

The Goldberg Committee: Legal and extra-legal means of solving the Naqab Bedouin case¹

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ABSTRACT

This paper reflects upon Israel's recent attempt to resolve land and settlement issues of the Palestinian Bedouin-Arabs in the Naqab through the formation of the Goldberg Committee, which has been tasked with making recommendations for solving this case. This recent effort follows a series of past attempts that grapple with the notion of extra-legality in handling the Bedouin dispute with the state over land and housing. The analysis presented here is part of an ongoing research effort, begun in September 2007, undertaken by the International Human Rights Clinic of Harvard University Law School under my supervision. The research project has thus far consisted of three field missions to Israel and included dozens of interviews and meetings with Bedouins, activists, academics, politicians and government representatives. Most importantly, it produced a submission and presentation before the Goldberg Committee in May 2008, presenting an international human rights legal analysis of issues arising in the Bedouin case and some comparative examples of similar situations in the world and recommendations to be adopted.

Opening remark

The Bedouin case and the establishment of the Goldberg Committee reflects an interaction between majority and minority, law and politics, and law and justice. The State of Israel has acted vis-a-vis the Bedouins neither by "integration" nor by "accommodation" (see Choudry, 2008). Nor has it adopted a hybrid choice of the two. The legal and political systems thus far have excluded and alienated the Bedouins. Existing Israeli law has fallen short of accommodating some extent of justice or any of the Bedouin needs and claims. On the contrary, it has denied them ownership of historical lands and turned them into invisible citizens and "invaders" of these lands. Nevertheless, the "rule" of the same law has failed, maybe for the same reason that it is a "bad" law. It has failed to settle the land ownership dispute with the Bedouins and place it in the history books. Recognizing the shortcomings

of the existing legal framework to deal with this case, the Goldberg Committee is an extra-legal attempt to resolve the dispute.

Historical background

In the wake of the 1948 Arab-Israeli conflict, 80%-85% of the Bedouin population either fled or was expelled to Jordan, Egypt, Gaza or the West Bank (Swirski and Hasson, 2006; Yiftachel, 2003:31). It is estimated that of the pre-1948 Bedouin population of about 70,000 people from 95 tribes, only 11,000 Bedouins belonging to 19 tribes remained in the Naqab (Falah, 1989:71, 78). Bedouins in the western and southern Naqab were transferred to the Siyag (Arabic for fence), an enclosed area in the northern Naqab that was then partly inhabited by some Bedouin tribes. The Siyag is estimated to be 1,000 square kilometers in size—the equivalent of just 10% of the area originally held by the Bedouins. The newly relocated Bedouins were provided with neither housing nor compensation. Most Bedouins settled on the lands where the state authorities placed them (Rosen-Zvi, 2004:45).

The case of the Naqab Bedouins entered the path of “illegality” when land and planning laws² by the State of Israel failed to recognize Bedouin ownership or any form of title over lands they possessed for years. Such laws also refuse to recognize the existence of Bedouin villages as legal structures. Accordingly, the villages are labeled “illegal,” and residing on these lands is considered illegal occupation of state land.³

Past state attempts to resolve the Bedouin case

The state’s acts and policies since its early years revolve around the principle of reducing lands possessed by the Bedouins and concentrating them in state-planned settlements (Swirski and Hasson, 2006:12). Israeli politicians and military commanders have voiced different views on where to settle the Bedouins; some of the tabled options were the Naqab and the mixed cities of Jaffa, Lydda and Ramle (Swirski and Hasson, 2006:12–14). One of the early government’s policies was formulated in 1962, by an “interministerial committee to examine proposals for locating sites for residential construction in the Naqab, including housing for the Bedouin population” (Bauml, 2002:313). This committee recommended the establishment of permanent settlements on over 7,600 dunams and identified seven sites for such settlements. This was hoped to put an end to the Bedouin claims over the lands they possessed and still possess in the Naqab (Bauml, 2002:314).

Seven government-planned townships were established between 1966 and 1990: A’rara Banegev, Hura, Ksayifa, Laqiya, Rahat, Segev-Shalom and Tel-Sheva. The permanent townships are home to approximately 90,000 Naqab Bedouins

(Ministry of Construction and Housing, 2007). However, their establishment was subject to failure and it did not solve the Bedouin dispute.⁴ Indeed, the seven Bedouin townships are located within the eight poorest localities in Israel; suffer a high rate of crime and striking unemployment; and lack infrastructure and other services (Israel State Comptroller, 2002:115; Swirski and Hasson, 2006:87).

