CA, 218/74, *Alhawashla and Others v. The State of Israel*, 38(3) P.D. 141; Joseph Ben-David, Gideon Kressel, “The Bedouin market—Cornerstone for the founding of Beer-Sheva: Bedouin traditions about the development of the Negev capital in the Ottoman period,” *Nomadic Peoples*, 36–37 (1995) 119–144.

8. The foundation of Beer-Sheva: El-Aref, *Beduin Love, Law and Legend*, 156–163; Kark, *Pioneering Jewish Settlement in the Negev*, 33; Marx, *Bedouin of the Negev*, 34; Braslavi, *Know the Country*, 236 [Hebrew].

9. Marx’s assessment is 65,750 Bedouin, Marx, *Bedouin of the Negev*, 17; Kark’s assessment is 55,000–65,000 (Kark, *Pioneering Jewish Settlement in the Negev*, 89).

10. According to the 1954 Israeli national census, 11,000 Bedouin were left in the Negev after the establishment of Israel; Marx, *Bedouin of the Negev*, p. 18.

11. Marx, *Bedouin of the Negev*, 20; Chanina Porat, “The Strategy of the Israeli Government and the Left Parties’ Alternative Plan towards the Bedouin Issue in the Negev 1953–1960,” *Iyunim Bitkumat Israel*, 10 (2000) 420–479 [Hebrew].

12. Joseph Ben-David, *The Beduins in Israel—Land Conflicts and Social Issues* (Jerusalem, 2004) 33 [Hebrew].

13. Rahat—1972, Arara in the Negev—1980, Keseifa—1982, Segev-Shalom—1982, Hura—1991, Lakia—1991.

14. The Ministry of Interior, 1.1.06; Ministry of Interior—Na’ama Malis Co., K.S.T. Co.—Moshe Cohen and Others, *Beer-Sheva Metropolis Plan*, April 2005, 39, 40: the Bedouin population for the year 2020 is expected to be 300,000.

15. The Authority for the Advancement of the Bedouin in the Negev; For more information see Chapter C’ of The Israel Land Council Resolution no. 1028, May 2, 2005; also the 10th, 11th, 12th, and 13th, *Periodic Reports Concerning the Implementation of the International Convention on the Elimination of all forms of Racial Discrimination* (compiled by the Department for International Agreements and International Litigation, Ministry of Justice, 4 May 2005) paragraphs 379–392

16. The number of vacant plots according to the data of the Authority for the Advancement of the Bedouin in the Negev, 2004.

17. According to plans of the Ministry of Interior—Na’ama Malis Co., K.S.T. Co.—Moshe Cohen and Others, *The Beer-Sheva Metropolis Plan*, April 2005, 119: Expansions include Tel-Sheva—80%, Lakia—72%, Rahat—63%, Keseifa—48%, Segev Shalom—25%. New towns/villages are Tarabin A-Sana, Drigat,

Makchul—including a private agrarian farm *Kuchla*, Molada—for the El-Atrash tribe, Bir-Hadag—for the El-Azazme tribe, Kaser-A-Sir—for the Hawashla tribe, Abu-Krinat, Um-Batin, and El-Sayed.

18. According to section 100 of the Planning and Building Law, 1965, any relevant party has a legal right to object to building plans after they are published. Nevertheless, in the southern district, the planning authorities added a preliminary step to the planning procedures to increase public involvement in the planning proceedings. This was done by establishing steering committees, at both the district and local planning levels where interested parties are invited to clarify their wishes. See, for example, the local steering committee protocol regarding the new village of *Um-Batin* (dated 13.10.04) and the protocol of the new village of *Molada* (dated 20.3.05). The public involvement in regional planning is illustrated in the protocols of the preliminary steering committee regarding the planning of Metropolitan Be'er-Sheva (as the protocol of the meeting on 4.7.05 shows, various sectors are represented on the committee: Bedouin, academic, NGOs, etc.

