

האגודה לזכויות האזרח בישראל
جمعية حقوق المواطن في اسرائيل
The Association for Civil Rights in Israel



Rights of the Arab Population in the Negev

Position Paper

**Submitted to the Government Committee for Policy Development
for Arrangement of Settlement in the Negev**

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July 3, 2008

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1. Introduction and Abstract: The genesis of the unrecognized village crisis and guidelines for solving it

The Bedouin of the Negev comprise an integral part of the Arab-Palestinian minority in Israel, both as an ethnic and as an indigenous/homeland minority. Approximately half of the Negev Bedouin reside in some 45 villages (henceforth: the unrecognized villages), most of which the State of Israel refuses to recognize or to include in regional and municipal zoning and planning.¹ It should be noted that the vast majority of these unrecognized villages were already in existence before the founding of the state, while the remainder were established in the 1950's, when Israel forcibly resettled Bedouin populations from their traditional ancestral territories (which they either owned or controlled) to a defined smaller area referred to as the *Siyag* or "restricted area." Up until 1966, Bedouin citizens as well as all of the state's Israeli-Arab citizens lived under a state of martial law, which severely curtailed their freedom of movement as well as other basic human rights. Many displaced Bedouin, for example the el-Okbi and al-Azazma tribes, were prevented from returning to their lands. The resettlement of the indigenous Bedouin population was carried out without their informed consent or agreement, and the new areas where they were settled were neither recognized as legitimate villages nor were they included in regional planning maps. The state provided no monetary compensation to the displaced, as required under international law. In these early years of the state, most of the legislation was enacted that would transfer these lands from the control of the Arab population for the use of the Jewish majority population, as will be illustrated in later chapters.

We have requested to testify before the Commission for the Resolution of Arab Settlement in the Negev, despite our deep reservations regarding a number of government decisions. For example, we take issue with the **composition of the Commission**, which does not include representatives of the most severely injured parties, namely those Negev Bedouin who have filed ownership claims regarding their ancestral lands. Further, there is inadequate representation of women on the

1 Assessment of the Regional Council of Unrecognized Villages. Between 1988 and the present, 13 unrecognized villages have been in the process of recognition and/or inclusion in regional planning as per the decisions of the government and/or regional planning boards. Most of these villages have received full or partial recognition, in addition to the 7 urban townships established by the state. These villages have been organized within the Abu Basma Regional Council Municipality (Abu Qrenat, al-Sayyid, Bir Hadaj, Drijat, Qasr al-Sir, Tirabin al-Sana, Umm Batin and the planned townships Makhul and Mulada.) There are 3 additional villages that are currently in the process of inclusion in regional planning, though they are yet to have joined the Ovda Municipality, and the villages Abu Talul and el-Far'ah whose recognition is not supported by a government decision. Despite recognition and inclusion, the planning in many of these villages does not reflect the needs nor the will of their residents and development there has been insufficient. For more on the subject of the genesis of the problem of unrecognized villages in the Negev and the plight of their residents, see (inter alia): Shlomo Swirski and Yael Hasson, *Invisible Citizens: Israel Government Policy Toward the Negev Bedouin* (Tel-Aviv: Adva Center, February 2006) published in "Information on Equality" vol. 14, Sept. 2005, and the many sources quoted there: <http://adva.org/UPLOADED/NegevEnglishFull.pdf>; see also Cesar Yehudkin, *Unrecognized Villages in the Negev: Recognition and Equal Rights* (Bimkom) that was submitted to the Commission: <http://www.bimkom.org/publicationView.asp?publicationId=116>; see also Lucy Mair, *Off the Map: Land and Housing Rights Violations in Israel's Unrecognized Bedouin Villages* (Human Rights Watch) <http://www.hrw.org/reports/2008/iopt0308/iopt0308webwcover.pdf>; For a brief summary see [HCI 1991/00 Abu Hamad et al vs. the National Planning and Building Council. The petition can be read on ACRI's website: http://www.acri.org.il/Story.aspx?id=458](http://www.acri.org.il/Story.aspx?id=458) (websites last accessed on 20 May, 2008).

Commission (one in eight), effectively excluding the voice of Bedouin women from the discussion. We take issue with the government's **decision to limit the Commission's conclusions solely to budgetary considerations and to conclusions regarding recognized areas that the government has permitted it to consider.** We also object to **the short time period of only six months** that the government has allotted the Commission to address one of the weightiest and most difficult matters of majority/minority relations in Israel – matters which hold profound implications regarding one of the weakest communities in Israel and its attempts to realize many of its most basic rights, matters which could possibly lead to the reapportioning of valuable land resources whether on a symbolic or practical level. This short time span was decreed despite the broad mandate the Commission received to propose a comprehensive program regarding Bedouin settlement, including proposed legislation, compensation, and the planning of new villages.

2. Proposed principles for arranging Bedouin settlement in the Negev

We propose the following: the Commission should recommend that Bedouin settlement in the Negev be based on the principles of **equality, affirmative action, transitional justice, and distributional justice, while taking into consideration the status and rights of the population as a homeland minority in Israel.** Specifically, we suggest the following recommended actions:

1. Mapping out the unrecognized villages in the Negev, granting them recognition through the accepted zoning criteria in Israel, granting them official status in national and regional master plans, and placing them on the map of the partial Outline Plan for the Beersheba Metropolis (Plan 23/14/4) so that the regional development plan for the area will be based on current facts-on-the-ground, and so that future development will not require the uprooting of extant Bedouin settlements.
2. Recognition of the historical property rights of the Bedouin Arab population to their ancestral lands, and reaching a decision regarding their ownership lawsuits according to legal mechanisms (to be established) based on traditional Bedouin evidentiary law, so that plaintiffs have the opportunity to prove their ownership claims without the government competing with them regarding title to the land;
3. Creation of legal mechanisms that will allow for monetary compensation of persons whose land was expropriated for public use, when there is no possibility of residents returning to that land. Concurrently, alternative land resources should be made available to displaced and landless Bedouin using the same compensation standards offered to Jewish agricultural settlements (moshavim and kibbutzim.)
4. Advancement of a detailed regional master plan that would provide reasonable and equitable solutions to the basic needs of the unrecognized villages. Such a plan should allow for different types of settlement (e.g. agricultural settlements, communal settlements, shepherding communities) that would address the needs of various communities while respecting their culture.
5. Removing the zoning and planning obstacles that prevent the Negev Bedouin from realizing their most basic rights (e.g. right to education, right to health care) in an equal manner to their Jewish Israeli counterparts. These obstacles should either be addressed on a case-by-case basis in individual plans, or more globally in the partial Outline Plan for the Beersheba Metropolis, so that the necessary institutional buildings (schools, health clinics, welfare agencies) can be built immediately as temporary structures until the completion of the recognition process and the full zoning of their villages.

3. Enshrining the rights of the Negev Arab-Bedouin as a homeland minority, as defined by International Law and Comparative Law

The Arab minority in Israel, including the Bedouin population of the Negev, clearly should be categorized as a “homeland minority” or as “indigenous peoples” and as a matter of fact they have received such recognition, as in the Official Commission of Inquiry into the October 2000 Events (henceforth: the Or Commission.) The Negev Bedouin comprise a distinct population with their own particular religious and cultural characteristics, organized into traditional social structures to this very day. The Bedouin have lived in the Negev since well before the founding of the State of Israel, pre-dating the British mandate, and even the Ottoman Empire. During Ottoman rule and the British mandate, the Bedouin maintained their own legal system, including a separate system of property law. Here is not the place to go into detail about the “homeland minority” definition, however it should be noted that the legal claims of indigenous minorities enjoy a certain greater legal force than those of migrant minorities who intentionally choose to join a particular society².

International Humanitarian Law, in general, has enshrined the protection of the human rights of minorities, and in particular the rights of homeland minorities. Foremost among these are: the right to equality, the right to preserve one's culture, the right to property and the right to adequate housing. The State of Israel is a signatory to a long list of international charters and declarations that anchor these rights, and it is obligated to protect them³.

A. The Right to Equality

The right to equality is a basic human right and a necessary condition for realizing the full complement of inalienable rights which are the endowment of all humanity. The right to equality is enshrined in a long list of international charters, most notably the International Covenant on Civil and Political Rights (ICCPR 1966), which enumerates equality among the rights anchored in the covenant (Article 2(1)) and also enshrines equal protection before the law to be provided by individual states (Article 26.) General Comment 18, adopted by the Human Rights Committee establishes that the right to equality also encompasses affirmative action for groups whose protected human rights have been denied in the past, as a corrective means of ensuring their rights in the present (Article 10.) Furthermore, the **International Covenant on Economic, Social and Cultural Rights (ICESCR 1966)** establishes that the rights enshrined in the covenant must be ensured equally for all parties (Article 2(2)). Finally, International Humanitarian Law has designated a specific charter for the protection of the rights of national, ethnic, and racial minorities – the **International Convention on the Elimination of All Forms of Racial Discrimination (ICERD 1965.)**⁴ The ICERD obligates all its signatory states,

2 Official Commission of Inquiry into the October 2000 Events, 1st Section, Chapt. I, paragraph 5. A summary of the Or Commission report in English can be read at: <http://www.adalah.org/features/commission/orreport-en.pdf>. The full report in Hebrew can viewed at: http://elyon1.court.gov.il/heb/veadot/or/inside_index.htm For the various definitions of indigenous peoples see for example *Fact Sheet No.9 (Rev.1)*, *The Rights of Indigenous Peoples* (UN Commission on Human Rights): <http://www.ohchr.org/Documents/Publications/FactSheet9rev.1en.pdf>. For further on the matter see the position paper submitted by Prof. Oren Yiftachel to the Commission in April 2008, entitled “Principles for Arranging Bedouin Settlement in the Negev” and also the presentation of Dr. Sandy Keidar presented before the Commission on 13 April, 2008.

3 For more on Israel's obligation to the human rights of the Negev Arab-Bedouin as per International Law, see the report submitted by the Center on Housing Rights and Evictions (COHRE) in February 2008 (pp. 7-9) and also in the Human Rights Watch report (pp. 74-79.)