The legal situation of the Bedouins gained an additional aspect in 1969, when the Israeli government initiated a land claims process, in which any Bedouin claiming a title of land could file a claim under Article 17 of the Land Settlement Ordinance (New Version, 1969). The Bedouins filed more than 3000 land claims, claiming 991,000 dunams (Israel State Comptroller, 2002:15).⁵ However, as noted by Dr. Abu-Ras (2006:5), 1974 marked the end of the claims and counter-claims process. After halting this legal process, the state turned towards an extra-legal one. In 1975, the government established the Albeck Committee of land claims, which represents a milestone in state policy towards land disputes with the Bedouins. The Albeck Committee concluded that the Bedouins have no ownership over lands in the Naqab. However, it did recommend an extra-legal path resolving the land claims through a settlement process. The state was asked by the Albeck Committee to go “beyond the letter of the law” (cited in Swirski and Hasson, 2006:17) and grant compensation to Bedouins who relinquish their land claims and move to the state-planned townships. This policy line, with slight changes, dominated for years to come.⁶

As the state observed this policy, it pursued legal means of law enforcement, such as eviction and demolition orders, to pressure the Bedouins to reach a settlement of their land claims. However, within 30 years, only 140,000 dunams claimed were settled (Israel State Comptroller, 2002:115). Failing to solve the situation, more bodies, committees and reports with recommendations were made. Between August 1996 and August 1999, two ministerial committees were established by the government to handle the Bedouin case (Israel State Comptroller, 2002:101). Between May 1996 and December 2000, five inter-ministerial staff groups and committees were formed to make recommendations. The Bedouin dispute continued to persist and grow. In July 2007, the government established an Authority and a Committee for Arranging the Settlement of Bedouin in the Naqab (government resolution No. 1999). The committee’s mandate and composition was adjusted and elaborated upon in a subsequent government resolution (No. 2491) of October 2007. For the purpose of this paper, I will focus only on the committee and not the authority.⁷

The Goldberg Committee

The establishment of the Goldberg Committee originated in government resolution No. 5 (May 7, 2006), which transferred Israel Land Authority (ILA) activities,

including the land dispute with the Bedouins, from the Ministry of Industry and Commerce to the Ministry of Construction and Housing. On November 2006, government resolution No. 631 requested the Minister of Construction and Housing to submit to the government, within 90 days, a detailed plan for establishing a body within his ministry that would comprehensively handle the Bedouin case. The detailed plan was advanced in government resolution No. 1999 to include the Goldberg Committee and the Authority, with government resolution No. 2491 adjusting the committee's composition. This step was initiated by M. P. Meir Shitrit, while acting as the Minister of Construction and Housing, and was continued by his alternate M. P. Ze'ev Boim.

Incentives for this step

Every modern state seeks the regulation of the inhabitation of its citizens, including land and housing. This goal is a particularly high priority in Israel, as a state that seeks maximum territorial control through ownership—control that currently reaches over 93% of the land. In addition, there was the political personal ambition of M. P. Shitrit to solve the Bedouin issue. However, a press release of the Ministry of Construction and Housing (2007) implied another sort of motivation: the demographic question. The press release mentioned that in 2020 the Bedouins will number more than 300,000. Throughout the failure to solve the dispute via legal and extra-legal means until today, the Bedouin population has grown, exacerbating the dispute. Besides the issue of general demographics in Israel to maintaining a Jewish majority,⁸ having more Bedouins would mean a larger possession of lands and larger construction of houses, thus detracting from the control that the state is seeking.

Mandate

Article 3 of government resolution No. 2491 states that the committee

will submit its recommendations for forming a large, inclusive and feasible plan that will set the rules for arranging the Bedouin settlement in the Naqab, including compensation rate, arrangements for alternative land allocation, law enforcement and a timeline to executing the arrangements and, if necessary, legislation bills (translated by the author).

Each of the mandate provisions in isolation could be interpreted as having a neutral purpose. Taken together, however, and coupled with past practices and the lack of any positive mention in the resolution of considering land ownership or recognition

of the villages, the provisions raise serious concerns that the state's goal is relocation of most of the Bedouins.

Performance

The Goldberg Committee held dozens of public hearings between January and May 2008, wherein it listened to more than 100 Bedouin representatives, activists, academics, experts, local and international civil society representatives and government representatives. No doubt, the hearings and the submissions covered most, if not all, aspects of the Bedouin case, including many recommendations on solutions. From my experience with the committee, presenting and also sitting in one of its hearings, it has the intention and the interest to deeply understand the Bedouin issue and its origins, as well as to hear different views on how to resolve it. The members listened, asked questions and welcomed comments and contributions to the committee's work. This relatively wide participation and engagement has not only provided more information, but also granted more legitimation to the process, especially by the engagement of Bedouin claimants and international bodies like our own human rights clinic and Human Rights Watch.

