



Off the Map

Land and Housing Rights Violations in Israel's Unrecognized Bedouin Villages

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I. Summary

Tens of thousands of Palestinian Arab Bedouin, the indigenous inhabitants of the Negev region, live in informal shanty towns, or “unrecognized villages,” in the south of Israel. Discriminatory land and planning policies have made it virtually impossible for Bedouin to build legally where they live, and also exclude them from the state’s development plans for the region. The state implements forced evictions, home demolitions, and other punitive measures disproportionately against Bedouin as compared with actions taken regarding structures owned by Jewish Israelis that do not conform to planning law.

In this report, Human Rights Watch examines these discriminatory policies and their impact on the life of Bedouin in the Negev. It calls on Israel to place an immediate moratorium on home demolitions in the Negev and establish an independent mechanism to investigate the discriminatory and often unlawful way in which land allocation, planning, and home demolitions are implemented.

The state controls 93 percent of the land in Israel, and a government agency, the Israel Land Administration (ILA), manages and allocates this land. The ILA lacks any mandate to disburse land in a fair and just fashion, and members of the Jewish National Fund, which has an explicit mandate to develop land for Jewish use only, constitute almost half of the ILA’s governing council, occupying all the seats not held by Israeli government ministries. While the Bedouin were traditionally a nomadic people, roaming the Negev in search of grazing land for their livestock, they had already adopted a largely sedentary way of life prior to 1948, settling in distinct villages with a well defined traditional system of communal and individual land ownership. Today they comprise 25 percent of the population of the northern Negev, but have jurisdiction over less than 2 percent of the land there.

Planning in Israel is highly centralized, and state planners fail to include the Palestinian Arab population, especially the Bedouin, in decision making and in developing the master plans that govern zoning, construction, and development in Israel. Even though Bedouin villages in the Negev pre-date Israel’s first master plan

in the late 1960s, state planners did not include these villages in their original plans, rendering these longstanding communities “unrecognized.” As a result, according to Israel’s Planning and Building Law, all buildings in these communities are illegal, and state authorities refuse to connect the communities to the national electricity and water grids, or provide even basic infrastructure such as paved roads. Israeli policies have created a situation whereby tens of thousands of Bedouin citizens in the Negev have little or no alternative but to live in ramshackle villages and build illegally in order to meet their most basic shelter needs.

While the Bedouin suffer an acute need for adequate housing and for new (or recognized) residential communities, the state rarely provides these opportunities. Meanwhile, even though some of the more than one hundred existing Jewish rural communities in the Negev sit half empty, the government is developing new ones. While in theory anyone can apply to live in these rural Negev communities, in practice selection committees screen applicants and accept people based on undefined notions of “suitability,” which exclude Bedouin. The ILA recently defended the role of the selection committees, saying “social cohesion in small communities is important.”¹

Israel’s planning authorities have taken this discriminatory logic to an extreme with the creation of 59 individual farms in the Negev over the past 10 years. The state has allocated vast land tracts almost exclusively to individual Jewish families and fenced off the land at government expense in a bid to “preserve state land.” Often, government ministries and the ILA allow individuals to establish the farms before they have secured building permits, on land zoned for other purposes, and local authorities connect these illegal outposts to water and electricity grids without hesitation. Meanwhile, the same officials claim that they cannot provide unrecognized Bedouin villages, with hundreds or even thousands of residents, with utilities because the villages are built illegally and the population is too dispersed. Several Bedouin told Human Rights Watch that the state had allocated their ancestral land to individual farms. Mohamed Abu Solb, an Israel Defense Forces veteran, took Human Rights Watch to the site of the village where he had grown up, from which the authorities had evicted him and his family in 1991, ostensibly for

¹ “Living in Sophisticated Rakefet,” *Haaretz* (Tel Aviv), February 16, 2007.

military purposes. Sixteen years later there are no signs of the army, but one of the individual farms, a lush cactus ranch, prospers on this confiscated land next to the Abu Solb clan's destroyed village of Kornub.

Since the 1970s Israeli authorities have demolished thousands of Bedouin homes in the unrecognized villages, many of them comprising no more than tents or shacks. In the past year alone Israeli officials have demolished hundreds of structures, and placed warnings of intended demolition on hundreds more. Israeli officials contend that they are merely enforcing zoning and building codes, but the state systematically demolishes Bedouin homes while overlooking or retroactively legalizing illegal construction by Jewish citizens. According to Ministry of Interior records, in January 2005 all 242 outstanding judicial demolition orders in the southern region of Israel were against Bedouin structures. Israel denies security of land tenure to the Bedouin and then exploits this insecurity to destroy their homes.

Planning officials carry out "administrative" home demolitions without any judicial oversight. Even in cases where, by law, officials must obtain a judicial warrant for demolition, judges issue the warrants during court proceedings without the presence of the Bedouin home owner, who is almost never identified or notified of the proceedings. In recent years, most Bedouin have given up any attempt to appeal home demolition orders in court since historically no Israeli judge has overturned a home demolition order in the unrecognized villages. Bedouin and their lawyers claim that they have no effective right to appeal: bringing such court cases is costly and futile, they say, and judges may add criminal charges for building or maintaining an "illegal" dwelling that can have consequences such as jail time or a hefty fine for the homeowner. Some Bedouin have demolished their own homes in an attempt to avoid such charges and to salvage as much as possible from their homes.

Israel's systematic violation of Bedouin land and housing rights appears to be increasing. Ministry of Interior records show that governmental demolitions in the Negev region more than doubled from 143 in 2005 to 367 in 2006. On May 8, 2007, Israeli authorities demolished 30 structures in the unrecognized village of Twayil Abu Jarwal, the largest single demolition to date and the sixth time homes in this village were demolished in the past year. In some villages, Israeli authorities have delivered

warning notices or demolition orders to entire neighborhoods or the whole village, such as in al-Sira, next to the Nevatim air base, where on September 7, 2006, officials distributed six judicial demolition orders, and demolition warnings to the rest of the village. In July 2007 all the homes with warnings received demolition orders.