4 Israel signed and ratified the three declarations in 1991. There are additional declarations prohibiting discrimination that are relevant to the protection of the rights of the Negev Arab Bedouin population, including the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the UN Convention on the Rights of the Child.

including Israel, to prohibit and uproot racial discrimination in all its forms, to guarantee the human rights of all without regards to race, color, ethnic or national origin. General Comment 23 adopted by the Human Rights Committee in 1997, which clarifies the ICERD stance regarding racial discrimination, is devoted solely to the rights of indigenous peoples⁵. It states that discrimination against indigenous minorities is especially deleterious, in that the injured parties have lost their land and their resources, and it highlights the fact that their culture, identity, and history are often threatened.⁶

B. The Right to Property of Homeland Minorities and Indigenous Peoples

As mentioned above, the Human Rights Committee designated General Comment 23 to address the rights of homeland minorities and indigenous peoples, and especially to highlight their connection to their ancestral lands and to their property rights. Article 5 of the Comment details the state's obligation to protect the rights of indigenous peoples, so that they retain their rightful ownership of their lands, as well as rights to develop, control, and make use of their lands. The Comment also establishes **the obligation of states to work towards returning ancestral lands to indigenous peoples who held customary or traditional ownership of those lands, or who lived on them, or who made use of them**, when the lands in question were expropriated from them, or when their ownership was transferred without their informed and free consent. Only **when facts on the ground make it impossible to return these lands, it is the obligation of the state to compensate said peoples with fair, reasonable and immediate compensation, preferably with alternative lands and territory**.⁷ In all cases, the Human Rights Committee calls upon states **not to take any decisions regarding indigenous minorities without their informed consent**.⁸

On Sept. 13, 2007 the UN General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples, which enshrined and protected the rights of indigenous minorities to their lands, their natural resources, and their culture⁹. Though the declaration carries no legal obligation incumbent on the State of Israel, it does reflect the international norms regarding the rights of indigenous peoples and could be used as an interpretive tool for legislation in Israel. These norms include: **the obligation not to forcibly remove indigenous peoples from their lands or their living areas; not to resettle them without their free, informed consent and without full and fair compensation**¹⁰. Accordingly, **indigenous peoples retain their rights to own, control, and make use of their historic ancestral lands, the territories and the natural resources that they control through their traditional ownership, and the right to regain those lands and resources that were forcibly taken from them**¹¹. The declaration established that states must grant recognition and legal protection to the land, territory, and natural resources belonging to, or under the control of, indigenous peoples. Such recognition should be given while respecting the indigenous people's leaders, their heritage, and their traditional ownership mechanisms¹². Additionally, the Declaration enshrines the state's obligation to provide indigenous peoples with an effective mechanism to

5 General Comment No. 23: Indigenous Peoples, dated 18 August, 1997.

6 Article 3 of General Comment 23 of the ICERD Committee.

7 Article 5 of the Comment reads: "The Committee especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories."

8 Article 4(d) to the General Comment.

9 With a majority of 143 states in favor, 4 opposed, and 11 abstaining (among them Israel.)

10 Article 10 of the Declaration

11 Articles 1, 2, and 26 of the Declaration, which reiterate the instructions of General Comment 23 of the CERD Committee.

12 Articles 3 and 26 of the Declaration.

prevent the coerced transfer of property which could harm their rights as a community¹³.

The concluding remarks of the UN committee overseeing the implementation of ICERD, from March 9, 2007, serve to strengthen Israel's obligation to respect and help realize the rights of the Negev Arab-Bedouin population – namely their rights to equality, to preservation of their culture, as well as their property rights¹⁴. In these remarks, the committee expresses its deep concern over Israel's intention to uproot residents of the unrecognized villages and to resettle them in townships. It recommends that Israel investigate other alternative options, while giving special priority to finding alternative land for the villages, and at the same time it urges Israel to enhance its efforts to make decisions in consultation with village residents. The committee emphasizes that before any relocation of Bedouin be made, Israel should obtain the agreement of those affected communities and that such agreement be given freely and on the basis of factual information (Article 25 of the recommendation.)¹⁵ The committee further calls upon Israel to provide the necessary conditions so that the Negev Bedouin can create a sustainable economy and advance social development in accordance with their cultural values. At the same time, it calls on Israel to refrain from establishing any policies affecting the Bedouin without their consultation and consent.

C. The Right to Preserve Cultural Character

Article 27 of the ICCPR obligates those states with ethnic, religious or linguistic minorities to enable these minorities to preserve their culture, to practice their religion, and to speak in their language together with other members of their community. The ICERD broadens these rights protections, first and foremost among homeland minorities, in protecting their collective culture. General Comment 23 adopted by the Human Rights Committee attributes special significance to the preservation of the culture of homeland minorities and indigenous peoples, and gives great weight to the relationship between these minorities and their land, highlighting the connection between the land and the minority's right to preserve its cultural character and lifestyle. The Committee calls upon member nations to recognize the culture and lifestyle of indigenous peoples; to ensure that they can conduct their lives in accordance with their traditions and culture; and to provide them with conditions that permit both economic and social development in line with their cultural character.¹⁶ Regarding the relationship between land and culture, the Committee recognized the organic connection between indigenous people's land and their right to conduct their lives in accordance with their culture. To realize this right they must be able to utilize the resources of the land and to engage in traditional activities connected to the land such as grazing and agriculture, and it is therefore incumbent upon the state to respect the affinity between a people and its land. The obligation to preserve the culture character of homeland minorities received additional legal and moral support with the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, as mentioned above.

D. The Right to Housing and Dignified Living Conditions

Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESR) enshrines the right of every human being to minimal basic living conditions which include among

13 Article 8(2)(c) of the Declaration.

14 Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel (2007).

15 The concluding remarks of the Committee (p. 25) read as follows: "The Committee recommends that the State party inquire into possible alternatives to the relocation of inhabitants of unrecognized Bedouin villages in the Negev/Naqab to planned towns, in particular through the recognition of these villages and the recognition of the rights of the Bedouins to own, develop, control and use their communal lands, territories and resources traditionally owned or otherwise inhabited or used by them. It recommends that the State party enhance its efforts to consult with the inhabitants of the villages and notes that it should in any case obtain the free and informed consent of affected communities prior to such relocation."

16 Article 4 to General Comment 23 of the CERD Committee.

them the right to housing. General Comment 4 to the ICESR, which constitutes the official interpretation of the covenant, places upon the state the burden of ensuring **equal access to housing**, and prohibits housing discrimination on the basis of membership in a particular societal group.¹⁷ Similarly, the covenant has been interpreted to include the state's obligation to ensure every individual's **right to privacy and fair living space**; the right to shelter which includes **dignified living conditions** – protection from heat and cold, rain and wind, and all other threats to wellbeing; a structurally sound and safe building; connection to the electricity grid and to safe drinking water sources; proper ventilation and lighting; and conditions that allow for hygienic and healthy living.¹⁸ Accordingly, it is the state's obligation to grant all individuals **legal protection from arbitrary eviction or lockouts**. The eviction of a person from his home, or a community from their land can only be carried out after a thorough investigation of alternatives.¹⁹ The General Comment establishes the state's obligation to ensure that housing is provided in a non-polluted environment, and that it is accessible to such essential services as: employment, health services, schools, and other social and welfare services.²⁰ Finally, every individual enjoys the right to freely choose the area of his/her housing²¹ and the right to culturally adequate housing.²²

E. The Right to Education and Health, and Equality in Realizing those Rights

The right to universal education is well based in the annals of international law, and some view it as part and parcel of customary international law.²³ Both the ICCPR and the UN Convention on the Rights of the Child (1989) recognize this right, and the Convention places special emphasis on every child's right to education without discrimination (Comment on all Forms of Racial Discrimination (Article 5e)). **The right to health** is recognized as a basic human right in a long list of foundational international treaties and documents, to which Israel is a signatory. It is a broadly defined, inclusive right that deals with improving the environmental conditions that affect people's health while at the same time ensuring their access to medical treatment. In this context, Article 12 of the ICESR establishes that all individuals enjoy the right to highest attainable standards of physical and mental health care available, a right that is recognized by all signatory states.

The Committee on Economic, Social and Cultural Rights, in its interpretation of the Convention, declares in General Comment 14²⁴ that the right to health is inherently connected to the right to life and other basic rights. Article 8 of the Comment notes that the right to health places burdens upon the state, among them the obligation to ensure a healthcare system that provides equal opportunity to all its citizens, so that they may enjoy the highest attainable standard of health. An important principle established in the Comment is that of accessibility. It necessitates a healthcare system that is accessible to all without discrimination, especially to the more vulnerable and weaker segments of the population (sentence 12a-b). Similarly, the Convention on the Rights of the Child (Article 24), the ICERD (Article 5(d)(iv)), and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) (Article 12) enshrine the right to health and to equality in realizing this right. The Committee on the Elimination of Discrimination against Women, in its report from 2005, expresses concern over the health situation of Bedouin women in general, and

17 Articles 2(2) and 3 of the ICESR, Article 2(1) of the ICCPR, and Article 5 of the ICERD; also Article 14 of the CEDAW and Article 27 of the UN Convention on the Rights of the Child. See also General Comment 4 to the ICESR.

18 General Comment 4 to the ICESR.

19 General Comments 4 and 7 to the ICESR.

20 General Comment 4 to the ICESR (1991)

21 Article 12(1) to the ICCPR.

22 General Comment 4 to the ICESR.

23 Yoram Rabin, *The Right to Education*, (Nevo: 2002) pp. 187-189.

24 General Comment No.14 'The Right to The Highest Attainable Standard of Health', Committee on Economic, Social, and Cultural Rights, 2000.

particularly of those Bedouin women living in the unrecognized villages. The Committee called upon Israel to take meaningful and effective measures necessary to eliminate discrimination against Bedouin women, and to strive to improve their overall health situation (Articles 259-260 in their report.)