International human rights law and comparative practices

In an attempt to go beyond the boundaries of Israeli law and jurisprudence with regard to the Bedouin land dispute with the state, the following is an international legal analysis with comparative examples from other states that have encountered similar housing and land challenges to those facing the Goldberg Committee. This analysis and these examples are not exhaustive and are presented briefly with specific emphases, and without applying them directly to the relevant facts of the Bedouin case.

Bedouin claims

Based on the interviews the research team held in the field, Bedouin land and property claims were classified into three major categories: (1) those claiming ownership over lands they historically possessed; (2) those with origins in the Siyag—or previously displaced to the Siyag—who seek to remain and obtain legal status and development for their land, houses and villages; and (3) those displaced in the 1950s or thereafter who want to resettle upon ancestral land from which they were displaced, or resettle upon alternative equivalent land. In addition, such claimants have two cross-cutting categories of claims, requesting government

services and development in their respectively desired areas and effective participation and equal treatment in policies affecting them.

International human rights law

International human rights law applies to the five above-mentioned categories of Bedouin claims. Israel has ratified a number of international conventions that contain provisions relevant to the Bedouin claims. The relevant human rights conventions by which Israel is bound include the International Covenant on Civil and Political Rights (ICCPR),⁹ the International Covenant on Economic, Social and Cultural Rights (ICESCR),¹⁰ the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),¹¹ the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)¹² and the Convention on the Rights of the Child (CRC).¹³ As citizens of Israel, the Bedouins are guaranteed the human rights outlined within these international legal documents. Five categories of rights related to the Bedouins' claims are enshrined in these conventions: (1) rights to adequate housing; (2) limits on forced displacement and eviction; (3) rights to culture; (4) participation rights; and (5) rights to equal treatment.

The right to adequate housing is widely protected under international law. Article 11(1) of the ICESCR requires state parties to the covenant to (1) "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate...housing, and to the continuous improvement of living conditions" and (2) "take appropriate steps to ensure the realization of this right." Article 17 of the ICCPR also "constitutes a very important dimension in defining the right to adequate housing,"¹⁴ prohibiting states from "arbitrary or unlawful interference with [the] privacy, family, [and] home" of individuals (see also art. 26). The right to adequate housing is also recognized in three additional international conventions which provide special protection for social groups that are especially vulnerable on account of their race, ethnicity, gender, nationality or age.¹⁵ The right to adequate housing must be broadly interpreted to protect not simply "the shelter provided by merely having a roof over one's head" but also the equal right "to live somewhere in security, peace and dignity."¹⁶

Limits on displacement and eviction: ICCPR Article 12 contains the right to freedom of movement and the right to choose one's residence, and thus in turn includes protections against displacement. Additionally, in its General Comment 7, the Committee on Economic, Social and Cultural Rights (ESCR) interpreted Article 11(1) of the ICESCR to prohibit the practice of forced eviction and to create a positive obligation upon states to protect against such eviction.¹⁷ The Committee of the Elimination of Racial Discrimination has also recommended that state parties

study all possible alternatives with a view to avoiding displacement; that [they] ensure that the persons concerned are made fully aware of the reasons for and modalities of their displacement and of the measures taken for compensation and resettlement; that [they] endeavour to obtain the free and informed consent of the persons and groups concerned; and that [they] make remedies available to them... (para. 18).¹⁸

The right to culture: The protection of individuals' and communities' cultural rights stems from three overlapping international bodies of law: general human rights law, minority protections and law relating directly to indigenous populations. The ICESCR acknowledges the general right to freely participate in the cultural life of the community (art. 15[1]), and, more specifically with regard to ethnic and religious minorities, the ICCPR states that "[p]ersons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture" (art. 27). The Committee on the Elimination of Racial Discrimination has also called for the respect of distinct indigenous cultures, histories, languages and ways of life.¹⁹ Similarly, the Declaration on the Rights of Indigenous Peoples provides that "Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture" (art. 12).²⁰

Participation rights are a central component of human rights protection. ICCPR Article 25 protects individuals' right "to take part in the conduct of public affairs." With respect to land and development, the Human Rights Council has called upon states to "promote participation in decision-making processes and inclusion of relevant stakeholders in the planning stage of urban or rural development, in particular at the local level."²¹ More specifically with regard to instances of policies or decisions that could lead to eviction or displacement, the Declaration on the Rights of Indigenous Peoples affirms that

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

The right to equality and non-discrimination: States must apply all human rights in an equal manner and without discrimination. Article 2 of the ICCPR requires states to ensure rights protections "without distinction of any kind." Similarly, Article 2 of the ICESCR prohibits "discrimination of any kind" in enforcing rights protections, and Article 2 of CERD requires that states "condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination." Article 5 of CERD explicitly articulates specific rights that should be provided without discrimination, including participation rights, freedom of movement and residence, housing rights and rights

to social services. Additionally, Article 6 requires states to provide effective remedies for discrimination. More specifically, states must ensure equal “legal security of tenure, protection from discrimination and equal access to affordable, adequate housing for all persons and their families.”²²

Comparative practices of other states

Within a framework involving the fulfillment of the above-mentioned rights, below are some practices of several states with analogous long-lasting or large-scale land and property issues.