19. Obviously, not all wishes can always be fulfilled—the Bedouin new settlement of Bir-Hadag, for instance, is planned as four-dunam plots (free of charge) plus agricultural area on the margins. As of now, part of the target population prefer their current living conditions in illegal clusters and have refused to cooperate with the authorities until they are allotted 10 dunam each (see petition filed by the District Council of Ramat-Negev—HC, 2778/05 *The Regional Council "Ramat Negev" v. The Prime Minister and Others* (Pending). For Bedouin in traditional occupations, agriculture and herding flocks, the government leases approximately 135,000 dunam in various areas. According to the Authority for the Advancement of the Bedouin in the Negev, 2005 in the spring pasture season, some 280,000 dunam are leased and pasturing is also permitted in 35,000 additional dunam in IDF firing areas.

20. Local Councils Ordinance (Regional Councils) (Abu-Basma) 2003 (The Official Gazette: Collection of Regulations no. 6280 from 28 December 2003).

21. Reports from the Ministry of Interior—National Unit for Planning, Law Supervision and Enforcement, for the years 2003 and 2004.

22. HC, 528/88 *Avitan v. Israel Land Administration and Others*, 43(4) P.D. 297. The Supreme Court rejected a petition of a non Bedouin who wanted to receive a plot in Segev-Shalom (one of the Bedouin towns).

23. See Chapter C' on the Israel Land Council Resolution no. 1028, 2 May 2005.

24. See *Ibid.* and 10th, 11th, 12th, 13th, *Periodic Reports Concerning the Implementation of the International Convention on the Elimination of all forms of Racial Discrimination* (Compiled by the Department for International Agreements and International Litigation, Ministry of Justice, 4 May 2005) paragraphs 379–392.

25. See Pelia Albek, *The Experts' Commission Final Report for Land Settlement of the "Sayig" and the Northern Negev* (Jerusalem, 1975); adopted as Israeli Government Resolution no. 968 (A/1) from 15.8.1976; CA, 218/74 *Hawashla and*

Others v. The State of Israel and Others, 38(3) P.D. 141; the State's position in all the land title cases that the Land Title Unit is now handling.

26. That has happened even when the land is expropriated for Bedouin public needs. See the plaintiff's argument in CC, 261/04 *Abu-Jama v. The Israel Land Administration* (pending in the Beer-Sheva Magistrate's Court) claiming compensation of 2.5 million NIS from the Israel Land Administration. According to his claim, he was unable to implement his plans for an industrial plot, which he purchased from the Israel Land Administration, due to the violent act of another Bedouin (even though the latter had been compensated by the State regarding his previous ownership claim over that plot and even though the land is expropriated). See also CC, 18155/05 *Ze'ev Sharon Kablanut Binian Co. v. the Israel Land Administration* (Tel-Aviv Magistrate's Court) in which the plaintiff who signed a contract with the State regarding the building of the main road to Abu-Krinat argued that he couldn't fulfill the contract due to the violent actions of another Bedouin who claimed ownership over the land route of the road. This case ended in reconciliation and the case was withdrawn from court. See also in—Emmanuel Marx, "Advocacy in Bedouin Resettlement Project in the Negev, Israel," in Muneera Salem-Murdock and Michael M. Horowitz (eds), *Anthropology and Development in North Africa and Middle East* (Boulder, CO, 1990) 228, 234.

27. The Bedouin claims are for 3% of State Lands (total sum of State Land is about 21,500,000 dunams excluding the Dead Sea and the Sea of Galilee). Source: the Ministry of Justice 19.1.06.

28. There are more than 150,000 dunams of registered State lands in the Negev that have been subject to incursion.

29. For example, on 15.11.05, an act of violence occurred against the distribution of subpoenas in an illegal building cluster known as the *Bir El Mashash* area.

30. See Chapter C' of the Israel Land Council Resolution no. 1028 from May 2, 2005. For example, the compensation sum for 1 sq. meter of illegal building made of blocks is 890 NIS. The average compensation for Bedouin family is about 200,000 NIS.

31. Compare the compensation sums in Albek's report, *The Experts' Commission Final Report for Land Settlement of the "Sayig" and the Northern Negev*, 20.10.1975 (adopted as Israeli Government Resolution no. 968 (A/1) from 15.8.1976) to the sum in the Negev Land Acquisition (Peace Treaty with Egypt) of 1980 and to the sum in The Israel Land Council Resolutions: no. 585 from 15 March 1993, no. 813 from 9 October 1997, and no. 932 from 24 June 2002.