4. Enshrining the rights of the Negev Arab-Bedouin in Israeli Law

A. Equality, Affirmative Action, Distributional Justice and Social Justice

It is not necessary to elaborate here on the centrality of the equality principal in Israeli law, nor on the prohibition against discrimination on the basis of race, ethnicity, or membership in a societal group. These are recognized meta-principals and constitutional rights that obligate all of the state's authorities and institutions, including planning institutions. Over the last decade, Supreme Court rulings have anchored the **right to equality**, and to be more exact the prohibition against discrimination, as an integral part of the **right to dignity**, which is itself enshrined as a constitutional right in the **Basic Law: Human Dignity and Liberty**. The Supreme Court views the right to equality as one of the pillars of democracy, central to the social contract underlying democratic society. A long list of court rulings enshrine the constitutional status of the right to equality, including:

- HCJ 869/92 **Zwilli v. Chairman of the Central Elections Committee for the Thirteenth Knesset**, IsrSC 46(2) 692, 707;
- HCJ 1703/92 **C.A.L. Cargo Airlines Ltd. v. The Prime Minister**, IsrSC 52(4) 193;
- HCJ 7111/95 **Center for Local Government v. The Knesset**, IsrSC 50(3) 485, 501;
- HCJ 953/87 **Poraz v. Mayor of Tel-Aviv-Jaffa**, IsrSC 42(2) 309, 332;
- HCJ 5394/92 **Hoppert v. Yad Vashem**, IsrSC 48(3) 353, 362;
- HCJ 721/94 **El-Al Israel Airlines Ltd v. Danielowitz**, IsrSC 48(5) 749, 76;
- HCJ 453/94 **Israel Women's Network v. The Government of Israel**, IsrSC 48(5) 501, 526-1
- HCJ 4541/94, **Miller v. Minister of Defense**, IsrSC 49(4) 94, 133;
- HCJ 1113/99 **Adalah v. Minister of Religious Affairs**, IsrSC 54(2) 164, 186;
- HCJ 7052/03 **Adalah v. Minister of Interior** (from 14 May, 2006);
- The violation of the right to equality harms the discriminated group's sense of belonging, it humiliates and erodes their motivation to participate in and contribute to society. A society in which discrimination is practiced is not a healthy one. "A state in which discrimination is practiced cannot be called a democracy."
- HCJ 104/87 **Nevo v. National Labour Court**, IsrSC 44(4) 749, 760;

Consonant with the right to equality stands the state's obligation not to engage in prohibited discrimination. However, the state does have an obligation to practice corrective discrimination (affirmative action) in order to arrive at egalitarian results. This obligation applies all the more so in the allocation of land resources (which by their nature are finite and limited) and in the usage of those land resources, permission of which is granted through regional planning authorities. It becomes even more pronounced regarding land resources that can be directed toward righting socio-economic injustice suffered by religious, ethnic, and national minorities. In the **Ka'adan** case, the Supreme Court ruled that the state cannot allocate land for the building of a town that discriminates against Arabs. Whereas in the **Avitan** case, the court decided that it is permissible to

allocate land for the building of homes designated for a specific community, in this case for the Negev Bedouin population, especially if that community requires a separate way-of-life in order to preserve its cultural or religious autonomy. Similarly, the Or Commission report grants special significance to land issues, and recommends that the state ensure the allocation of land to the Arab population on the basis of equality and distributive justice. The Or Commission points out the charged emotional situations that arise out of conflict over land, and establishes the obligation of the state to allocate land to the Arab population “on the principle and the template of equality, as it does for other population sectors.”²⁵

- HCJ 6698/95 **Ka'adan v. Israel Lands Administration**, IsrSC 54(1) 258;
- HCJ 528/88 **Avitan v. The Israel Land Administration**, IsrSC 43(4) 297;
- HCJ 244/00 **New Dialogue Society for Democratic Dialogue v. Minister of National Infrastructure**, IsrSC 56(6) 25;
- HCJ 11163/03 **Supreme Monitoring Committee for Arab Affairs in Israel v. Prime Minister** (not yet published, decision rendered on 27 February 2006, rulings 14 and 21 in the decision of Chief Justice Barak);
- HCJ 6924/98 **Association for Civil Rights in Israel v. Government of Israel**, IsrSC 55(5) 15;

There is no dispute that the right to equality and the prohibition against discrimination apply to all of the state's authorities, including its regional planning bodies. Recently, the court has found that claims of discrimination on the basis of national origin or ethnicity constitute real concerns – concerns that regional planning authorities must take into account. The ruling emphasizes that regional zoning and planning have turned into “a tool for achieving social goals of the highest order, especially as they apply to the needs of the weaker segments of society.”

- Administrative Petition (Tel Aviv) 1253/05 **Mucharab v. National Planning and Building Council** (not yet published, decision rendered on 4 May 2006, ruling 24);
- Re: discriminatory planning in the southern district (detailed below), the Supreme Court ruled in HCJ 1991/00 **Abu Hamad et al vs. the National Planning and Building Council** that the regional planning authorities have an obligation to correct existing discrimination in zoning and planning that exists between the Jewish and the Arab-Bedouin population in the southern district. This is to be implemented in the partial Outline Plan for the Beersheba Metropolis (Plan 23/14/4).

B. The Right to Dignity

The right to dignity is the most important of the constitutional rights enshrined in Israeli law, though the extent of its scope is a matter of some dispute. The consensus view is that the right to equality and the prohibition against discrimination are essential, related elements that underlie the right to dignity. Additionally, the right to dignity includes the right to satisfactory living conditions, or at the very least, the minimal conditions necessary to ensure a dignified existence.

“Human dignity includes the protection of the minimum of human existence. A person living outdoors who has no housing is a person whose dignity has been violated; a person hungry for bread is a person whose dignity as a person has been violated; a person who does not have access to rudimentary medical service is a person whose dignity as a person has been violated; a person who has to live in humiliating physical conditions is a person whose dignity as a person has been violated.”

25 Official Commission of Inquiry into the October 2000 Events, 6th Section, paragraph 13.

- LCA 4905/98 **Gamzu v. Yeshayahu**, IsrSC 55(3) 360, 375;

See also:

- HCJ 161/94, **Atri v. State of Israel**, IsrSC 94(1) 1283;
- Aharon Barak, *Interpretation in Law*, (1994) p. 422;
- Aharon Barak, "Human Dignity as a Constitutional Right," *HaPraklit* 41 (1994) p. 271, 280;

The court has further recognized the obligation to protect those social rights grounded in human welfare and in the advancement of social justice. In this context, it is worth studying the words of Justice Yitzchak Zamir in HCJ 164/97 **Conterm Ltd. v. Treasury Ministry, Department of Customs & VAT**, IsrSC 52(1) 289, 340:

"Democracy entails more than just the recognition and protection of human rights. While human rights represent a value of the highest order, they are not the only value. A person is more than a mere amalgamation of rights – he is also an amalgamation of needs, desires, and aspirations. Therefore, it should not be said that the role of the government is to respect human rights. True, it is one of its primary roles, but not the only one. What should be said, in the same breath, is that government's role is also to advance the human welfare of all people, and to promote social justice for all people. Human rights should not overshadow human welfare and social justice. They must not serve the satiated person alone. All people must be sated, so that they can enjoy *de facto*, and not only *de jure* human rights."

In the petition against the cuts in Income Support entitlement payments, submitted by the Association for Civil Rights in Israel (ACRI) along with other organizations committed to peace and social justice, Chief Justice Barak ruled that the right to dignity entails the right to "lead the normal life of a human being, and not be at the whim of financial crisis which could bring him to a state of intolerable destitution."

- HCJ 366/03 **Commitment to Peace and Social Justice Society v. Minister of Finance** (ruling issued on 12 December 2005.)

C. The Right to Housing

Despite many efforts, Israel has not yet enacted the Basic Law: Social Rights, which would enshrine the right to housing in constitutional law.²⁶ Nevertheless, the right to housing is partially protected through another constitutional law, the Basic Law: Human Dignity and Liberty (in the context of human dignity) and through the repeated decisions of the Supreme Court holding that **the lack of a roof over one's head represents a violation of human dignity**. In the *Mister Money* case, the court ruled that the right to housing constitutes one of the minimum conditions for human existence, and it has subsequently received broad acceptance as a basic constitutional right.

- LCA 4905/98 **Gamzu v. Yeshayahu**, IsrSC 55(3) 360, 375-376;
- CA 9136/02, **Mister Money Ltd. v. Reiz**, IsrSC 58(3) 934.

Housing discrimination against an individual because of his or her membership in a societal group

²⁶ On the efforts to legislate the Basic Law: Social Rights, which would assign constitutional status to socio-economic rights including the right to housing, see: Anat Ma'or, 'Hor Pa'ur Be-Sefer Ha-hukim: Hatz'a'at Hok Yesod Zekhuyot Hevratyot: Chronika Shel Kishlon Ha-Hakika' (A Gaping Hole in the Law Gazette: Draft Basic Law: Social Rights – Chronicle of a Legislative Failure) in Yoram Rabin, Yuval Shani eds., *Economic, Social and Cultural Rights in Israel*, Ramot, p. 195.

is a violation of the constitutional right to human dignity, and is therefore prohibited by law (as detailed above.) The right for a person to choose their place of residence, and their right not to be forcibly removed from their residence are also covered under the Basic Law: Human Dignity and Liberty. It is also possible to categorize the right to housing as part of the **right to culture**, which we will address below. In the **Ajuri case**, the court held that the forcible removal of a person from his or her home is a violation of human dignity, of liberty, and also of the individual's property rights. The court ruled that “a person's home is not merely a roof over his head, but it is also a means for the physical and social location of a person, his private life and his social relationships.” In the case of the relocation of settlers under the Disengagement Plan, the Supreme Court ruled that the forcible evacuation of Israeli citizens from the area under evacuation did constitute a violation of the settlers' human dignity. *A fortiori*, the prohibition against forcible relocation applies all the more so to a protected, indigenous homeland minority living on its historic lands in the State of Israel.

- HCJ 7015/02 **Ajuri v. Commander of IDF Forces in the West Bank**, IsrSC 56(6) 352, 365;
- HCJ 1661/05 **The Gaza Coast Regional Council v. The Prime Minister**, IsrSC 59(2) 481.

D. The Right to Education, to Health, and to Equality in Realizing these Rights

The right to education, to health, and to equality in realizing these rights are also anchored in Israeli law. When the Bedouin residents of the unrecognized villages see that essential human services, such as schools and medical clinics, are withheld from them and yet are provided to equally small Jewish villages, it arouses feelings of humiliation and abandonment. There is an inescapable sense that they are viewed as less equal, as less valuable, and this infringement of their equality only serves to heighten the injury to their right to education and health.

Right to Health: The right to health, and the right to equality in realizing health are both enshrined in the **National Health Insurance Law, 5754-1994** as well as the **Patients' Rights Law, 5756-1996**. Even before Israel legislated the constitutional laws that protect human rights, its courts had recognized the right to medical treatment as a basic human right that could not be denied even to aliens residing in the country illegally. The status of the right to health was bolstered significantly with the passage of the Basic Law: Human Dignity and Liberty, Article 4 of which describes the right to protection of one's life, one's body, and one's dignity. Today, the right to health is viewed by the Supreme Court as “at the heart of the protection of human rights in Israel.”

- HCJ 332/87 **Ben Shlomo et al v. Minister of the Interior**, IsrSC 43(3) 353, 356;
- HCJ 2887/04 **Abu Medeghem v. Israel Land Administration** (decision not yet published, handed down on 15 April 2007) rulings 44-45.

We do not have to invent imaginary scenarios to realize the negative impact that an absence of accessible, basic health services has on a population. Such a situation necessarily leads to lengthy postponement of doctor visits, to neglect of symptoms and conditions that demand medical attention, and ultimately it severely harms the overall health of the population leading, in certain cases, to serious injury and/or death that otherwise could have been prevented. “The right to healthcare obligates the authorities to ensure accessibility to these services, through public financing, without discrimination and with the careful preservation of equality.” (see Prof. Amnon Carmi, Health Law (2003, vol. 2) p. 800).