India and the Philippines chose to address the issue of informal settlements by regularizing²³ them and granting security of tenure to citizen “squatters” (individuals living on land owned by other private individuals or by the state). In comparison, Bedouins have a greater connection to their claimed lands, as they are living on their historical lands and/or lands to which they have been displaced or relocated by the State of Israel. In India, various localities established systems to grant security of tenure to millions of slum dwellers. Some states, such as West Bengal and Tamil Nadu, have undertaken city-specific or program-specific approaches for tenure regularization, while other states, such as Andhra Pradesh, Orissa, Rajasthan, Maharashtra and Madhya Pradesh, have undertaken state-wide policies of tenure regularization across all urban areas (Durand-Lasserve and Royston, 2002:47).²⁴

The Philippines’ Urban Development and Housing Act of 1992²⁵ offers another example of a system providing security of tenure and development based on inhabitation of land. The primary goal of the 1992 act was to increase the availability of “decent housing at affordable cost, basic services and employment opportunities” in low-income, high-poverty urban and resettlement areas (art. I, sec. 2), and thus the act has provisions on minimizing displacement, integrating development and temporarily halting demolitions.

Canada, the inter-American system and New Zealand: Canada and the inter-American system offer examples of recognizing or granting land title based on historical ties. New Zealand illustrates attempts to remedy past abuse of a legal regime that recognized legal title over indigenous lands.

In Canada, the government and courts²⁶ have recognized indigenous title to land, defined land rights with reference to practices, traditions and customs central to indigenous societies and allowed customary forms of documentation. Such steps have included setting up specialized ministries at the provincial and national levels. Indeed, the Ministry of Aboriginal Relations and Reconciliations, at the province of British Columbia, has defined its mission as

build[ing] new relationships with Aboriginal people, founded on reconciliation, recognition and respect. We negotiate treaties and other agreements to create economic certainty over Crown land and resources, and to improve the lives of Aboriginal people.²⁷

Recently, the state and the indigenous population have signed more comprehensive treaties, which address land, natural resources and compensation issues. For example, on April 13, 2000, the Nisga's Treaty took legal effect, through the adoption of the Nisga's Final Agreement Act. The Nisga's Treaty includes elements dealing with trade and development, compensation in the amount of \$196.1 million, the Nisga's right to self-government and the Nisga's authority to manage 2,019 square kilometers of land and natural resources.²⁸ On December 6, 2007, the signing of the Tsawwassen First Nation Final Agreement established First Nation ownership and management over approximately 724 hectares (7,240 dunams).²⁹

The inter-American system, in the *Case of the Mayagna Community of Awas Tingni v. Nicaragua*,³⁰ affirmed that the human right to property includes the right of all indigenous peoples to the protection of their customary land and resource tenure.³¹ While Article 21 of the American Convention on Human Rights³² sets out the right to property only in general terms, the court held that the right included property held collectively by indigenous groups under customary indigenous law. In addition, the court called upon Nicaragua to recognize indigenous claims in accordance with "customary law, values and mores," and to "refrain from acts that would allow others to affect the "existence, value, use and enjoyment of the community's property."³³

New Zealand, well-known for its indigenous population, has a long and mixed history of rights protection as well as exploitation of the native Maori. While an 1840 treaty did recognize Maori ownership over land in principle, the mechanisms established for titling and selling land actually broke down communal systems and infringed upon vulnerable groups' land rights and cultural way of life.³⁴ The past harms created by the Waitangi Treaty implementation mechanisms led to the enactment of the Treaty of Waitangi Act in 1975. This established the Waitangi Tribunal to make "recommendations on claims brought by Maori relating to actions or omissions of the Crown, which breach the promises made in the Treaty of Waitangi." As of February 11, 2008, 1,430 claims have been registered with the Waitangi Tribunal, and it has issued multiple reports of its findings and recommendations on the claims.³⁵

Mass land and property claims (South Africa and Kosovo): Given the outstanding Bedouin land claims dating to the early 1970s that Israel has yet to resolve, one component of a solution explored in collaboration with Bedouins might involve a land claims mechanism. In recommending a practical model for solving mass property claims, the committee can draw upon the experiences of South Africa

and Kosovo, which provide examples of mass land and property claims mechanisms that have worked through a variety of challenges that Israel might similarly face.