Israeli officials insist that Bedouin can relocate to seven existing government-planned townships. But in fact alternative housing there is not readily available, and these towns are currently ill-equipped to handle a further influx of residents. Most Bedouin reject the idea of relocating to the townships, where poverty and crime rates are high, basic socioeconomic infrastructure is lacking, and they cannot continue traditional means of livelihood such as herding and grazing. Most important, the state requires Bedouin who move to the townships to renounce their ancestral land claims, which is unthinkable for most Bedouin who have such claims to land. This land has often been passed down from parent to child over several generations. In recent years the government and planning authorities have officially recognized six Bedouin villages that were previously unrecognized, and established three new villages/townships. However, these communities are suffering from bureaucratic foot dragging, poor financing, and borders that do not provide sufficient agricultural land for villagers' livelihoods or land reserves to allow the next generation to remain in the villages. Planning authorities continue to demolish the existing Bedouin homes that, unfortunately for their owners, fall outside the new officially (and arbitrarily) drawn village borders. In addition, the government has offered no housing solution to tens of thousands of Bedouin in the 39 remaining unrecognized villages.

The government has made developing the Negev region one of its strategic goals. In November 2005, the government adopted the Negev 2015 plan, a US\$3.6 billion 10-year scheme aimed at increasing the Jewish population of the Negev by 200,000 by developing upscale residential neighborhoods, fast transportation networks for commuters, high tech establishments, and better educational facilities. While the plan does propose upgrades to the appalling infrastructure and educational facilities in the government-planned Bedouin townships, it completely ignores the needs of the Bedouin living in unrecognized villages in the Negev. Bedouin advocates point

out that while Israel created fast-track measures to accommodate a million new immigrants from the former Soviet Union in the 1990s, the state still refuses to address the longstanding land and housing needs of the Negev's indigenous population.

The state's motives for these discriminatory, exclusionary and punitive policies can be elicited from policy documents and official rhetoric. The state appears intent on maximizing its control over Negev land and increasing the Jewish population in the area for strategic, economic and demographic reasons. For example, while promoting the building of new Jewish towns in the Negev in 2003 government officials stated that their aim was "creating a buffer between the Bedouin communities," "preventing a Bedouin takeover," and ensuring the security of the (Jewish) residents of the Negev.² The government has been able to exploit Jewish Israelis' suspicion of and prejudice against the Bedouin population to engender support for these policies. The state and the media often perpetuate images of the Bedouin as criminals, trespassers, and a potential third column, who should be controlled, cracked down upon and forced off the land of the unrecognized villages which they are deemed to have "stolen" from the state. In December 2000 Ariel Sharon, then leader of the Likud party, wrote "The Bedouin are grabbing new territory. They are gnawing away at the country's land reserves."³

International law permits governments to expropriate land and carry out evictions only in "the most exceptional circumstances." Even in these exceptional circumstances, human rights principles require the government to consult with the affected individuals or communities, identify a clear public interest for the eviction, and ensure that the eviction is carried out with due process that allows those affected a meaningful opportunity to challenge the eviction. The government must also provide appropriate compensation and adequate alternative land and housing arrangements. In almost all the cases Human Rights Watch investigated for this report, the state has met none of these criteria. Instead, the authorities typically left families to the charity of relatives or community organizations, who provided

² Oren Yiftachel, "Inappropriate and Unjust: Planning for Private Farms in the Naqab," *Adalah Newsletter*, vol. 24, April 2006.

³ Ariel Sharon, "Land as an Economic Tool for Developing Infrastructure and Significantly Reducing Social Gaps," *Land*, December 2000, quoted in Abu Ras, "Land Disputes in Israel," *Adalah Newsletter*.

temporary shelter. In some cases, as quickly as Bedouin rebuilt, the authorities returned to demolish the new structures. Even in cases of threatened wide-scale demolitions or evictions, the authorities did not inform the Bedouin about the future use of their village land or attempt to justify the necessity of the evictions.

Key Recommendations

To the Government of Israel

- Establish an independent mechanism, such as a special commission, to investigate the ways in which land allocation, planning, and home demolitions are implemented with regard to the rights and entitlements of the Bedouin population. The commission's work should be guided by the right to housing as defined in Israel's international human rights obligations and should give special regard to any discriminatory and arbitrary impact that current policies and practices have on the Bedouin population.
- Conduct a comprehensive examination of Bedouin citizens' residential needs, in consultation with the communities, and create a national master plan and corresponding regional and local outline plans to address their housing and community needs.
- Impose a moratorium on all Bedouin home demolitions and evictions until the aforementioned review has taken place and appropriate measures have been taken to ensure that the rights and interests of the Bedouin will be fully respected and protected in future implementation of planning and development policy.
- Enact legislation that provides the greatest possible security of tenure to residents of houses and land, and ensures that any evictions are carried out in a non-discriminatory way and in accordance with international human rights norms.

To the United States and other international donors

- Ensure that any aid funds allocated to, or used by, Israel for development of the Negev region are not used for further home demolitions and are conditioned on non-discrimination in planning, land allocation, and development.

To the United Nations special rapporteur on adequate housing and the special rapporteur on the situation of human rights and fundamental freedoms of indigenous people

- Request an invitation to conduct a visit to the Negev to study the problem in more depth and make recommendations addressing indigenous land claims.