Right to Education: The right to education, too, is enshrined in Israeli legislation, first and foremost in the **Compulsory Education Law, 5709-1949**. The right to education has received recognition in Israeli law as a central basic human right, the entitlement of all, that stands on its

own without dependence on the right to human dignity which is enshrined in the Basic Law: Human Dignity and Liberty.

- HCJ 11163/03 **Supreme Monitoring Committee for Arab Affairs in Israel v. Prime Minister** (not yet published, decision rendered on 27 February 2006, rulings 14 and 21 in the decision of Chief Justice Barak);
- HCJ 2599/00 **Yated, Children with Down Syndrome Parents Society v. Ministry of Education** IsrSC 56(5) 834, 843;
- HCJ 421/77 **Nir v. Be'er Yaakov Local Council**, IsrSC 32(2) 253, 265;
- HCJ 4363/00 **Upper Poriya Board v. Minister of Education**, IsrSC 56(4) 203, 213-215;
- HCJ 7374/01 **Anonymous v. Director-General of Ministry of Education**, IsrSC 57(6) 529, 545;
- HCJ 1554/95 **Shoharei Gilat Society v. Minister of Education**, IsrSC 50(3) 2, pp. 22-23.

E. The Right to Preservation of Cultural Character

The right of national, ethnic and cultural minorities to preserve their own cultural character is, in our opinion, an inseparable part of their right to dignity. When governmental agencies, including regional planning bodies, seek to impose an urban lifestyle upon the Bedouin population, they broadcast a humiliating message that disparages the Bedouin's traditional, communal way of life and labels it as "primitive." This violation of the right to dignity becomes all the more severe in light of the fact that dozens of lone farms and more than a hundred communal villages – almost exclusively limited to the Jewish population – have been established in the Negev at the same time that the Bedouin are being pressured to give up their agricultural lifestyle. The loss of their cultural character is paired with humiliating discrimination – the Bedouin are asked to abandon their traditional ways, while agricultural settlements are being made abundantly available to Jews, who have no such cultural heritage in the Negev.

It is a well known fact that regional zoning and planning bodies enjoy broad authority to create plans that benefit the citizens and communities within their region, all the more so when planning for populations with special characteristics and needs, such as the religious community. In this context, we'd like to point out once again that the right to affirmative action in the allocation of land resources and in regional planning has been recognized and affirmed by the Israeli court system, especially as it applies to the Bedouin population:

- HCJ 237/88 **Givat Shmuel Regional Council v. Director of Minister of the Interior**, IsrSC 42(4) 841, 847;
- HCJ 528/88 **Avitan v. The Israel Land Administration**, IsrSC 43(4) 297.

Negev Arab-Bedouin society enjoys a unique cultural character, and it is entitled to preserve its traditional lifestyle as least as much as the Haredi population and more so, in that their way of life is intimately connected to their status as a homeland minority. The State of Israel sees fit to recognize the needs of the Gush Katif evacuees to continue living together in independent, close-knit communities despite the fact that they have existed for less than 40 years. These needs are even recognized in Israeli legislation, namely in Article 85 of the **Implementation of the Disengagement Plan Law, 5765-2005**. To this purpose, regional planning bodies are exerting efforts to draw plans especially designed for the Gush Katif evacuees, for example the designation of lands in the Lachish area for the creation of new communal villages. These plans are rooted in the decision from August 28, 2007 of the Ministerial Committee for Settlement Affairs under the

auspices of the Prime Minister's Office.²⁷ *A fortiori*, it is incumbent upon Israel to recognize the right of the Negev Bedouin in the unrecognized villages to continue living together in their communities. Israel must recognize these villages, which have served as the home for the Bedouin community well before the creation of the State of Israel, or at the very latest in the 1950's when certain communities were uprooted by the state and forcibly resettled in the *Siyag*.

In summary: equality, a life of dignity, and dignified living conditions underlie the welfare of every human being. These are the necessary conditions without which there can be no implementation and realization of other human rights, including those enshrined in constitutional law. Similarly, the Basic Law: Human Dignity and Liberty constitutes an important basis for grounding the right to housing within Israeli law, and also for recognizing the intimate tie between the right to housing and the right to preserving one's culture.

5. Human rights violations of the Arab-Bedouin population in the unrecognized villages

None would dispute the fact that Israel's Arab citizens are subject to discrimination on the basis of their ethnicity. Lack of Arab equality has been documented in many studies and papers, and has been underscored in numerous court rulings, government decisions, state comptroller reports and other official documents. One of the areas that stands out in terms of discrimination towards Arab citizens is land allocation, planning and housing.²⁸ The Or Commission, in its report, assigned critical importance to the issue of land, and recommended that the state act to allocate lands to the Arab population according to the principles of equality and distributive justice. The Or Commission also acknowledged the explosive emotional aspect of the struggle over land and determined that the state is obligated to **“allocate land according to the principles and perceptions of equality, as is done with other sectors.”**²⁹ Now, this esteemed commission has received a mandate to make recommendations on arranging the permanent settlement of the Negev Bedouin residing in the unrecognized villages. The commission's recommendations will have the power to help the Negev Arab population actualize their land rights, guaranteeing not only their property rights to their traditional lands, but also equal allocation of land resources for those without land, and appropriate use of resources that will match the needs and lifestyle of Bedouin residents. Only in this way will the state be able to begin correcting a long-standing, historic injustice and guarantee equal rights to all of its citizens.

A. Discrimination in allocation of land resources and planning

Lands

Disputes between Israel and the Bedouin over land have existed since the establishment of the state. From early on, the Israeli government adopted a policy of concentrating the Bedouin population geographically, uprooting some Bedouin from their ancestral lands while at the same time refraining from granting legal status to their new villages. This relocation was carried out despite Bedouin objections and without fair and prompt compensation. Whole tribes, such as the el-Azazma and the el-Okbi, were forcibly removed from their lands on the grounds of security needs³⁰. Whether the stated security needs were real or fictitious, the residents were never allowed to return to their lands, nor were they granted the right to acquire the lands to which they were

27 For a press release of the announcement, see: <http://www.mfa.gov.il/MFA/Government/Communiques/2007/Rural-community+settlement+district+to+be+established+in+eastern+Lachish+region+28-Aug-2007.htm>

28 **Or Commission Report** documents both the discrimination and the admissions of discrimination on the part of the Israeli government, see **paragraphs 19, 27, 30**. For the court rulings recognizing discrimination see **paragraphs 31 – 45**.

29 **Or Commission Report** section 6, paragraph 13.

30 The Supreme Court has also recognized the fact that many Bedouin were moved to the *Siyag* under martial law (LCA 496/89 **El-Kalab vs. Ben-Gurion University**, IsrSC 45(4) 343, 345.

moved. They have been living continually as “internal exiles” for nearly 60 years now. Even those Bedouin who were permitted to remain living on their lands within the *Siyag* were never granted state recognition of their ownership of the land. State authorities concentrated the Negev Bedouin into the *Siyag*, a closed military area, subject to martial law. Within this region new villages made up of dislocated people developed, such as Wadi al-Naam and Rahma, while villages that had already existed in the region before the establishment of the state, such as Umm Batin, Tel Almalah and Drijat, absorbed part of the exile as well. This relocation and concentration of the Bedouin population into a very limited area was intentional, aimed at restricting living space as much as possible, thus forcing the residents to undergo an urbanization process and to give up their previous way of life, their culture and their traditional livelihood based on raising livestock and agriculture. The stated goal of this policy was to clear large tracts of Negev land for Jewish settlement and for the use of the regional councils which currently control the vast majority of Negev land today.

Contrary to the popular Israeli belief that the Negev Bedouin are squatters, they are in fact the original settlers of the region and, as such, they hold ownership rights over the lands cultivated and controlled by their ancestors. Some Bedouin have remained on the same ancestral lands that their forefathers settled long before the establishment of the state of Israel, while others have been uprooted from their ancestral territories and transferred to lands within the *Siyag*. At the very least, the latter group should be entitled to compensatory benefits. It is pertinent here to restate that the Bedouin have a distinct and clear traditional system of territorial ownership, including documented land transfer transactions. Among these transactions are land sales to representatives of the Zionist movement³¹ prior to the establishment of the State of Israel.

Israeli policy over the years has continually sought to obtain lands previously used by the Galilee and Negev Bedouin and to register them in the name of the state³². Legal machinations have featured prominently in this exercise. Israeli governments have made use of the law as a tool for expropriation of lands, for the dispossession of the indigenous Bedouin population and the negation of their property rights, and for the judaization of these lands. The process goes as follows: the state first registers the lands and arranges their planning and zoning status, and then it transfers those lands to various organizations charged essentially with judaizing the area. All this is made possible through various land expropriation laws, such as the Absentee's Property Law (1950), Land Acquisition (Validation of Acts and Compensation) Law (1953), and Acquisition of Land in the Negev Law (1980). The first two laws even allow for expropriation of the new lands settled by the displaced Bedouin, since they were forcibly moved to these lands after the laws came into effect and did not control these lands during the relevant period. The third law is an example of legislation specifically targeting the Negev region, employed in order to grab lands belonging to Negev Arabs, often for the second time, sometimes without their knowledge and without fair and agreed upon compensation. **However, more often than not, such laws were not even required to expropriate Bedouin lands.** New legislation simply served as an additional tool to affect the disinheritance of the native population from their lands, which primarily relied on broad and far-reaching interpretations of Ottoman and Mandatory laws.

The Ottoman Land Law of 1858 defined various categories of land including *mawat*, literally “dead land”, which was commonly used to denote uncultivated or unsettled areas. Built into this designation were relatively lenient guidelines for acquiring ownership rights over *mawat* areas by anyone involved in their cultivation. In order to encourage the revitalization of dead lands and to generate tax revenues from these lands, the Ottoman administration granted ownership rights to anyone who wished to cultivate them. Even where no prior application was submitted for cultivation of a specified tract of land, ownership rights were granted *ex post facto* (in exchange for

31 Many distinguished witnesses have testified to the Committee as such, including Dr. Sandy (Alexander) Keidar, Dr. Yosef Ben David, Prof. Oren Yiftachel, and Mr. Eli Atzmon.