32. According to the data of the Ministry of Interior—National Unit for Planning, Law Supervision and Enforcement—in 2000, only three illegal buildings were demolished by the unit and only 45 in 2001.

33. The NGOs and others lead effective and wide scale campaigns as well as using other measures to promote the legitimacy of the existing illegal clusters. For example, petitions to the High Court demanding an order to legitimize 45 illegal existing clusters—HC, 1991/00 *Abu Hamad v. The State Council for Planning and*

Building (Pending). Petitions demanding infrastructure and the supplement of basic services to illegal clusters (the demand for electricity—HC, 8062/05 *Inas El-Atrash v. the Health Minister and Others* from 23.11.05—failed) but the demands for health services (HC, 7115/97 *Adalla v. The Ministry of Health* from 19.12.01) and education (HC, 5221/00 *Abu-Gardud v. The Minister of Education*, from 26.11.02) were successful).

The specific terminology used in the procedures and publications plays a major part in the process: on the one hand, it de-legitimizes the State's actions (as in AAC, 8354/04 *The Association for Civil Rights in Israel, El-Ukbi and Others v. The Israeli National Planning Council* (dated 25.1.06). In one of the previous proceedings at the District Court, the petitioner (Mr. El-Ukbi) referred to the Bedouin towns as "Concentration Towns." On the other hand, it puts a legitimate label on the phenomenon by calling it "unrecognized villages" rather than illegal clusters. Furthermore, one of the organizations calls itself "the Regional Council for Unrecognized Negev Arab Villages," masquerading as a regular publicly elected municipality. Organizing volunteer "labor days" to build infrastructure in and for the illegal clusters and even rebuild demolished houses—see Publication of the Israeli Committee Against House Demolition (dated 23 January 2006); <http://www.icahd.org/eng/news.asp?menu=5&submenu=1&item=288>, Accessed date: 15 March 2006; "Account of Work day in Qatamat, organized by Recognition Forum," <http://dukium.org/modules.php?name=News&file=article&sid=75> Accessed date: 3 January 2006; "Working Day in the Village of Um Al-Hiran," <http://dukium.org/modules.php?name=News&file=article&sid=128> Accessed date 3 January 2006; Yaser Elukbi, "Houses Demolished were Rebuilt," *SHEVA magazine* (9.3.06) 24.

34. According to the laws of expropriation, all the existing Bedouin towns are public land, with no reference to who the previous owner was (HC, 179/79 *Abu-Karen v. the Israel Land Administration*, 34(4) P.D. 567; HC, 307/82 *Lubianker v. The Ministry of Finance*, 37(2) P.D. 141). For example, see the expropriation for public purposes order from September 8, 1980 regarding the town of Rahat (Israel's Official Gazette no. 2662, 9 October 1980); from 6 November 1978, regarding the town of Hura (Israel's Official Gazette no. 2491, from 14 December 1978).

35. See the Rahat Municipality answer in HC, 10747/03 *Abu Koider Ali v. The Government of Israel and others* (unpublished). While accepting the State's argument, the Supreme Court emphasizes in its decision that Rahat is obliged to accept proper plans that answer the petitioners' family needs (1 November 2004). Another example is case 4098/03 *Abu-Karen Nahala v. the State of Israel*, in which the petitioners tried to prevent another Bedouin family from entering a plot in the Bedouin town of Lakia (the plaintiff withdrew the case after the submission of the State's reply).