II. Note on Methodology and Scope

This report is based on field work that Human Rights Watch carried out during March-April and December 2006 in 13 unrecognized Bedouin villages and three government-planned Bedouin townships in the Negev. Wherever possible, Human Rights Watch interviewed Bedouin in their homes in order to get a sense of life in the unrecognized villages and to witness directly the aftermath of home demolitions. Since unrecognized villages are not marked on any Israeli maps, nor signposted from Israeli roads, nor connected to the paved road network, locating and reaching the villages was part of the research challenge.

Human Rights Watch also spent time with Bedouin shepherds in their grazing areas to better understand the impact of Israeli restrictions on grazers and herders. Most Bedouin whom we interviewed were willing to be identified, although some asked that their identity be withheld.

Finally, Human Rights Watch interviewed activists, community organizations, nongovernmental organizations (NGOs), academics, and lawyers in Israel. Human Rights Watch also obtained information from Israeli authorities regarding their policy toward the unrecognized villages.

Human Rights Watch submitted a detailed letter with preliminary findings and a list of questions to the Government of Israel on May 14, 2007. The Ministry of Justice sent a lengthy reply on July 23, 2007. Human Rights Watch welcomes the government's attempts to provide some additional housing solutions for the Bedouin and appreciates the ministry's detailed response, which contained some information and statistics that we were unable to obtain elsewhere. However, the government did not address the existence of institutionalized discrimination against the Bedouin in regard to planning processes, choice of residential communities, access to land, and enforcement of building codes, and did not provide answers to many of our questions regarding what measures Israel is taking to redress this discrimination. We have included the relevant government information and responses in the body of the report.

Human Rights Watch also benefited from access to court petitions covering matters such as discrimination in planning and access to land. The information in this report is updated as of December 2007.

This report focuses on discriminatory land and planning policies in the Negev, disproportionate punitive policies of demolition and eviction directed at Bedouin, and the consequences for Israel's Bedouin population. It does not cover other problematic Israeli policies toward the Negev Bedouin that Human Rights Watch encountered, including the withholding of government services and utilities to citizens of the unrecognized villages and limitations on available land and permits for Bedouin farmers and shepherds. In a 2001 report, "Second Class, Discrimination against Palestinian Arab Children in Israel's Schools," Human Rights Watch examined discriminatory distinctions between the Jewish and Arab education systems in Israel, including the grossly under-resourced Bedouin education system.⁴

Note on terminology: Palestinian Arab Bedouin see themselves as a part of the larger Palestinian Arab minority inside Israel. Some Bedouin prefer the label Palestinian or Palestinian Arab rather than Bedouin, in an effort to combat what they see as the Israeli state's deliberate policy of dividing its minority Palestinian Arab population. While Palestinian Arab Bedouin share many characteristics with the Palestinian Arab community in Israel, Bedouin have a distinct history of a nomadic and semi-nomadic lifestyle throughout large areas of the modern Middle East, and some historians date Bedouin's presence in the Negev back 7,000 years, when the Bedouin roamed back and forth between the Sinai and Negev.⁵ In this report we have adopted the short term "Bedouin" when referring to the Palestinian Arab Bedouin population of the Negev.

Many organizations advocating for the Bedouin prefer to use the Arabic transliteration "Naqab" in referring to the Negev area of Israel. In this report we have

⁴ Human Rights Watch, *Second Class, Discrimination against Palestinian Arab Children in Israel's Schools* (New York: Human Rights Watch, 2001), <http://www.hrw.org/reports/2001/israel2/>

⁵ See for example, Martin Ira Glassner, "The Bedouin of Southern Sinai under Israeli Administration," *Geographical Review*, Vol 64 (1): 31-60 (January 1974), and Clinton Bailey, "Dating the Arrival of the Bedouin Tribes in Sinai and the Negev," *Journal of the Economic and Social History of the Orient*, Vol 28(1): 20-49.

used the more widely recognized term Negev except where quoting individuals and organizations.

Reference is made throughout the report to seven government-planned Bedouin townships and to newly recognized and unrecognized villages. The seven government-planned townships are: Hura, Lakiya, Rahat, Segev Shalom, and Tel Sheva (constructed post-1968); and Arara B'Negev and Kseife (post-1980).

Six previously unrecognized villages have been newly recognized, but only on a portion of the land which they previously utilized, meaning that village homes outside the newly recognized village borders are still being demolished. These six villages are: Abu Karinat, Bir Hadaj, Qasr al-Sir, Drijat, Um Batim, and al-Sayid. Three recognized villages/townships are new: an as-yet-unnamed village for the Tarabin tribe, near Rahat (partially populated), Moleda (at the planning stage, unpopulated), and Marit (exists only on paper). Of these nine, only one has a detailed plan and building permits, and three have detailed plans but no permits. Three other villages/townships are planned and awaiting statutory approval: Ovudat/Avde, Abu Tlul, and al-Fura/El-Foraa.

There are presently 39 unrecognized villages. Some of these are historic villages but two-thirds were established post-1948 on sites to which the military had forcibly moved Bedouin from elsewhere in the Negev. These Bedouin were forced to abandon their historic villages during this period and today some of the Negev's Jewish farming communities and towns are built on the sites of these traditional Bedouin villages.

III. Background

The Bedouin must be made municipal workers in industry, services, construction, and agriculture. Eighty-eight percent of Israeli residents do not work in agriculture. The Bedouin will be included among them. The transition will be sharp, however. It means that the Bedouin will not be on his land and with his herd; he will be a city dweller who comes home in the afternoon and puts on a pair of slippers. His children will get used to a father who wears pants, carries no dagger, and does not remove head lice in public. They will go to school with their hair combed and parted. It will be a revolution. How can this be organized within two generations? Not by force, but with governmental direction. This phenomenon called “Bedouin” will disappear.