32 **Or Commission Report** section 1, chapter 1, paragraphs 39-44.

a symbolic fee).³³ The overriding principle of the Ottoman rulers was to refrain from upsetting the local Bedouin leadership, including in matters of traditional Bedouin land acquisition systems. During the Mandatory period, the rules regarding *mawat* changed as part of a larger British plan to register all lands. The Dead Lands Ordinance (1921) was a draconian piece of legislation that canceled the acquisition rights of anyone who cultivated *mawat*. Without the prior approval of the Mandatory authorities for cultivating *mawat*, registration of such lands was no longer an option.³⁴ The occupying British authorities slapped an additional clause onto the Ottoman Land Law, granting the Mandatory authorities residual rights over all land without proven ownership by an individual owner.³⁵ In effect, however, the British land registration process was never completed for the Negev region (nor was it executed in the Galilee Arab region).

Subsequent Israeli governments held a view similar to that of the British, that lands held by the Bedouin should be considered dead-lands and thus registered as state owned lands, a process which was put into effect during the land registration drive that began in the 1960s. Bedouins were permitted to file ownership claims in context of the land registration process, and many in fact did so even if their claims only included a portion of their original territorial lands (much of which had already been expropriated by Israel years before.) During the 1970s, the state's approach shifted. It began to view the Bedouin's filing of ownership claims as a mechanism for them to rescind those claims and relinquish land to the state in return for symbolic monetary compensation.³⁶ In any case, during this period a number of court decisions were handed down supporting the government's contention that all Negev land fell under the dead-land category. This effectively granted ownership of all Negev lands to the state, and left the burden of proof on the Bedouin, who were required to prove their ownership claims using formal legal criteria which did not reflect their own system of law and documentation. Court decisions such as the **Badaran** ruling of 1961³⁷ and the **El-Hawashlla** ruling of 1984³⁸ further solidified the legal basis for defining Negev lands as state-owned. In order to register these lands as privately owned, Bedouin claimants would need to present formal documents including approval from the ruling authority to rejuvenate the *mawat* in question, along with proof that the land had indeed been cultivated continuously. Rulings such as these completely ignored the presence of Bedouin agricultural settlements in the area, which should have been enough to negate the designation of the area as *mawat*. The court's demands in these cases were unreasonable in light of the fertility of the land in question, their geographic location and in light of Bedouin culture and law which were determinant of how they lived their lives.³⁹

Although the ruling of the Hon. Judge Halima in the El-Hawashlla case is well-based in the Ottoman Land Law and the Mandatory Dead Lands Ordinance (1921), it is important to recall that the laws in question are the laws of foreign entities imposed forcibly upon the indigenous residents. They take no account of indigenous peoples' rights to these lands according to their own traditional legal constructs, nor to their human rights as recognized and developed in Israeli and International Law. Today, in light of the Basic Law: Human Dignity and Freedom and the development of human rights protections in Israeli case law; and in light of the protection of land acquisition rights in Israeli law; and in light of the approach of equality and distributive justice in the allocation of

33 Article 78 of the Ottoman Land Law arranges for the acquisition rights to *miri* (state lands) and in articles 6 and 103 it arranges the matter of *mawat*.

34 Those who reclaimed and cultivated *mawat* before the British Mandate came to power were required to inform Mandatory authorities as such within two months. However, in effect the Mandatory regime recognized the land rights of anyone who had reclaimed *mawat* before 1921. Witnesses testified as such, including Att. Havatzelet Yahel (on 24.1.08) – see pp. 7-10 of her testimony. Also testifying were Dr. Sandy Keidar and Dr. Yosef Ben David.

35 Articles 19 and 29 of the Mandatory Ordinance, which became Article 22 of the Israeli Land Law (1969)

36 Also on this subject, Dr. Sandy Keidar, Dr. Yosef Ben David, and Att. Havatzelet Yahel testified before the Committee. For elaboration, see the position paper of the Adva Center, footnote 1.

37 LCA 518/61 **State of Israel v. Badaran** PD 16:1717.

38 LCA 218/74 **El-Hawashlla v. State of Israel** PD 38(3) 141.

39 Dr. Sandy Keidar presented legal analysis and criticism of these rulings in his testimony before the Committee.

state lands, **it follows that the categorization of land and the assignment of rights to that land should closely follow the Bedouin's traditional evidentiary rules and laws, without the state having to compete with Negev Bedouin residents for title to the land.**

In addition to disputes over land ownership, the Arab population in Israel, including the Negev Bedouin population, continues to suffer from pervasive discrimination by state institutions. With respect to allocation of land resources, this discrimination is consistent, methodical and institutionalized. The Or Commission report addresses the historic discrimination against Israel's Arab population in the area of land and housing rights very specifically, emphasizing this problem as a main source of tension between the state and its Arab citizens. The Commission stressed the egregious nature of the housing and land crisis within the Arab population, pointing to the ubiquitous state-condoned policy of expropriation of vast tracts of Arab land.⁴⁰ The Commission further stated that these land expropriations were generally executed very clearly in favor of the interests of the Jewish majority. The purpose of such policies has been to limit the development and growth of Arab settlements and has led to a drastic reduction in their physical size.⁴¹ **We are hopeful that the Goldberg Commission will continue in the path of the Or Commission in suggesting policy directions to the government that will serve to resolve issues of Bedouin settlement in the Negev and correct the historic injury suffered by the Bedouin population. We hope that the Bedouins' ownership rights to their Negev land will be recognized, and further that they will be offered additional lands, thereby ensuring fair and equal land allocation to all of Israel's citizens without discrimination on the basis nationality, ethnicity or religion.**

Planning

Israeli government policy regarding Bedouin settlement has been and continues to be characterized by blatant discrimination. This is expressed first and foremost in the master plan for Bedouin settlement. While the policy toward Jewish settlement continues to be one of expansion and spreading-out of the population, the policy toward Bedouin settlement has been one of consolidation into as limited and defined an area as possible, while invalidating the Bedouin's right to continue living legally in their villages according to their traditional lifestyle. Initially the entire Negev Bedouin population was moved into the *Siyag* (restricted area) in the north-eastern Negev. Since the mid-1960s, Israeli government policy has been to concentrate the Bedouin population into seven government-planned townships while turning a blind eye to the existence of other Bedouin villages already in the region. The existing villages were totally excluded from the Negev region's first regional master plan (District Outline Plan 4 recorded in the 1980s), perpetuating the Israeli myth of the Bedouin "dispersion" that never established roots in the land. Over the past decade, ten (existing) Bedouin villages have been added to the recognized townships and are in various stages of planning, organization and registration. These villages have been joined together into a single municipal entity known as the Abu Basma regional council. Plans for inclusion of an additional 3 villages are underway.⁴²

The refusal to recognize Bedouin villages outside of the townships is accompanied by efforts to

40 **Or Commission Report** section 1, chapter 1, paragraphs 33-36, 41-46.

41 For further on the subject of land policies in relation to the Negev Bedouin see: Yosef Ben David, *The Bedouin in Israel – Social and Land Perspective* (2004), *Conflict in the Negev: Bedouin, Jews, Land* (1996); Hanita Porat "Developmental Policy and the Negev Bedouin Question in the Early Years of the State, 1948-1953", *Iyunim Bitekumat Yisra'el* 7 (1990) 389; and the position paper of the Adva Center, footnote 1.

For a summary of land policies taken with respect to the Negev Bedouin, see H CJ 9010/04 **The Arab Center for Alternative Planning vs. ILA** (decision pending) at ACRI's website: <http://www.acri.org.il/story.aspx?id=946>

42 The villages of the Abu Basma Regional Council are: Abu Qrenat, al-Sayyid, Bir Hadaj, Drijat, Qasr al-Sir, Tirabin al-Sana, Umm Batin, Makhul (which exists only on the map), Mulada, and the Kochla Farm. The additional villages are Ovda, Abu-Talul, and el-Far'ah which are in the first stages of planning, which should lead to their eventual recognition.

make life in the unrecognized villages unbearable. This includes a broad array of enforcement methods such as fines and house demolitions sanctioned by Israeli housing and construction laws regarding “illegal” building; refusal to provide essential services, including health, education and welfare services; as well as refusal to connect the villages to water utilities and to the electricity grid. Despite pressure tactics such as these, only about half of the Bedouin population has agreed to move to the urban townships. The remainder has kept their resolve to stay in their unrecognized villages despite the sub-standard living conditions they face on a daily basis. The Israeli government refuses to recognize these Bedouin villages by putting them on regional planning maps and providing their residents with the basic services needed for dignified human existence, while at the same time the government continues to financially support and provide services to over 100 Jewish rural settlements in the Beersheba district, with an average of 300 residents each.⁴³ In addition to these Jewish settlements, dozens of private farm homesteads have been established, about half of which the government has decided to recognize retroactively.⁴⁴

HCJ 1991/00 Abu-Hamad: The state’s broken obligation in District Outline Plan 23/14/4:

The master plan for the southern region (District Outline Plan 14/4, hereinafter “the Plan”), enacted in 1996, failed to arrange planning status for any of the Bedouin rural unrecognized villages, which as an aggregate were home to over 50,000 Bedouin or approximately half of the entire Negev Bedouin population. At the same time, the Plan recognized 106 rural Jewish settlements, home to a total of 73,000 Jewish citizens. The Bedouin population was given two choices: uproot themselves from their villages and relocate to one of the seven recognized townships, or remain in their unrecognized villages under disgraceful conditions. In 2000, ACRI along with a number of organizations for social change submitted a petition against the Plan to the Supreme Court on behalf of some of the unrecognized village residents (HCJ 1991/00 Abu-Hamad v. the National Planning and Building Council). The petition demanded that the Plan be reworked to incorporate rural Bedouin settlements, and that guidelines be included for the planning of such settlements that take into account the Bedouin population’s way-of-life. The central argument against the Plan was that it perpetuated discriminatory policy, in which the Arab population was denied the opportunity of living in recognized rural villages, while the Jews around them were able to do so freely. Furthermore, the petitioners claimed that the Plan was severely flawed in that it provided no reasonable alternative for the residents of the unrecognized villages, who continued to suffer from pervasive discrimination. Finally, the petition claimed that any planning policy that would essentially force the Bedouin to trade their rural lifestyle for an urban one – effectively disregarding the cultural and social rhythms of their traditional rural village life – would represent a severe blow to their right to dignity.⁴⁵

During the Supreme Court hearings, the planning and zoning authorities committed themselves to modify the Outline Plan for the Beersheba Metropolis (herein “**the Metropolis Plan**”) to accommodate the demands of the ACRI petition. The planning and zoning committee for the

43 These figures are based on an analysis of CBS and Interior Ministry data, prepared by planner Nili Baruch of Bimkom.

44 Announcement of the Government Secretary of 15.7.07 which presented the Government 2000 decision. It enumerated 60 isolated Negev farms and ranches of which only 25 had properly arranged legal status. The government decided to appoint an inter-ministerial committee “which will act to arrange legal status for existing Jewish farms, and which will recommend to the government rules for establishing additional lone farms in the Galilee and in the Negev.”