The South African land claims mechanism has its basis in the right to restitution of property recognized in the South African Constitution³⁶ and the Restitution of Land Rights Act 22 of 1994, which outlined a land restitution program allowing dispossessed black individuals³⁷ and communities to bring claims for land from which they had been dispossessed. The Restitution Act and its subsequent amendments created a two-tiered Court-Commission system for processing land claims. The Land Claims Court's evidentiary rules are much more specific to the nature of the land claims.³⁸ The Restitution Act recognizes both formal and informal land rights, defining a right in land as "any right in land whether registered or unregistered." The court also recognizes indigenous rights in land,³⁹ and, because physical documentation is often absent, admission of oral evidence, including both hearsay and expert testimony, is permitted in the court (sec. 30).

Kosovo, in 1999, was ravished by an ethnic conflict that forced 800,000 ethnic Albanians to leave their homes. When the conflict ended, the governing authority in Kosovo, the United Nations Mission Interim Administration in Kosovo (UNMIK), had to address the enormous challenge of property restoration to dispossessed Kosovars. UNMIK created a dual property restitution system made up of the Housing and Property Directorate and the Housing and Property Claims Commission.⁴⁰ Understanding the importance of neutrality in such processes, UNMIK specifically designed the two institutions to "create an impartial and independent mechanism for resolving claims using local and international legal expertise."⁴¹

In both mechanisms of South Africa and Kosovo, an administrative body handled the bulk of the claims and a judicial or quasi-judicial body adjudicated unresolved claims, allowing South Africa to settle more than 75,000 claims⁴² and Kosovo to settle almost 29,000 claims.⁴³

The Goldberg Committee's recommendations: Expectations and limitations

M. P. Shitrit thinks that solving the land disputes with the Bedouins will be the key to resolving the Bedouin settlement issue. This thought was on his mind when advancing the formation of the Goldberg Committee and the Authority.⁴⁴ I believe that the land ownership dispute will be at the heart of the committee's recommendations; however, it should be noted that these recommendations are subject to limitations. Article 4 of government resolution No. 2491 mentions that the committee's work will be based on a memorandum submitted to it by the government. This memorandum will include the "budget and the land stock that the government can allocate" for the Bedouin case. Made public on June 23, 2006,⁴⁵ the

memorandum allocates 100,000 dunams for solving the land claims. Of these, 25,000 dunams should be within the planning boundaries of the existing Bedouin settlement and those under planning. The government also dedicates NIS 2.6 billion to solving the land claims, a sum that includes the value of the settled lands (100,000 dunams).⁴⁶

The memorandum thus defines a ceiling for the committee's recommended plan, with regard to how much land and how much compensation can be granted, or recommended to be granted. It is not known whether the committee chooses to be bound by these numbers or whether they will make their own judgment based on the testimonies and the facts, regardless of this limit. An unintentional leak of information about the memorandum and how the committee might respond to it, occurred during the committee meeting on May 20, 2008 (note that at that date, the memorandum was confidential):

Bilha Givon:⁴⁷ ... We got here a document this morning, and I actually see that there is nothing to talk about. The government can allocate for land settlement.

Adv. Bar Sila: No no, excuse me, ignore this, what is this? What?

Givon: No... if they here talk about 100,000 dunams, 25 out of them...

Bar Sila: So, what, this is what they said, what, that's not... We will say what we think.

Givon: It's the Prime Minister's office that decides.

Bar Sila: How come they decide? Who are they to decide? What?

Givon: ... This is our working paper.

Bar Sila: No, this is not our working paper.... We will hold an internal discussion about this.

The conversation reflects the lack of preparation and coordination between the committee members, and, more importantly, it reflects the power and the latitude of the committee when recommending on the case. They either have to work according to the boundaries drawn by the "document" or they "will say what they think" regardless of that document. On the same day, the ILA-proposed solution was presented before the committee; that proposal confirms the government numbers. The ILA proposal allocates 100,250 dunams⁴⁸ to solve the Bedouin case. In sum, the Bedouin are claiming 800,000 dunams, but the ILA considers 200,000 dunams in Naqab Mountain to be outside the territory subject to land claims, as they are registered as state land. For the ILA, only 600,000 dunams are still disputed. The government offers 100,000 dunams as a deal to settle the dispute.