—Moshe Dayan, then-minister of agriculture, July 1963⁶

In the Negev, we face a serious problem: About 900,000 dunams of government land are not in our hands, but in the hands of the Bedouin population. I, as a resident of the Negev, see this problem every day. It is, essentially, a demographic phenomenon... Out of weakness, perhaps also lack of awareness about the issue, we, as a country, are doing nothing to confront this situation... The Bedouin are grabbing new territory. They are gnawing away at the country’s land reserves, and no one is doing anything significant about it.

—Ariel Sharon, December 2000⁷

The Bedouin are indigenous inhabitants of the Negev region of southern Israel.⁸ Those Bedouin who remained in the Negev after the 1948 War became citizens of

⁶ Quoted in the newspaper *Haaretz* (Tel Aviv), July 31, 1963, reproduced in Thabet Abu Ras, “Land Disputes in Israel: The Case of the Bedouin of the Naqab,” *Adalah Newsletter*, vol. 24, April 2006.

⁷ Ariel Sharon, “Land as an Economic Tool for Developing Infrastructure and Significantly Reducing Social Gaps,” *Land*, December 2000, quoted in Abu Ras, “Land Disputes in Israel,” *Adalah Newsletter*. At the time of the article Sharon was leader of the Likud party, which was in opposition. A dunam is equivalent to 0.1 hectares or approximately 0.25 acres.

⁸ Israeli and international literature both confirm that Jewish settlement only began in the Negev in the years leading up to the 1948 War and that the Bedouin were the only inhabitants of this area for most of the pre-1948 period. See for example, Ruth Kark, “Jewish Frontier Settlement in the Negev, 1880–1948: Perception and Realisation.” *Middle Eastern Studies* 17 (1981), pp. 334–56. In addition, both Israeli and international academics and organizations have asserted the Bedouin’s indigenous status. See, for example, the work of the Washington DC-based Refugees International on the Bedouin, <http://www.refugeesinternational.org/content/article/detail/909/> (accessed December 7, 2007), and Israeli academics Sandy Kedar, Oren Yiftachel and Ruth Kark.

Israel.⁹ While the Bedouin were traditionally a nomadic people, roaming the Negev in search of grazing land for their livestock, they had already adopted a largely sedentary way of life prior to 1948, settling in distinct villages with a well defined traditional system of communal and individual land ownership.¹⁰

During and immediately after the 1948 war, that followed the end of the British Mandate and Israel's Declaration of Independence, the majority of Negev Bedouin were expelled or fled to surrounding areas in Jordan, Egypt, the West Bank, and Gaza. Only around 11,000 of the 65,000-95,000 pre-1948 Bedouin population remained in the Negev, representing just 19 of the original 95 Negev Bedouin tribes.¹¹ Israeli officials at the time debated whether the Bedouin should be entirely cleared from the Negev (a position supported by Yosef Weitz, chairman of the Jewish National Fund Land Division, and Foreign Minister Moshe Sharef) or whether those loyal to the state should be allowed to remain but concentrated into a limited area east of Beer Sheva (a position supported by Yigal Alon, commander of the southern front and the Military Governor of the Negev).¹² Alon's plan also spelled out the purpose for moving the Bedouin into this circumscribed area: to secure land suitable for settling Jews and for building bases of the Israel Defense Forces (IDF, the Israeli army), and to remove the Bedouin from key Negev routes.¹³

Alon's approach won out, and over the following four years authorities forcibly moved 11 of the 19 remaining tribes from land in the area between Beer Sheva and the Israel-Gaza border to a circumscribed area known as the Siyag (the other eight

⁹ The Negev constitutes 60 percent of Israel's land mass. There are also a few tens of thousands of Bedouin living in the north of Israel, in Galilee, who are descended from Syrian Bedouin tribes. Most of the Negev Bedouin are related to Sinai and Arabian Peninsula Bedouin tribes.

¹⁰ See, for example, Ghazi Falah, "Israel State Policy Towards Bedouin," p. 36 (footnote 10). According to Falah, the 1931 Census of Palestine registered some 89.3 percent of the Negev Bedouin as deriving their livelihood from agriculture and only 10.7 percent as occupied solely in raising livestock.

¹¹ Jeni Dixon and Leena Dallahseh, "Ethnic Cleansing in the Negev," July 31, 2005, <http://www.alternativenews.org/aic-publications/other-publications/ethnic-cleansing-in-the-negev-20050801.html> (accessed June 15, 2007).

¹² Benny Morris, *Israel's Border Wars, 1949-1956: Arab Infiltration, Israeli Retaliation, and the Countdown to the Suez War* (Oxford: Clarendon Press, 1997).

¹³ Shlomo Swirski and Yael Hasson, *Invisible Citizens Israel Government Policy Toward the Negev Bedouin* (Tel Aviv: Adva Center, February 2006), <http://www.adva.org/UserFiles/File/NegevEnglishFull.pdf> (accessed May 23, 2007), p. 12.

already inhabited land inside the Siyag).¹⁴ Military authorities told these Bedouin that the move was temporary and that they would be allowed to return to their ancestral land within periods ranging from two weeks to six months.¹⁵ To date, none has been allowed to return. Several Bedouin showed Human Rights Watch copies of the original military order for their allegedly temporary relocation. Ostensibly confiscated for military purposes, today much of this land is used by Jewish farmers. Many Bedouin could tell Human Rights Watch exactly which *kibbutz* or *moshav* (communal Jewish farming community) was built on their ancestral land.¹⁶ Over the decades many internally displaced Bedouin created permanent settlements on the sites to which the military had moved them. The other eight tribes that had not been displaced because they already lived inside the Siyag continued inhabiting their historic villages.¹⁷

Legal Basis for Land Confiscation

During the period of Israeli military rule over the country's Palestinian Arab population, from 1949 to 1966, Israel passed laws that enabled the state to confiscate land previously owned or used by the Bedouin (as well as the wider Palestinian Arab community) and register it in the name of the state:¹⁸

The 1953 **Land Acquisition (Validation of Acts and Compensation) Law** gave the state the right to register previously confiscated land in its name if various conditions were met. One of these conditions was that the owner was not in possession of the property on April 1, 1952. By this date the “temporary” removal of the Negev Bedouin

¹⁴ *Siyag* means fence in Hebrew. According to Israeli Ministry of Agriculture figures the total area of the Siyag was 1.2 million dunams (300,000 acres), located mostly east and southeast of Beer Sheva. See Swirski and Hasson, *Invisible Citizens*, p. 6.