45 HCJ 1991/00 **Abu Hamad et al vs. the National Planning and Building Council** (decision from 26.7.07 not yet published.) The petition was submitted in the names of residents of the unrecognized villages, and in the name of ACRI, the Regional Council of Unrecognized Villages, the The Negev Coexistence Forum (Dukium) , and the Center for Jewish-Arab Economic Development. It is possible to view the petition on ACRI’s website: <http://www.acri.org.il/story.aspx?id=458> and to read other documents submitted in the framework of petition hearings at <http://www.acri.org.il/story.aspx?id=1824> .

Metropolis Plan was instructed to take into account the needs of the Bedouin population and to include solutions for the settlement of rural Bedouins, in coordination with the representatives of the unrecognized villages.⁴⁶ Over the course of the planning process, ACRI worked to ensure that representatives of the Bedouin communities would have their say, and that they would be in a position to influence elements of the new Metropolis Plan (District Outline Plan 23/14/4). ACRI stressed to committee members their obligation to modify plans in order to accommodate the needs of the Bedouin population, and their further obligation to abide by the principles of equality and just allocation of land. In this vein, a number of meetings were organized between representatives of the petitioners and of the planning committee and authorities. Unfortunately, the committee members did not honor the commitments that the planning authorities made to the Supreme Court. **They refused to address seriously the concrete planning recommendations offered by the petitioners regarding the arrangement of status for the unrecognized villages.** During the meetings, committee members referred vaguely to various constraints that would prevent recognition of certain of the villages. However, they failed to provide the petitioners any list detailing those constraints, and they provided no opportunity to present alternative planning solutions that could overcome the specific obstacles preventing recognition of the villages in their current locations.⁴⁷

In February and June of 2005, the representatives of the petitioners submitted their comments on the proposed Metropolis Plan (version #1) - which at best paid lip-service to the planning authorities' commitments to the Supreme Court. The petitioners pointed out the flaws in the proposed plan, which barred any possibility of recognition for the majority of the unrecognized villages. Unfortunately, their objections fell on deaf ears. On July 4, 2005 the proposed plan was presented at a hearing before the Southern District Planning and Building Council during which the petitioners expressed the key points of their comments and suggestions. The planning committee did not offer any alternative proposal, and the Council rejected the petitioners' comments without bringing them to any floor discussion.⁴⁸ Bimkom- Planners for Planning Rights, submitted its own critique of the proposed plan, which it presented in hearings before the Labor Committee on January 30, 2006. Bimkom raised the need to find a fair and acceptable planning solution for the unrecognized villages, but its comments were similarly rejected without explanation at the regional council meeting on Feb. 5, 2006, which recommended adoption of the proposed Metropolis Plan. When it became clear that the Metropolis Plan had failed to meet the obligations to which the planning authorities had committed themselves in court, ACRI in coordination with Bimkom, the Regional Council of Unrecognized Villages in the Negev, the Arab Center for Alternative Planning, various social change organizations, and over 200 Bedouin village residents along with a good

46 In a statement on behalf of the parties that was submitted to the Supreme Court on 9.7.01, the planning authorities undertook the commitment "that in the planning of the partial Outline Plan for the Beer Sheva Metropolis... **the planners will be required, as their primary interest, to formulate a solution for the problem of Bedouin settlement in the area.**" They further undertook to consider rural villages, outside of the existing townships, as one of the possible solutions to the Bedouin settlement problem. Moreover, **they affirmed that the planning team would have to "meet with representatives of the residents and to examine, together with them, concrete proposals for new settlements,** including communal villages, including the plan to distribute communal villages that was submitted by petitioner #6 [i.e. the Regional Council of Unrecognized Villages] to the Regional Planning and Building Council, Southern District." This handwritten statement received the force of a legal commitment with the Supreme Court decision of 9.6.01. A copy of the statement and the Supreme Court's decision are attached to this position paper.

47 This despite their commitment to do so already in November 2003. For the response of the petitioners in the framework of hearings on the petition, see the following which describe the sequence of events:
See: the response of the petitioners from January 2004: <http://www.acri.org.il/pdf/petitions/hit1991tguva1.pdf>
from September 2004: <http://www.acri.org.il/Story.aspx?id=1098>
from March 2005: <http://www.acri.org.il/Story.aspx?id=1097>

48 See the comments of the petitioners to the first draft of the Metropolis Plan from Feb. 2005: <http://www.acri.org.il/pdf/petitions/hit1991tmm4-14-23.pdf>
and from June 2005: <http://www.acri.org.il/pdf/petitions/hit1991hearot.pdf>

number of Jewish Negev residents, **submitted six fundamental objections to the Metropolis Plan as regarding six of the unrecognized villages.** Additional organizations and dozens of other individual residents submitted further objections regarding the Metropolis Plan's complete disregard of most of the unrecognized villages, and a special court-appointed investigator has already begun to hear some of those objections.⁴⁹

Key Reservations of the Metropolis Plan

The current Metropolis Plan, similar to the previous one, will leave tens of thousands of Bedouin citizens with the agonizing choice of whether to continue living in their historic villages – without any planning solutions, under disgraceful conditions, and with the ever-present threat of home demolition suspended over them – or whether to abandon their villages in exchange for a place in the urban townships which fall sorely short of meeting their lifestyle and cultural needs. The Metropolis Plan flouts the commitments made by the planning authorities before the Supreme Court, according to which “the planners are obligated to seriously work to fashion viable solutions for Bedouin settlement in the region.”

The Metropolis Plan does reflect the recognition of some existing villages or the establishment of certain new ones, and the inclusion of these villages in the plan will protect their residents from the threat of expulsion. However, the status of the vast majority of these settlements was already settled by a government decision over a decade ago, when the said villages were joined together and designated as part of the Abu Basma regional council. The only innovation introduced by the current Metropolis Plan is the recognition of two additional large villages in the region (Abu Talul and el-Far'ah) – which makes the plan more notable for its deficiencies than its accomplishments. One other positive aspect of the plan was the re-designation of areas previously reserved for agriculture, industry or military purposes as “combined rural-agricultural land.” In future planning, these newly designated areas could potentially provide solutions for Bedouin settlement. But on Feb. 17, 2008 committee member Mr. Dudu Cohen explained to the committee that the “combined rural-agricultural lands” were designated as such due to technical planning restrictions (existing roads, environmental limitations, etc.). In other words, **the planning committee's modus operandi was to preserve the existing maps that ignored the existence of the unrecognized villages. The committee completely disregarded the fact that Israel is obligated by International Law, which states that transfer of indigenous populations may only be affected as a last resort. The result of the committee's work is telling: an examination of the “combined rural-agricultural lands” shows that they encompass only 13 of the 36 still unrecognized villages within the region.**⁵⁰

While the Metropolis Plan doesn't explicitly state that all villages outside of the “combined rural-agricultural lands” will eventually be evacuated, this is the unavoidable outcome of failing to recognize the villages. Without including the villages in areas slated for future planning, there will be no mechanism for recognizing them in the future, effectively dashing any hope of ever achieving such recognition. Take for example plans for the development of new Jewish settlements (such as Hiran and Yatir) including local access roads and industrial parks which run through rural Bedouin village lands. The continued existence of these villages are in danger of demolition if they are not

49 See for example the objections submitted by Bimkom – Planners for Planning Rights: <http://www.bimkom.org/publicationView.asp?publicationId=115> ; the objections of the Arab Center for Alternative Planning: <http://ac-ap.org/files/Resisttama4.pdf> ; and the objections of Adalah – the Legal Center for Arab Minority Rights in Israel: <http://www.adalah.org/features/naqab/metropolin-beersabe-o.pdf> and <http://www.adalah.org/features/naqab/hiran-nov07-o.pdf> .

50 For an analysis of the characteristics of “combined rural-agricultural lands” see the petitioners' comments to the Metropolis Plan mentioned above. See also Cesar Yehudkin, *Unrecognized Villages in the Negev: Recognition and Equal Rights* (Bimkom) that was submitted to the Commission on 21.2.08, pp. 24-25. The document can be read at: <http://www.bimkom.org/publicationView.asp?publicationId=116>

currently recognized at the planning level.

To make matters worse, **the Metropolis Plan neither defines criteria nor sets timetables for action, a sure recipe for delays that could last decades before concrete planning solutions for the Negev Arab population are properly examined.**⁵¹ In the absence of specific guidelines and criteria for the recognition of Arab rural settlement in the Negev, the planning authorities will not be held accountable for their progress, even for the 13 villages that face no obstacles to recognition from a planning point of view. On top of this, Mr. Cohen's statements to the committee in context of his Jan 15, 2008 testimony (see pg. 72 and onward of the committee hearing protocols), raise additional concerns. Cohen's working assumption is that any planning initiative for recognition of Bedouin settlement (he uses the term "establishment [of new settlement]") lies with the Bedouin residents themselves. Any such planning change can only be the result of a pointed request **by a very large group** (the Plan intentionally neglects to include minimum size for such a group) that comes forward and **proposes establishment of a new settlement – only after arrangements are approved for all the groups' current lands.** Another reference to this process even requires the group to prove **its economic and administrative ability to govern a new settlement** that would be accessible to other economic and employment development in the area.⁵²

The fact that the Metropolis Plan refuses to even note the locations of the remainder of unrecognized villages reflects the Plan's **unreasonable, discriminatory planning policies that violate the Bedouin's human rights**, be they long time residents of the land or "internal exiles." These policies will effectively force the Bedouin population to consolidate into larger settlements and support plans that would evacuate Bedouin residents from their homes and destroy their villages. These policies run counter to the principles of justice, morality and human rights enshrined in International Law as well as in Israeli law. **The Metropolis Plan represents a continuation of the same planning policies that ignore the needs of the Arab-Bedouin population in the Negev and their right to preserve their distinct lifestyle and culture.** If approved, the Metropolis Plan will end up perpetuating the crisis of the unrecognized villages, and there will be no recognition of the Bedouins' right to live in small rural villages like their Jewish neighbors. Below, we examine the situation in six of the unrecognized villages. With the exception of Wadi El-Naam, none of the villages have paved roads, water or gas hook-ups or other essential conditions for dignified existence, and furthermore, the government neglects to set up the necessary infrastructure in order to provide for the education and the healthcare of the residents.⁵³

Wadi El-Naam

The residents of the unrecognized village Wadi El-Naam (population: over 5,000) were evacuated from their ancestral lands and moved by the government to the area in which they currently reside. Israeli governments moved the residents to this village, but never recognized the village from a planning or municipal standpoint. Instead of providing a viable settlement solution for the residents, the government instead developed and built environmentally dangerous industrial plants

51 In the objections submitted by Bimkom to the Metropolis Plan (pp. 6-10), the NGO listed potential criteria for recognizing Bedouin villages and arranging their planning status, for example: **the affinity of the residents to the location, the socio-communal structure, social cohesiveness of the residents, and the physical distribution of the community.**

52 On 17.2.08, during the testimony of Mr. Eli Atzmon, Mr. Dudu Cohen stated that the conditions for examining the establishment of a new community for the Bedouin population in an area designated as "combined rural-agricultural land" required: an organized group as defined by Article 85 in the Evacuation and Compensation Law; a large group (intentionally left vague and undefined) and with shared affinity for the land; a group that can prove its economic ability to manage the community that will be placed within access of economic and employment developments in the area. This is to say that they won't necessarily be settled in their current place, rather new communities will be established in the area, where the vast majority of lands currently have ownership claims upon them by other Bedouin.