36. According to Chapter 5, section 145 of the Planning and Building Law, 1965.

37. LCA, 11057/04 *Ali Hasin Salman Alturi v. The State of Israel—The Minister of Transportation* (dated 2.5.05); CA, 1048/04 *Ali Hasin Salman Alturi v. The State of Israel—The Minister of Transportation* (dated 27.9.05, Beer-Sheva District Court)
38. Interviews with officials from the Authority for the Advancement of the Bedouin in the Negev.
39. Annual Report of the State Comptroller No. 52B (1.9.2001) [Hebrew].
40. On the phrase “*Nemo dat quod non habet*” (no one is able to transfer what he doesn’t have) see Chaim Zandberg, *Land Title Settlement in Eretz-Israel and the State of Israel* (Jerusalem, 2000) 28 [Hebrew]; CA, 525/73, *Suliman Abdala Isa Inheritance v. the State of Israel*, 29 (1) P.D. 729, 732–733.
41. Subordinate to several exceptions.
42. The reasoning for the land title settlement process is explained in detail in Zandberg, *Land Title Settlement in Eretz-Israel and the State of Israel*, 27.
43. “. . .the register of title is a mirror which reflects accurately and completely and beyond argument the current facts that are mutual to a man’s title . . .” Zandberg, *Land Title Settlement in Eretz-Israel and the State of Israel*, 86, quoting from Theodore Ruoff, *An Englishman Looks at the Torrens System* (Australia, 1957). The outcome of the Land Title Settlement process is called “Blank Plate” (CA, 163/57 *Daud Adorin v. The Guardian*, 12(3) P.D 1718, 1724).
44. Settlement of Land Rights Ordinance (Consolidated Text) –1969, Settlement of Land Rights Regulations (Procedures)—1972, *The Official Gazette: Collection of Regulations* no. 2929 from 9.11.1972, p. 220
45. The Law and Administration Ordinance, 1948. Upon attaining independence (1948) Israel passed the Law and Administration Ordinance, stipulating that laws prevailing in the country prior to statehood would remain in force insofar as they did not contradict the principles embodied in the Declaration of the Establishment of the State of Israel or would not conflict with laws to be enacted by the Knesset. Thus, the legal system includes remnants of Ottoman law in force until 1917, and British Mandate laws, which incorporate a large body of English common law. The Ministry of Foreign Affairs: <http://www.mfa.gov.il/mfa/facts%20about%20israel/state/the%20state-%20the%20law%20of%20the%20land>
46. The Land (Settlement of Title) Ordinance, 1928. Until the foundation of the State of Israel in 1948, the British Mandate settled 5 million dunams on the basis of that ordinance.
47. The Ottoman Land Code, 1858; Moshe Douchan, *The Land Laws in Israel* (Jerusalem, 1952) [Hebrew]; Avraham Ben-Shemesh, *The Land Laws in the State of Israel* (Tel-Aviv, 1953) [Hebrew]; Zandberg, *Land Title Settlement in Eretz Israel and the State of Israel*, 110.
48. Section 3 of the Ottoman Land Code, 1858; Avraham Chalima, The Negev Lands from a Legal Point of View, *Land Use Research Institute Policy Discussions Group* (Jerusalem, 1985) 24:5 [Hebrew]. For a definition of “Mewat” see Pelia

Albeck, *The Land Laws in Israel* (Jerusalem, 2005) 68–76 [Hebrew]; Avraham Hilleli, “The Rights in Land: General-Historic Background of Evolution of Property in Israel”, in Avraham Shmueli, Arnon Sofer, and Nurit Clot (eds), *The Lands of Galilee* (Haifa, 1983) 586 [Hebrew].

49. The British Mandate legislated the *Mewat Land Ordinance* (1921) which ruled that persons cultivating *mewat* lands could register the land in their own names, during a limited period of time. As before, the Bedouin did not register the lands. According to the *Ordinance*, after that period, “Any person who, without obtaining the consent of the government breaks up or cultivates any waste land, shall obtain no right to a title deed for such land, and further will be liable to be prosecuted for trespass.” See Pelia Albeck, “About Land Limitation Laws in Israel,” *Kiryat Mishpat*, 1 (2001), 335, 343; CA, 218/74, *Hawashla and Others v. The State of Israel and Others*, 38(3) P.D. 141; CA, 298/66 *Masad Yosef Asad Kasis v. The State of Israel*, 21(1) P.D. 372; CA, 518/61, *Salach Badaran v. the State of Israel* 16(3) P.D. 1716.

50. Joseph Ben-David, *The Bedouin in Israel—Land Conflicts and Social Issues*, (Jerusalem, 2004) 258–264, 274–276 [Hebrew].

51. Section 43 of the Settlement of Land Rights Ordinance (Consolidated Text)—1969; Avraham Chalima, “Right of possession and limitation in lands settlement ordinance,” *The Institute of Judicial Training for Judges*, no. 2 (Jerusalem, 1975) [Hebrew]; Solel Asher, *The geographical delimitation and mapping of rights to land in Israel* (Tel-Aviv, 1991) [Hebrew].