¹⁵ Human Rights Watch interviews with Nuri al-Ukbi, Beer Sheva, April 3, 2006; Salim Abu Alqian, Um al-Hieran, March 29, 2006; Labad Abu Afash, Wadi al-Ne'am, April 9, 2006.

¹⁶ Human Rights Watch interviews with Salim Abu Alqian, Um al-Hieran, March 29, 2006 and Suliman abu 'Bayid, Lakiya, April 6, 2006. According to Israeli historians, around 50 Jewish settlements were built in this area in the early 1950s. See Swirski and Hasson, *Invisible Citizens*, p. 7.

¹⁷ According to Israeli Ministry of Agriculture figures, in 1955 about one-third of the residents of the Siyag were indigenous to the area and the other two-thirds had been displaced from the Western Negev. *Ibid.*, p. 8.

¹⁸ Hebrew originals of these laws can be found in *Sefer HaHokim* [Book of Laws]. The Land Acquisition (Validation of Acts and Compensation) Law - 1953, *Sefer HaHokim* 122, p. 58. The Planning and Building Law - 1965, *Sefer HaHokim*, 467, p. 307. The Land Rights Settlement Ordinance [New Version], 1969, *Ordinances of the State of Israel, New Version* 13, p. 293. The Negev Land Acquisition (Peace Treaty with Egypt) Law - 1980, *Sefer HaHokim*, 979. An English translation of the Planning and Building Law 1965 can be found online at <http://www.geocities.com/savepalestinenow/israellaws/fulltext/planningbuildinglaw.htm> (accessed June 15, 2007).

into the Siyag area had been completed, and thus much of the Bedouin's land outside the Siyag was registered as state land, unbeknownst to many of the Bedouin owners.¹⁹

The 1965 **Planning and Building Law**, examined in greater detail in Chapter V, created a hierarchy of planning bodies that drew up master plans at the national, district and local level. The first Israeli master plans in the late 1960s identified existing and projected built-up areas in every part of Israel. The authorities did not acknowledge the existence of the populated Bedouin villages on the original master plans and zoned their land as agricultural. As a result, although six villages have subsequently been recognized (see below), most of these still do not have a detailed outline plan and thus cannot receive permits to build. In addition, none of the still unrecognized villages (39 in total) can apply for and receive permits to build, and all the structures, even those existing before passage of the 1965 law, the state deems illegal. Another section of the 1965 Law holds that unlicensed buildings cannot be connected to utilities such as water, electricity, or telephone networks, thus leaving all the homes in the unrecognized villages without these basic state services. Finally, the law also allowed for the confiscation of land for public purposes, which led to another round of state confiscation of Bedouin land in the Negev, including the land that the state used to build the first government-planned Bedouin townships as well as land later used to build Jewish towns and other state projects.

After the end of military rule in the Negev, and during the period that the government began to concentrate Bedouin in newly created townships, Israel also continued to register Bedouin land in the name of the state, facilitated by two further pieces of legislation:

The 1969 **Land Rights Settlement Ordinance [New Version]** gave the government the right to confiscate lands that Ottoman Land Law (the law applicable when Palestine was under Ottoman rule, some aspects of which both the British Mandate and the State of Israel incorporated into their legal systems), had defined as “dead lands” (*mawat*), and which Bedouin had not both “revived” (that is, cultivated) and officially registered during Ottoman and British land registration periods. Most of the Bedouin

¹⁹ In the Negev, 137,400 dunams were expropriated under the law.

residents of the Negev did not register their settled and cultivated lands during these periods for a number of reasons, including:

- Bedouin utilized a traditional ownership system and saw no need for official registration;
- Bedouin historically did not cooperate with (non-Bedouin) state authorities;
- Bedouin lacked knowledge of the registration procedure;
- Bedouin feared that registering their land with the authorities would provide the authorities with official records that could be later used for taxation and military conscription;
- Bedouin did not have adequate time to learn about and fulfill the requirements of the British Mandate registration process, which lasted only two months.²⁰ This was the last time that Bedouin were able to officially register their land and it is the registry that Israeli officials have used since 1948.

The 1969 law also provided a legal basis for settling disputed land title, as described below (see this chapter, section “Battle over Land Ownership”).

The Knesset (Israel’s parliament) passed the 1980 **Negev Land Acquisition (Peace Treaty with Egypt) Law** following Israel’s 1979 peace treaty with Egypt in which Israel agreed to return the Sinai Peninsula to Egypt and dismantle the Israeli air base there. The 1980 Law authorized the government to confiscate specifically designated land in the Negev with no right of appeal in order to create a new site for the air base. The Law stipulated that the land would be registered in the name of the state and that the current owner or tenant should vacate the land within three months; if not, the Law authorized the government to use force to remove them.

Under the framework of the 1980 Law, the state expropriated 65,000 dunams (16,250 acres) and removed approximately 5,000 Bedouin from their land.²¹ This land was used to build the Nevatim air base and the government-planned townships of

²⁰ Ben-David, Y., *Feud in the Negev: Bedouin, Jews, Land*, (Rananna: The Center for the Research of Arab Society in Israel, 1996) (Hebrew). Under this law the state gained possession of about 12 million dunams, most of them in the Negev region.