53 For further elaboration, see ACRI's objections to the plan's disregard for existing Bedouin villages and the needs of their residents: <http://www.acri.org.il/pdf/hitnagduyot.pdf> .

in close proximity to the village with complete disregard to the health threat associated with living near such plants. The largest of these is the Ramat Hovav hazardous waste disposal plant and the Israel Electric Company site. Due to this untenable situation, Wadi El-Naam may be a prime example of the kind of exceptional case that warrants evacuation of a population and transfer to an alternate location – in order to protect the health of its residents – and with fair and agreed upon compensation, including in the form of land.

The residents have been imploring the government authorities since 1987 to find them a viable solution, and have requested that the government enter into negotiations with them regarding the development of a rural-agricultural settlement for their community. Throughout the years, the residents' petitions have fallen on deaf ears; the only solution offered them was to move out of their current village - against their will - in favor of the nearest urban township, Segev Shalom, which does not match the needs or lifestyle of the village residents. To this effect, a master plan was drawn up for development of the southern neighborhoods of Segev Shalom. However, in August 2004 this plan was disqualified by planning authorities due to the dangerous proximity of these new neighborhoods to the Ramat Hovav plant. In their current location, Wadi El-Naam residents are faced with the constant threat of evacuation orders. The Supreme Court has given the authorities an extension until Sept. 2008 to come up with an alternate location for the village. **Despite this, and despite the repeated requests filed with the planning committee seeking a solution that will relocate all the residents of Wadi El-Naam to an appropriate area that will not endanger their health,** the Plan has not examined any concrete solutions for this community, even though it is the largest of the unrecognized villages in the planning area. On top of the disgraceful conditions that exist in all of the unrecognized villages, the Metropolis Plan completely abandons the residents of Wadi El-Naam in a physical location that endangers their health.

A-Sera

The historic A-Sera village, located in the Tel Malhata area for the last one-hundred plus years, is about 6km west of the Kseifa township, as the crow flies. It is hemmed in by Route 31 in the north and the Nevatim military base and airport in the south. A-Sera is the smallest of the unrecognized villages, though with a population numbering approximately 400, it exceeds the average population size of Jewish settlements and villages in the district. The inhabitants inherited the village lands (approx 400 dunams) from their ancestors who purchased the land at the beginning of the 20th century from the previous T'l'am tribal owners. The residents hold a stamped deed from the British Mandate. The residents recently discovered that their lands have been expropriated in context of the Acquisition of Land in the Negev Law (even though they were never officially informed of this, and were not offered any compensation as stipulated by law).⁵⁴

The Metropolis Plan denotes the village land as a “special industrial area” called Kidmat Negev for environmental, safety and security reasons. The Plan does not consider shrinking the area of Kidmat Negev- which sprawls over a 12,700 dunam area. Rather, the Plan calls for dispersing the village residents, members of the Al-Amour and A-Nasasra families, who have been living together in this village for over 100 years, among existing and planned towns. The proposed relocation would be to towns with no available plots slated for them, against the will of the residents and it would effectively tear apart extended family groups. (There are many marital ties among the villagers and the tribal affiliation that is meant to be listed on Identity cards is often inaccurate). It goes without saying that the village has no accessible educational institutions or healthcare services. The nearest schools and clinics are located in Kseifa, 10-12 km away from the village (accessed by dirt foot paths and Route 31).

54 Acquisition of Land in the Negev Law – Peace Accord with Egypt (1980)

Rachama

Rachama is located alongside the Yerucham Regional Council and is divided into three concentrations at the intersection of Routes 224 and 204, at the northern and north-western exits of Yerucham toward Dimona, and east of Yerucham. The village numbers about 1200 people, and the residents are members of the Al-Azazma tribe - most of them internal exiles who were relocated to this area by the army during the period of military rule in the region. The residents have requested to be integrated into Yerucham as shepherding or agricultural neighborhoods adjoining the town, with the agreement and support of many Yerucham residents. The residents of Rachama also must contend with the constant threat of eviction orders, though the Supreme Court has frozen these orders through Sept. 2008 to allow time for a negotiated settlement over a viable alternate location for the village. The land where the village currently sits is denoted in the District Outline Plan 23/14/4 as a “desert landscape region” in some areas and a “municipal development region” (for Yerucham) in other areas. Neither of these designations allow for development of rural-agricultural neighborhoods in their midst. Like the residents of Wadi El-Naam, the Rachama villagers have never been presented with any viable or immediate settlement solutions. The village lacks educational institutions, with the nearest schools located in the town of Qasr Al-Sir, in Wadi El-Naam and Segev Shalom, ranging in distance from 12 to 25km (plus an additional walk of at least 1 km to transportation pick-up points).

Sawa

The Sawa village has been in existence for over 150 years and is located north of Route 31 which connects Beer Sheva to Arad, and south-west of Hura. The village consists of two neighborhoods (southern and northern) and numbers approximately 700 residents affiliated along various lines of the Al-Atrash and Kadirat tribes. Close neighborly relations developed between the families over the years based on their common life style and orientation to the land, cemented by marital ties between the two tribes. It is important to note that at this point in Sawa's history, the defining affiliation is no longer the tribal one, as demonstrated by the fact that individual families from the same tribal lines can be found in unrecognized villages across the region including Wadi Gawin/T'la Rashid, Hirbet Alutan, Al-Ghara and Umm-Batin. The village includes about 150 homes, with the first permanent structure built in 1972. To the best of our understanding, **the village lands are denoted in the Metropolis Plan as “rural-agricultural land”**, but it is unclear why the village was not listed on the map and what conditions are required in order for the village to be recognized in its current location. In July 2007 the residents submitted a plan to the southern district regional planning and building committee for the recognition of one of the village's neighborhoods. The villagers were told they would be informed regarding next steps, but as of this report, they have received no further announcements.

Hashem Zane

Hashem Zane is a village with a long and illustrious history. In the 19th century it was home to a righteous man named Zane (for whom the village was named). Following his death, his grave became the village's chief landmark, which, together with the historic cemetery alongside his grave overlook the village. Hashem Zane is located along Route 25 and the Beer Sheva-Dimona railroad tracks, with the residents spread to the south and to the north of Route 25 adjacent to the lands of Moshav Nevatim. The population numbers approximately 1200 people consisting of about 250 nuclear family groups.⁵⁵ The villagers are members of the following families: Al-At'amin, Al-Hamidi, Abu-A'nima, Al-Nabari and Al-Afawi. The Al-At'amin and Al-Hamidi families together make up about 70% of the population. The village includes some 300 permanent structures, mostly solid buildings that serve as family residences, and also tin roofed shanties that serve ancillary functions. Eighty percent of the village lands are used for agricultural needs, with the remaining

55 The count is based on a survey of household business rather than families, in order to include single-mother families and women who come from polygamous families.

20% shared between living quarters and grazing pasture for livestock. The elders among the villagers have, in the past, approached the land registration clerk and properly submitted their ownership claim to their lands.

The Metropolis Plan designates the village lands as “combined rural-agricultural land”, but fails to denote the village itself on the map. It remains unclear if, when and under what circumstances the village might be granted recognition and proper planning. The Plan’s complete disregard of the existence of the village and its inhabitants, who have lived there for generations, leads to egregious planning flaws. For example, **the planned route of Trans-Israel Highway 6 and its intersection with Route 25** runs straight through the homes and lands of Hashem Zane. Because of the width of the Highway 6 and the large total area needed to construct a highway interchange, road work will necessitate the expropriation of hundreds of dunams of village land; it will lead to the demolition of village residences, cause damage to agricultural lands, and interfere with extensive areas slated for development of the village.

El-Ghara

El-Ghara, situated in the ‘Ira Mountains region (al Jabel al-‘Ira) is home to about 2000 people, mostly members of the Al-Hawashla, Al-Harizat, Albatihat and Al-Sa’aida families along with some streams of the Al-Atrash family—all part of the Kadirat tribe. Access to the village is via dirt paths off of Route 31, at a distance of about 4km from the road. According to the inhabitants, the village has been in existence for some 300 years, with the vast majority of residents living on their ancestral lands. Ownership claims have been submitted to the authorities. Historically, the inhabitants of the village were mainly cave-dwellers, and to wit, remains of caves and other artifacts can be found in the area as well as historic burial grounds, wells, underground reservoirs and dams. Despite all this, the Metropolis Plan designates the area as non-residential by definition: “Proposed Forest Park”, “Preserved Natural Forest”⁵⁶ and Metropolitan Recreational Areas.

The El-Okbi Tribe:

In conjunction with the proceedings of HJC 1991/00 and preparation of the Metropolis Master Plan, ACRI worked to devise specific solutions for the internal exiles of the el-Okbi tribe, who during the 1950s were ordered to “temporarily” evacuate their lands, which ostensibly were required by the military for security reasons. The evacuees were never allowed to return and have since been living in disgraceful conditions near the town of Hura. At a certain point, the el-Okbi became aware of planning authority intentions to transform a planned settlement adjacent to the tribe’s historic lands - “Tarabin al-Sana”- and to designate it as a Jewish settlement area (Givot Bar). The el-Okbi petitioned the planning authorities, requested permission to move to the planned settlement area, an area which would meet their needs and end their decades-long suffering.