Moreover, the committee's recommendations will be submitted to the government through the Minister of Construction and Housing. For them to become an enforceable plan, they must be approved by the government or take the form of a new law that must be approved by the Knesset. Not only is the recent instability of the political situation in Israel not helpful in the case, but the political process of

approving the recommendation is not easy. The plan will most likely be subject to changes, adjustment or deals between the different political parties at that stage. Nevertheless, and most importantly, the recommended plan's success is also subject to the satisfaction of the Bedouins. The government is aware of this fact, as it mentioned that its offer, as presented in the memorandum, is possible under the assumption that most of the Bedouin claimants will accept it.⁴⁹

Epilogue

The experiences of other states with similar situations to the one in question point towards: (1) processes for providing land ownership to those with legitimate claims; (2) some form of "regularization," security of tenure and development coinciding with the actual geography of Bedouin villages for those who wish to remain on the land they currently inhabit; and (3) processes of relocation, security of tenure and development for those who wish to resettle on ancestral or alternatively provided land.⁵⁰

The government should establish independent and impartial specialized institutions with a comprehensive and integrated mandate that can address Bedouin claims by providing remedies of ownership, security of tenure, resettlement, compensation and development. The Bedouins' historical and cultural ties to the land should be acknowledged as part of any resolution process. It is inevitable that the state work collaboratively with Bedouin communities as equal citizens to develop their policies, fostering participation, consultation and representation through transparent processes.

It is clear to all parties that the solution to the Bedouin case cannot be a typical legal one, at least under the existing land and housing laws. Most Bedouins no longer try to take cases to court or dispute the question of land ownership, due to the futility of past efforts.⁵¹ Moreover, past enforcement of housing or planning laws has not solved the dispute and neither will future law enforcement. The Bedouin case is not a case solely involving legal rights or a "security matter," as it is viewed by some state authorities; it is a collective case of a national minority that involves history and politics, justice and historical justice. The answer to the Bedouin situation is therefore not through legal procedures or law enforcement. Any recommendations that do not include a mechanism that considers and integrates those elements will most likely fail and join a long line of failed attempts to solve the Bedouin case.

I look forward to the Goldberg Committee's report. More importantly, I await the aftermath, as the recommendations are just a "new" beginning and not the end.

NOTES

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² See, e.g., the 1953 Land Acquisition (Validation of Acts and Compensation) Law; The Planning and Construction Law-1965, *Sefer HaHokim* (Book of Laws), p. 467 (Hebrew).

³ The legal analysis of the legal dispute of the Bedouin case is beyond the scope of this paper. See Kedar (2000:923) and Shamir (1996:231).

⁴ On the townships and their failure, see Abu-Sa'ad (2003).

⁵ The report mentioned that the 991,000 claimed dunams include about 200,000 dunams that were already settled and registered as state land. In addition, there are about 200,000 dunams possessed by Bedouins that were not claimed.

⁶ For example, the state policy on land claims is embodied in resolution No. 1028 of the Israel Land Authority (ILA), according to which a Bedouin who is claiming less than 400 dunams of land will not be eligible for a settlement deal that includes alternative land. This 400-dunam eligibility level was set by the Albeck Committee.

⁷ As Justice (Emeritus) Eliezer Goldberg was appointed to chair the committee, I refer to it in this paper as the Goldberg Committee. The resolutions (in Hebrew) are available at <http://www.pmo.gov.il/PMO/Secretarial/Decisions/>.

⁸ On the demographic issue, see Masalha (1992).

⁹ General Assembly Resolution (G.A. Res.) 2200A (XXI), UN GAOR, 21st Sess., Supp. No. 16, UN Doc. A/6316 (1966) (ratified by Israel, January 3, 1992).

¹⁰ G.A. Res. 2200A (XXI), UN GAOR, 21st Sess., Supp. No. 16, UN Doc. A/6316 (1966) (ratified by Israel, January 3, 1992).

¹¹ G.A. Res. 34/180, UN GAOR, 34th Sess., Supp. No. 46, UN Doc. A/34/46 (ratified by Israel, November 2, 1991).

¹² G.A. Res. 2106 (XX) Annex, UN GAOR, 20th Sess., Supp. No. 14, UN Doc. A/6014 (1966) (ratified by Israel, February 2, 1979).

¹³ G.A. Res. 44/25 Annex, UN GAOR, 44th Sess., Supp. No. 49, UN Doc. A/44/49 (1989) (ratified by Israel, November 2, 1991).

¹⁴ Committee on ESCR, General Comment 4: "The right to adequate housing," para. 9, UN Doc. E/1992/23, Annex III, 114 (1991).

¹⁵ CERD, art. 5; CEDAW, arts. 2(f), 5, 13, 14(2), 15; CRC, art. 27(3).