²¹ Centre on Housing Rights and Evictions and BADIL Center for Palestinian Residency and Refugee Rights, “Ruling Palestine, A History of the Legally Sanctioned Jewish-Israeli Seizure of Land and Housing in Palestine,” May 2005, pp. 53-54.

Kseife and Arara B'Negev, to which the government expected the displaced Bedouin to move. The Law codified a compensation formula that was greater than that which the government had offered Bedouin in the 1970s, but still less generous than the compensation the government gave the Sinai Jewish settlers to relocate to Israel.

In 2006, 26 years later, the government threatened the unrecognized village of al-Sira, near the Nevatim air base, with mass forced evictions since the residents live on land officially expropriated by the state under the 1980 Law. The government had never previously told village residents that they lived in the expropriated area or told them to evacuate.

Government-planned Townships

Israel established seven Bedouin townships between 1968 and 1990, with no input from the Bedouin population, and encouraged Bedouin to move there.²² Most Bedouin assert that the government designed the townships to concentrate the Bedouin into a fraction of the land of the Siyag and to try to end Bedouin claims of land ownership elsewhere in the Negev.²³ Many of the Bedouin who moved into the townships from the 1970s onwards—approximately 85,000 of the current Bedouin population of 170,000—did so in the hopes of a better life and government services.²⁴ Those who moved were also disproportionately Bedouin who had not been landowners and had no claims to land, and thus did not have the same imperative to remain on their land.

²² Tel Sheva was established in 1969; Rahat in 1971; Segev Shalom in 1979; Kseife and Arara BaNegev in 1982; Lakiya in 1985; and Hura in 1989. See Swirski and Hasson, *Invisible Citizens*, p. 14. The Israeli government refers to Rahat as a Bedouin city and the other six townships as suburban Bedouin towns. Letter to Human Rights Watch from the Israeli Ministry of Justice, July 23, 2007, on file with Human Rights Watch.

²³ The seven townships were one of the recommendations of an interministerial committee established by the government in 1962 to “examine proposals for locating sites for residential construction in the Negev, including housing for the Bedouin population.” In 1965 the Committee recommended that the government establish seven permanent communities in a tiny area of 7,600 dunams (1,900 acres) in the Negev. See Swirski and Hasson, *Invisible Citizens*, p. 13.

²⁴ The population numbers stated here come from Swirski and Hasson, *Invisible Citizens*, p. 33. Many observers believe that there are actually far fewer than 85,000 Bedouin living in the townships but that Bedouin often register their place of residence in the townships in order to receive an official address for mail and to facilitate receipt of benefits. In addition, some Bedouin who previously lived in the townships have actually moved to (or back to) the unrecognized villages without changing their official place of residence. In its letter to Human Rights Watch dated July 23, 2007, the Israeli Ministry of Justice said that there are more than 170,000 Bedouin living in the Negev and that “[m]ost live in urban and suburban centers.” The letter later states that around 70,000 Bedouin live outside the townships, placing the government’s number of people living in the townships at around 100,000.

The government has neglected these towns, investing little in them. They suffer disproportionately compared to Jewish towns in Israel from food insecurity, poverty, unemployment, crime, low levels of education, and poor health. They are overcrowded, and they were built at least partly on confiscated land claimed by other Bedouin, leading to internal communal conflicts (this is discussed in more detail in Chapter VII, below). Very few Bedouin today see them as an acceptable residential option, and there are some reports that Bedouin are leaving the towns and returning to live in unrecognized villages.

Khair al-Baz, a Bedouin social welfare official, told Human Rights Watch:

The assumption was that if you move to one of the seven townships you would be in a wonderful situation, life would become much better and your psychological well-being would improve. But in fact the opposite happened. I actually think the kids in the unrecognized villages are healthier. Why would you move to the townships when you know there is no proper planning done, no real investment and no community involvement? I have lived in Tel Sheva since the late 1970s, and I have never felt at home there. The seven towns are like seven low-class motels. If you want to market a product you have to make it attractive. But these towns are not attractive—they are large towns with no real social and educational infrastructure.²⁵

(See Chapter VII for details on conditions in the seven townships.)

In recent years the government and planning authorities have recognized or established nine villages or townships for the Bedouin (see Chapter II, above). Six of these recognized villages are each on the site of an existing unrecognized village but in a more circumscribed area. All homes outside the new boundaries remain at risk of demolition. Bedouin fear that the new villages will suffer the same neglect and developmental failures as the seven townships. In the newly recognized villages that Human Rights Watch visited, it was difficult to detect any difference between them

²⁵ Human Rights Watch interview with Khair al-Baz, Beer Sheva, April 4, 2006.

and their still unrecognized neighbors, even though the recognition process began seven years ago when the government passed the relevant decision.²⁶ Most of these newly recognized or established villages do not have an approved detailed local outline plan that would allow residents to obtain building permits and build legally; as noted above, one exists only on paper.²⁷

Battle over Land Ownership

In 1969 Israel established, under the Land Rights Settlement Ordinance (see above), a process whereby citizens could register claims to land ownership with the Land Settlement Officer at the Ministry of Justice.²⁸ Staff from the Land Settlement office mapped out all claims to show the exact contours of the claimed plots. Many Bedouin showed Human Rights Watch copies of their claims file. During the early 1970s Bedouin submitted 3,220 ownership claims, for a total of 991,000 dunams.²⁹ However, the government filed counter-claims and, since the Bedouin lack ownership deeds (known as *tabu*), the state prevailed in every court case, and the land was registered in the state's name.³⁰

In 1975 the government abandoned its counter-claims lawsuits in favor of a different, comprehensive approach. Pliya Albeck, then head of the Civil Affairs Section of the State Attorney's office in the Ministry of Justice, headed a committee that suggested freezing the contentious "settlement of title" process, based on the fact that in the

²⁶ See, for example, Cabinet Resolution No. 2562 [Arab/47], November 2000. The first time the planning authorities officially recognized a pre-existing village was when the Southern District Planning Commission recognized the village of Drijat as a standalone community, despite a previous government decision to just include it as a part of the planned township of Marit. The Planning Commission decided to recognize the village in January 2004. See "First time recognition for previously unrecognized Negev village," Association for Civil Rights in Israel press release, February 1, 2004, <http://www.acri.org.il/english-acri/engine/story.asp?id=160> (accessed May 24, 2007).