The sub-committee of the National Council for Planning and Building, which heard the el-Okbi appeal against the rezoning of the settlement into a Jewish settlement area, acknowledged that the planning committee’s actions were discriminatory against the Negev Bedouins, but concluded that any correction of the discriminatory planning needed to be addressed in the broader context of the District Outline Plan 23/14/4. On these grounds, the Council rejected the appeal, which was subsequently upheld in Beersheba administrative court and in Supreme Court decisions. In the wake of the Council’s rejection, the courts did not see justification in re-designating the land to this specific tribe without first evaluating the overall planning needs of the Negev Bedouin. The guiding principle in the decisions of both bodies was that the Givot Bar settlement was a general one, open to all who wished to live there, while designating the land to the el-Okbi tribe would effectively discriminate against other Bedouin groups with similar land claims. However, as expected, judicial intervention was necessary to compel the Givot Bar acceptance committee to

56 It is important to note that the implementation of these designations have not been carried out for almost 10 years.

allow residence to even one Bedouin (out of the many Bedouin families who registered and didn't even receive any response).⁵⁷ The Givot Bar settlement in the southern district is just one of many settlements numbering 30 or fewer families and is desperate for additional residents, while over 100 families of the el-Okbi tribe continue to live in the same disgraceful conditions alongside Hura. Their right to dignity is continuously violated, and the threat of home demolition hovers constantly above their heads. Occasionally, homes are destroyed by the state, with no settlement alternative offered since the Metropolis Plan ignored the suggested alternative settlement plans.⁵⁸

The examples above amply demonstrate the need for a change in the immoral policies adopted vis a vis the residents of the unrecognized villages. It is our sincere hope that this illustrious commission will advise the government and the relevant planning authorities to rescind their current policies – which are coercive and ignore the needs and the very existence of the Bedouin residents – and replace them with an egalitarian approach that respects the Bedouin people, their needs, their rights, and their way of life.

B. Planning as an Obstacle to Realizing Equality in the Right to Education and to Health

One of the most severe consequences of the lack of recognition granted to Bedouin villages is that the State of Israel metes out its educational and healthcare resources so sparingly there. Because the villages are unrecognized, they do not appear in regional planning maps, nor are there any zoning plans for the villages that would enable the receipt of a building permit. The upshot is that all construction work in these villages is illegal, including the building of schools and medical clinics. District Outline Plan 1/40/14 does arrange building permits for some educational and healthcare institutions, but it limits these permits to only 16 of the unrecognized villages, and consequently, the Ministries of Education and Health do not build schools or clinics in most of the villages. This harms the rights of some 37,000 residents who live in the 30 unrecognized villages without any education or health service. It harms their right to equality and all because of obstacles in planning.

ACRI's repeated appeals to the Ministers of Education and Health to correct this untenable situation – which constitutes a violation of basic human rights guarantees anchored in law – have not born fruit. It is easy to blame “planning” for the systematic infringement of economic, social and cultural rights of village residents, rather than to change that planning and turn it into a means for helping the Bedouin realize their rights. In order to correct the current situation, we propose adding a paragraph to the Metropolis Plan that would allow for the placement of mobile, temporary buildings that could provide essential health and educational services on any of the lands included in the plan where unrecognized villages are located. Buildings would be allocated according to egalitarian criteria and according to the decisions of the relevant ministries providing those services. This would be an appropriate solution for an interim period, until the government adopts plans to arrange status for all Bedouin settlement in the Negev. Accordingly, District Outline Plan 1/40/14 should be changed to allow for the construction of public buildings in all of the unrecognized villages.

C. Infringement of the Right to Housing

The direct result of the state's discriminatory planning policies is that it is impossible to receive legal building permits in any of the unrecognized villages. Without building permits or fair

57 In this context, it is important to note that in the course of ACRI's work in the Negev, we learned of no less than 5 families and one single person who applied for acceptance into the community, but received no reply. On 16.11.06, the Human Rights Clinic at Tel Aviv University petitioned the Appeals Committee, claiming that the application process in communal settlement was flawed after the candidacy of Mr. Jamal Elkrinoi was rejected on the basis of his nationality. The appeal was accepted on 3.6.07, but the other candidates still have not received replies to their applications, handled by the organization Alkarama for Human Rights.

58 As revealed in the testimony of, amongst others, Mr. Ilan Yeshurun, Deputy Director of the Authority for the Advancement of the Bedouin, before the Commission on 24.1.08.

settlement alternatives, the Bedouin residents have no choice but to build illegally without permits. Thus, it is no wonder that the threat of house demolitions hang constantly over their heads, and in fact dozens of residents each year do lose their homes to demolition and are left without a roof over their heads.⁵⁹ The demolition of a house injures one's sense of security and makes it impossible to conduct a normal family life, not to mention the severe financial loss involved and the mental anguish, especially traumatic for children. Judicial demolition orders against illegal building have for the most part been issued without time limitations, and thus there is the growing awful feeling that all the homes in the unrecognized villages are eventually slated for demolition.

Over the last few years, the courts have begun to address this problem in their rulings, and there is reason to hope that this represents a positive trend away from the old. For example, in March 2008, the Beersheba Magistrate's Court ruled that the state could not carry out demolition orders in unrecognized (and un-zoned) Bedouin villages by the sheer force of a judicial demolition order, unless there was an overriding public interest in addition to the preservation of the rule of law.⁶⁰ The court found that though the building conflicted with the National Master Plan, there needed to be another special interest in order to approve the demolition order, especially when residents had been living in these homes for years and were never served eviction notices.⁶¹

Until an immediate settlement solution is available, the freezing of all demolition orders in the unrecognized villages should be at the center of any plan to arrange Bedouin settlement in the Negev. The mounting case law from 2008 is hopefully indicative of a change in the attitude of the courts; that they have internalized the fact that the vast majority illegal buildings in the unrecognized villages have been erected out of necessity and out of the sheer need for shelter over residents' heads. We propose that this esteemed commission follow in the footsteps of the Or Commission and other commissions, and recognize the fact that the building of homes without permits in the unrecognized villages is largely an action of no other resort. Thus, this Commission should recommend the freezing of all demolition orders until a fair and equitable settlement solution for the Bedouin is found.

D. Infringement of the Right to Dignity and the Right to Culture

The disgraceful living conditions in the unrecognized villages – villages without running water, electricity, paved roads, garbage collection, or sanitary sewage infrastructure – are the direct result of the systematic policies that prevent the Bedouin population from access to the basic services that are necessary for a dignified life in a developed country in the 21st century. Over the years, the state has made use of these policies to coerce the Bedouin population to uproot themselves (unwillingly) and relocate from their rural villages to urban townships that the state planned for them. However, these townships do not match the needs of the villagers and are not in keeping with their culture or way of life.

These policies – of concentrating and urbanizing the Bedouin population, of denying their villages recognition, and of disinheriting the population of their rights to their historic lands – represent a gross violation of the right to dignity and the right to preservation of culture. Such policies cut inter-familial ties and sever the connection of the population to their land, land which serves as their cultural backbone. They remove the population from the communal, agricultural village life to which they are accustomed, where agriculture and the raising of livestock are central to their culture and lifestyle.

59 In 2007, a record high of 224 homes were demolished in the unrecognized villages.

60 Criminal Appeal (Tel-Aviv) 80137/07 **Daka v. Tel-Aviv Municipality** (Justice Dr. Michal Agmon-Gonen, 4.2.08); Criminal Case (Magistrates Court, Haifa) 4420/04 **State of Israel v. N. Hadid** (Judge Daniel Fish, 20.2.08).

61 Beersheba (Magistrates Court, Beersheba) 9064/06 **Abu Shehita v. the State of Israel** (Judge Yisrael Axelrod, 5.3.08)

6. Summary: Guiding Principles for Arranging Bedouin Settlement in the Negev

With the creation of the State of Israel, the Palestinian residents of the land suffered many injustices, among them the Bedouin population of the Negev who were forced to cede control over their ancestral territories and their rights to their land. Legislation was passed by the fledgling Israeli state as a means to further Judaize the territory, in a move that violated the human rights of the indigenous population. Today, after more than 60 years, the time has come to correct this historic injustice. It is time to propose new policies that recognize the rights of the Bedouin residents of the Negev, and to bolster those rights by repealing existing damaging and/or discriminatory legislation. We need new enlightened legislation, consonant with International Law, that recognizes the rights of indigenous peoples and is based on the principle of justice. Laws are created by human beings, and human beings are ultimately vested with the power to change those laws or their interpretation.

In light of all the above, we propose policies that will allow for the organization of Bedouin settlement on the basis of respect for human rights and on the basis of International Law. These policies will open the door towards a brighter, more egalitarian future where all of Israel's citizens are equal partners in society. The proposed policies will need to redress a historical injustice that has continued for many years, and thus these policies must be based on the principles of equality, distributive justice, and transitional justice along with recognition of the traditional ownership rights of the Bedouin homeland minority. The new policies will obviate the need for lengthy legal proceedings, which in the past have led to rulings based on extremely narrow readings of Mandatory law which run roughshod over human rights. There is no place for such law in a democratic state that is required to respect the human rights of all its citizens and residents, all the more so after the enactment of the Basic Law: Human Dignity and Liberty.

In the first stage, we propose to map out all the unrecognized Bedouin villages in the Negev, using the standard, egalitarian planning and zoning measures used in Israel today (to which end we can rely on the maps and plans of the Regional Council of Unrecognized Bedouin Villages.) The purpose of this is to arrange the planning and zoning status of the unrecognized villages so they can officially appear on regional and national master plans, while placing them on the drafts of the partial Outline Plan for the Beersheba Metropolis (Plan 23/14/4). This is critical, so that the regional development plan will be based on current facts-on-the-ground, and so that future development will not require the uprooting of extant Bedouin settlements. **In parallel**, steps should be taken to remove the zoning and planning obstacles that prevent the Negev Bedouin from realizing their most basic rights (e.g. right to education, right to health) in an equal manner to their Jewish Israeli counterparts. These obstacles should either be addressed on a case-by-case basis in individual plans, or more globally in the partial Outline Plan for the Beersheba Metropolis, so that the necessary institutional buildings (schools, health clinics, welfare agencies) can be built immediately. Bedouin residents should not have to rely on temporary buildings until the completion of the recognition process and the full zoning of their villages. **In the second stage**, we propose that the state recognize the historical property rights of the Bedouin Arab population to their ancestral lands, and reach a decision regarding their ownership lawsuits according to legal mechanisms (to be established) based on traditional Bedouin evidentiary law. We also propose the creation of legal mechanisms that will allow for monetary compensation of persons whose land was expropriated for public use, when there is no possibility of returning that land to its owners. **In the third stage**, we propose to advance a detailed regional master plan that would provide reasonable and equitable solutions to the basic needs of the unrecognized villages. Such a plan should allow for different types of settlement (e.g. agricultural settlements, communal settlements, shepherding communities) that would address the needs of various communities while respecting their culture.