¹⁶ Committee on ESCR, General Comment 4, para. 7.

¹⁷ Committee on ESCR, General Comment 7: “The right to adequate housing: Forced evictions,” art. 11(1), para. 9,

<http://www2.ohchr.org/english/bodies/cescr/comments.htm>.

¹⁸ See Concluding Observations of the committee, April 18, 2005, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.LAO.CO.15.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CERD.C.LAO.CO.15.En?Opendocument).

¹⁹ Office of the High Commissioner for Human Rights, General Recommendation No. 23: Indigenous Peoples, August 18, 1997, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/73984290dfea022b802565160056fe1c?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/73984290dfea022b802565160056fe1c?Opendocument).

²⁰ United Nations Declaration on the Rights of Indigenous Peoples, Session, Report of the Human Rights Council, A/61/L.67, September 13, 2007.

²¹ Human Rights Council Resolution 6/27, “Adequate housing as a component of the right to an adequate standard of living,” para. 4(e),

http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_6_27.pdf.

²² United Nations Conference on Human Settlements (Habitat II), UN GAOR, UN Doc A/Conf.165/14, para. 8 (1996).

²³ “Regularization” refers to the provision of some form of legal status over land and housing that moves people from uncertainty to certainty.

²⁴ See also the Madhya Pradesh Act No. 15 of 1984 (Slum Dwellers Protection Act), found in “Forced evictions and human rights, a manual for actions,” COHRE, May 1999, p. 93,

<http://www.cohre.org/store/attachments/COHRE%20Sources%203.pdf>.

²⁵ Rep. Act No. 7279 (1992), Philippines,

<http://www.gov.ph/forum/thread.asp?rootID=14064&catID=23>.

²⁶ *Calder v. The Attorney General of British Columbia*, Supreme Court of Canada, (1973), S.C.R. 313 (Can.).

²⁷ See <http://www.gov.bc.ca/arr/>.

²⁸ The Ministry of Indian Affairs and Northern Development, Fact Sheet: The Nisga’s Treaty, http://www.ainc-inac.gc.ca/pr/info/nit_e.html.

²⁹ Tsawwassen First Nation, Ministry of Aboriginal Relations and Reconciliation, <http://www.gov.bc.ca/arr/firstnation/tsawwassen/>; see also the Tsawwassen First Nation Final Agreement, brochure, British Columbia, http://www.gov.bc.ca/arr/firstnation/tsawwassen/down/final/tfn_brochure.pdf.

³⁰ Inter-American CHR 9, August 31, 2001, <http://www.worldlii.org/cgi-bin/disp.pl/int/cases/IACHR/2001/9.html?query=mayagna>.

³¹ The Inter-American Court has subsequently affirmed and strengthened the protections of indigenous populations since *Awas Tingni*. See, e.g., *Case of the Indigenous Community Yakye Axa v. Paraguay*, Inter-Am. CHR 9, June 17, 2005, http://www.esqr-net.org/usr_doc/Corte IDH Sentencia fondo1.pdf.

³² See <http://www1.umn.edu/humanrts/oasinstr/zoas3con.htm>.

³³ *Case of the Mayagna Community of Awas Tingni v. Nicaragua*, para. 164.

³⁴ The Role of the Tribunal, Waitangi Tribunal, <http://www.waitangi-tribunal.govt.nz/about/about.asp>.

³⁵ See Frequently Asked Questions, Waitangi Tribunal, <http://www.waitangi-tribunal.govt.nz/about/frequentlyaskedquestions.asp#16>.

³⁶ See sec. 25(7) of the permanent Constitution of the Republic of South Africa, 1996, where “A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.”

³⁷ For the purposes of this paper, “black individuals” refer to groups that are not white, such as black or “colored” people.

³⁸ South Africa Land Claims Court Rules sec. 14, 46, 49, 52, <http://www.law.wits.ac.za/lcc/rules/index.html>.

³⁹ See *Richtersveld Community v. Alexkor Limited*, Case No. LCC 151/98, Judgment (April 29, 2004); see also *Hermanus v. Department of Land Affairs*, Case No. LCC 39/98, Judgment (September 15, 2000).

⁴⁰ UN Doc. UNMIK/REG/1999/23, October 31, 2000.

⁴¹ Housing and Property Directorate and Housing and Property Claims Commission homepage, <http://www.hpdkosovo.org/old/About%20Us%20.htm>.

⁴² Commission on Restitution of Land Rights Annual Report, 60, Year ended 31 March 2007, http://land.pwv.gov.za/restitution/Annual_reports/CRLR%20ANNUAL%20REPORT.pdf.

⁴³ See Final Report of the Housing and Property Claims Commission (2007), p. 9.