²⁷ Of the nine, only one has a detailed plan and building permits, and three have detailed plans but no permits. The rest are in various stages of planning. According to a letter to Human Rights Watch from the Israeli Ministry of Justice, dated July 23, 2007, only one of the nine new villages/townships is populated (the one for the Tarabin), two are under construction (Abu Karinat and Bir Hada) and the rest are "under planning procedures."

²⁸ The process was established by the Land Rights Settlement Ordinance [New Version] – 1969.

²⁹ The Negev Coexistence Forum for Civil Equality, "The Arab-Bedouins of the Naqab-Negev Desert in Israel," a Shadow Report submitted to the UN Committee on the Elimination of Racial Discrimination, May 2006, <http://www.ohchr.org/english/bodies/cerd/docs/ngos/NCF-IsraelShadowReport.pdf> (accessed May 21, 2007), p. 7.

³⁰ In 1858 the Ottoman Empire introduced a system of private ownership for the first time. The system was codified in the Ottoman Land Law of 1858, which created a *Tabu*, or land registry, where land owners who fulfilled the criteria of the law could register their land and receive an ownership deed (also called a *tabu*). As explained in the text of the report, Bedouin were often reluctant to officially register land they owned or used due to their distrust of the authorities; their reliance on a traditional, not official, land ownership system; and/or their fear of taxation and conscription.

state's view all of the Negev constituted *mawat* (dead) land and thus belonged to the state, meaning that no Bedouin would ever prevail in a settlement of title proceeding. Instead, the Albeck Committee suggested a three-pronged approach that included non-recognition of Bedouin ownership claims and offering compensation that was conditional upon Bedouin moving into one of the government-planned townships.³¹ The Albeck Committee proposed a compensation formula for those who agreed to the conditions, whereby claimants could receive 65 percent of the value of their land claims (to be determined by a government appraiser) in financial compensation, or, for those claiming over 400 dunams, 20 percent of their claim in land and the remaining 80 percent in financial compensation for 30 percent of the value of the land.³² While the monetary amounts have increased over the years, the conditions and the basic formula have remained the same. Today the government offers Bedouin between 1,100 and 3,000 shekels (NIS) per dunam.³³ Most Bedouin have rejected this offer both because of the conditions posed on receiving the compensation and because they see the amounts as insultingly low, especially when compared to the compensation paid to evacuated Sinai and Gaza settlers or even those displaced by large infrastructure projects (this is discussed further in Chapter VII, "Lack of Compensation or Adequate Alternatives"). As a result, there are still around 3,000 outstanding Bedouin land claims covering roughly 650,000 dunams in the Negev.³⁴

After an almost 30-year hiatus, the government decided in April 2003 to restart the counter-claims lawsuits, claiming that the Bedouin are not interested in its earlier "generous" compromise.³⁵ As of June 2006 the government had served Bedouin with 170 counter-claims lawsuits covering an area of 110,000 dunams; in every case

³¹ Swirski and Hasson, *Invisible Citizens*, p. 17.

³² *Ibid.*, pp. 17-18.

³³ At this writing, one New Israeli Shekel (NIS) equals approximately US\$0.25.

³⁴ *Ibid.*, p. 16.

³⁵ In April 2003 the Special Ministers Committee for the Non Jewish Sector ordered the Israeli Land Administration to file counter claims against the lands claimed by the Arab-Bedouins. See Negev Coexistence Forum for Civil Equality, "The Arab-Bedouins of the Naqab-Negev Desert in Israel," p. 7. The ILA refers to its "generous" offer to the Bedouin several times on its website. See http://www.mmi.gov.il/static/HanhalaPirsumim/Beduin_information.pdf (accessed June 15, 2007).

where the courts have already passed judgment, they have ordered the land to be registered as state owned.³⁶

Unrecognized Villages

Today the Bedouin of the 39 unrecognized villages possess no security of tenure and face the constant threat of having their homes destroyed.³⁷ According to government figures, there are 45,000 illegal structures in the Negev today. Not all have demolition orders against them, but all are candidates for demolition.³⁸

The Bedouin unrecognized villages, two thirds of them created since the Israeli army forced the Bedouin to abandon their historical villages and re-locate to the Siyag after 1948, exist in some of the most squalid and hazardous locations in Israel. Bedouin live next to Dimona's garbage dump, in the shadow of Beer Sheva's prison, under the constant roar of military airplanes taking off from the Nevatim air base, among the giant pylons of Israel's southern electric power plant, and under the noxious fumes of the Ramat Hovav chemical plant and toxic waste site. All of these facilities were built long after the Bedouin had established their homesteads in these areas.

Bedouin settled the unrecognized village of Wadi al-Ne'am in 1956, after Israeli military authorities forcibly displaced them from their ancestral land. In the 1970s Israel built its main electric plant for the southern region in the midst of the village. While Bedouin homes receive neither running water nor electricity, high voltage electric wires supplying residential communities nearby buzz directly overhead. In the mid-1970s, Israel built the Ramat Hovav industrial plant nearby, housing 50

³⁶ Negev Coexistence Forum for Civil Equality, "The Arab-Bedouins of the Naqab-Negev Desert in Israel," p. 8.