52. CA, 218/74 *Hawashla and Others v. The State of Israel and Others*, 38(3) P.D. 141.

53. *Ibid.*

54. CC, 1/69, 3/69–17/69 *Al Hawashla and Others v. The State of Israel and Others* (dated 13.3.74, Beer-Sheva District Court, not published).

55. Pelia Albek, *The Experts’ Commission Final Report for Land Settlement of the “Sayig” and the Northern Negev*, 20.10.1975; adopted as Israeli Government Resolution no 968 (A/1) from 15 August 1976.

56. *Ibid.*

57. See Chapter A’ of the *Israel Land Council Resolution* no. 1028, 2 May 2005.

58. 1,300–10,300 NIS per dunam (current rates). Average compensation is 450,000 NIS.

59. The change brought hopes for a rise in the compensation rates—according to a conversation with Pelia Albek, 17.8.04.

60. President Sadat visited Israel on 19 November 1977, and the Peace Treaty was signed in the United States on 26 March 1979.

61. *The Negev Land Acquisition (Peace Treaty with Egypt) Law—1980*.

62. Compare the sum of compensation in the *Land Acquisition (Peace Treaty with Egypt) Law—1980* to the sum in Albek, *The Experts’ Commission Final Report*

for *Land Settlement*; adopted as Israeli Government Resolution no. 968 (A/1) from 15 August 1976.

63. See Israel Land Council Resolution no. 932 from 24 June 2002.

64. Source: The Authority for the Advancement of the Bedouin in the Negev, 17.2.03.

65. Although the State did not initiate the promotion of legal proceedings from the 1970s until the Government decision of 2003, any Bedouin who wished to continue the legal procedure regarding his land claim was entitled to do so (see the State's reply in HC, 4611/03 *Alturi v. The Justice Minister and Other* (not published)).

66. According to data of the Ministry of Interior—National Unit for Planning, Law Supervision and Enforcement, as of 2005, there are about 40,000 illegal constructions in the Negev (including tents, sheds, etc.).

67. At the same time, *The Israel Land Council Resolution no. 932* was issued (from 24 June 2002) and *The State Comptrollers' Annual Report No. 52* was published.

68. Israeli Government Resolution no. 216 (ARB/1) from 14 April 2003.

69. Another relevant process that has potential for further discussions is the “conflict assessment process” that is taking place in two specific locations in the Negev: Ksaife and Um-Batin. The assessment memorandum of understandings was signed in January 2005 between the State of Israel and the Consensus Building Institute, Inc. (which determines the assessment). In this memorandum, the Government authorized the examination of an unaffiliated assessment, according to specific terms. The assessments' report has not yet been submitted.

70. Israeli Government Resolution regarding the development of industrial employment areas in the Bedouin villages, no. 3957 (ARB/41) from 22 July 2005.

71. Israeli Government Resolution regarding the Developing Plan for the Negev and the Galilee, no. 4415 from 20 November 2005—allocating 6 billion NIS for the Bedouin sector.

72. Together with the Authority for the Advancement of the Bedouin in the Negev.

73. Source: The Authority for the Advancement of the Bedouin in the Negev.

74. The authorities that handle implementation of Government policy along with the Ministry of Justice are mainly as follows: The Prime Minister, who is the head of the Ministerial Committee for Minorities Issues; The Deputy Prime Minister is the “Minister in charge” for plans regarding the Bedouin sector. Subordinate to them is the Government Coordinator for Actions in the Bedouin Sector who is in charge of coordinating the various authorities; The Israel Land Administration—by the Authority for the Advancement of the Bedouin in the Negev is in charge of lands, land compromises, and development of settlements for the Bedouin; the Ministry of Interior is in charge of planning as well as for coping with the illegal building (through its National Unit for Planning, Law

Supervision, and Enforcement); the Open Lands Enforcement Unit is in charge of coping with incursions into State lands and military zones; the Abu-Basma Regional Council is in charge of supplying municipal services for the new settlements, as well as education and welfare for all the Bedouin populations outside the towns. The police play a major part in assisting other authorities and in enforcing the law.