⁴⁴ Interview with Minister Shitrit conducted by the author in January 2008.

⁴⁵ Official request to the prime minister by Parliament members of the political party Meretz-Yahad. Copy of the government document is available from the author.

⁴⁶ In comparison, about 8,000 Jewish settlers who were evacuated from the Gaza Strip in 2005 (from settlements considered to be illegal under international humanitarian law) got monetary compensation of NIS 4.1 billion (see http://www.idi.org.il/PublicationsCatalog/Pages/PP_64/Chapter_E/Publications_Catalog_2064_ChapterH.aspx). Moreover, paradoxically, by law (the Disengagement Plan Implementation law of February 2005), they received incentives and grants that included free land plots to live in the Negev (see articles 3[d]), 47[a], 70[b]).

⁴⁷ Bilha Givon was responding to a plan presented by Ilan Yishoron, the director of the Bedouin Development Authority, part of the ILA. The plan was: if the claimed land is within the blue line (planning boundaries) of Bedouin settlement, the alternative land will be up to 50% of the land; outside the blue line will be up to 30%, and “mountain” land will be up to 10%, all in addition to monetary compensation depending on the land type and location. See Goldberg Committee

manuscripts of May 20 (Hebrew); copy available from the author. The dialogue was translated by the author.

⁴⁸ Goldberg Committee manuscript of May 20 (Hebrew).

⁴⁹ Government document submitted to the Goldberg Committee, April 8, 2008.

⁵⁰ See similar conclusions in Yiftachel (2008). See also position paper signed by 34 professors and lecturers in Israeli universities, <http://plannersnet.ios.st/Front/Pages/pages.asp?Id=26061> (Hebrew).

⁵¹ It is noteworthy that some Arab voices called not to cooperate with the Goldberg Committee, even though it is an extra-legal process.

REFERENCES

- Abu-Ras, T. (2006). "Land disputes in Israel: The case of the Bedouin of the Naqab." *Adalah's Newsletter* 24, April:1–9.
- Abu-Sa'ad, I. (2003). "Bedouin towns in Israel at the start of the 21st century: The Negev Bedouin and the failure of the urban resettlement program," <http://www.sikkuy.org.il/2003/english03/pdf/bedouinEn03.pdf>.
- Baumli, Y. (2002). "The attitude of the Israeli establishment to the Arabs in Israel: Policy, principles and action. The second decade, 1958–1968." Ph.D. dissertation, University of Haifa (Hebrew).
- Choudhry, S. (Ed.). (2008). *Constitutional Design for Divided Societies: Integration or Accommodation?* Oxford: Oxford University Press.
- Durand-Lasserve, A., and Royston, L. (Eds.) (2002). *Holding Their Ground: Secure Land Tenure for the Urban Poor in Developing Countries*. London: Earthscan.
- Falah, G. (1989). "Israeli state policy toward Bedouin sedentarization in the Negev." *Journal of Palestine Studies* 18,2:71–91.
- Israel State Comptroller. (2002). *Annual Report* No. 52 [b]. Jerusalem (Hebrew).
- Kedar, A. (2001). "The legal transformation of ethnic geography: Israeli law and the Palestinian landholder, 1948–1967." *NYU Journal of International Law and Politics* 33:923–1000.
- Masalha, N. (1992). *Expulsion of the Palestinians: The Concept of "Transfer" in Zionist Political Thought, 1882–1948*. Beirut: Institute for Palestine Studies.
- Ministry of Construction and Housing. (2007). Press release of October 28, 2007, <http://www.moch.gov.il/Moch/Messages/28.10.07.htm> (Hebrew).
- Rosen-Zvi, I. (2004). *Taking Space Seriously: Law, Space and Society in Contemporary Israel*. Aldershot: Ashgate.
- Shamir, R. (1996). "Suspended in space: Bedouins under the law of Israel." *Law and Society Review* 30:231–259.
- Swirski, S., and Hasson, Y. (2006). "Invisible citizens: Israel government policy towards the Negev Bedouin," Adva Center for Information on Equality and Social Justice in Israel, <http://www.adva.org/UserFiles/File/NegevEnglishFull.pdf>.

- Yiftachel, O. (2003). "Bedouin Arabs and the Israeli settler state: Land policies and indigenous resistance." In D. Champagne and I. Abu-Saad (Eds.), *The Future of Indigenous Peoples: Strategies for Survival and Development* (pp. 21–47). Los Angeles: American Indian Studies Center, UCLA.
- . (2008). "Toward recognition of the Bedouin villages," <http://plannersnet.ios.st/IOS/Users/plannersnet.ios.st/Files/goldenbergoren.doc> (Hebrew).