³⁷ The number of 45 unrecognized villages was first put forth by the Regional Council for the Unrecognized Villages in the Negev in 1997 when Dr. Amer Hozayel mapped the villages for the first time and created alternative master plans for them. See map at front of report. Despite the recent recognition of six of these villages and the establishment of three new villages or township, around 39 remain unrecognized. The term "unrecognized villages," first adopted by organizations such as the Association of 40 and Shatil in the 1990s, has gradually seeped into official discourse although many government agencies still refer to the Bedouin as living in the Bedouin "dispersal." See for example ILA paper on "The Bedouin of the Negev" which states that "...60% [of the Bedouin population in the Negev] lives in seven permanent townships, and the remainder in illegal homes spread over hundreds of thousands of dunams (these scattered Bedouin localities are referred to as the Bedouin 'dispersal')." http://www.mmi.gov.il/static/HanhalaPirsumim/Beduin_information.pdf (accessed May 21, 2007).

³⁸ Uri Tal, "Master-plans for the Bedouin Settlements in the Negev," Knesset Center for Research and Information, December 3, 2006, <http://www.knesset.gov.il/mmm/doc.asp?doc=m01668&type=pdf> (accessed March 25, 2007) and letter to Human Rights Watch from Ministry of Justice, July 23, 2007.

percent of Israel's chemical factories and the country's only toxic waste dump. Noxious fumes pervade the area. In 2004, the Ministry of Health released a much-delayed study documenting higher than normal cancer rates and high levels of hospitalization for respiratory illness near Ramat Hovav. Yet the authorities have consistently denied the Wadi al-Ne'am Bedouin's request to establish a new agricultural village in a different, non-toxic location. The only alternative the state has offered is a non-existent neighborhood in the already deeply deprived Bedouin township of Segev Shalom, still within the Ministry of Health's proscribed radius of Ramat Hovav. Today hundreds of families in Wadi al-Ne'am have demolition orders on their homes and nowhere to go.



Houses in the unrecognized village of Wadi al-Ne'am, under electric wires and pylons with Ramat Hovav factories in the background. © 2006 Lucy Mair/Human Rights Watch

Such Bedouin villages are effectively shanty towns, built on barren, non-irrigated land, inaccessible by paved roads and without basic infrastructure. They stand in sharp contrast to neighboring Jewish towns. The unrecognized Bedouin village of Tarabin al-Sane', built in the 1950s by members of the Tarabin tribe, where Human

Rights Watch researchers waded through ankle-deep mud to reach ramshackle huts, lies side by side with the villas and tree-lined streets of one of Israel's wealthiest towns, Omer. In 2000, Omer expanded its municipal jurisdiction over the land of Tarabin al-Sane', but rather than offer the Tarabin a place in their exclusive community, Omer's municipal council is actively trying to evict the Bedouin in order to develop and market costly new housing plots. One Omer resident showed Human Rights Watch a colorful brochure the municipality had handed out in 1998 showing its projected plans. "The map was designed on an aerial photo of Omer and on top of the Tarabin village were superimposed the names of new streets, nursery schools, and parks," she said. "It was really amazing. I didn't understand the map. It was as if the Tarabin didn't exist even though their huts were visible in the photo."³⁹

One of the residents of the Tarabin village told Human Rights Watch:

Look how we live. We live like animals in the mud. Then walk through that gate into Omer and see how nicely they live there. Our kids have to get up at 6:15 to be bussed to school in one of the recognized townships. Next door the kids of Omer walk out the door at 7:50 a.m. to be at the local school at 8:00 a.m. But they still want to get rid of us. Why can't we become residents of Omer? I'm an Israeli citizen, I have been living in this village all my life, this is my home, why can't I keep living here?⁴⁰

Developing the Negev

In November 2005, the government adopted the Negev 2015 plan, a \$3.6 billion, 10-year scheme aimed at securing and developing the Negev, principally by attracting 200,000 new residents to the Negev. The plan defines the ideal new residents as a "strong population" including "families with high income" who work in central Israel and will continue to commute to their old jobs while moving their homes to the Negev. To this end the plan provides for the development of "high-caliber transport infrastructure and attractive housing, education and community options" including

³⁹ Human Rights Watch interview with Haya Noach, Omer, April 4, 2006.

⁴⁰ Human Rights Watch interview with Talal (full name withheld), Tarabin al-Sane', April 6, 2006.

10,000 “unique real estate units” adjacent to sites of natural beauty and built on 2,000 square meter plots, contrary to the Israel Land Administration’s current maximum of 500 square meters. There can be no doubt that these elements of the plan are targeted at the Jewish population. While the plan does include some (much-needed) proposals for upgrading infrastructure and education facilities in the government-planned Bedouin townships, these improvements would only bring standards up to the most basic levels, not put these communities on a par with their Jewish counterparts. Furthermore, there is no mention of the unrecognized villages or their inhabitants in the document.⁴¹

Several of the regional councils in the Negev and the Jewish National Fund (JNF) have promoted plans for attracting new Jewish residents to the Negev (the structure of local government is explained in detail in the next chapter). The Bnei Shimon Regional Council in the Western Negev states, “Increasing the Jewish population of the Negev is one of Bnei Shimon Regional Council’s major goals. Our vision is to double Bnei Shimon's population within ten years.”⁴² The JNF is supporting Bnei Shimon’s aspirations as part of its Blueprint Negev plan, launched in 2006. According to the JNF, “Over the next five years, our goal is to bring 250,000 new residents to the Negev. Seven out of a proposed twenty-five new communities have already been created. Existing communities are being strengthened with economic opportunities and improved quality of life.”⁴³ The JNF has a mandate to develop land for Jewish use only.

Is Resolution Possible?

During a three-part debate in the Knesset’s Committee for Internal Affairs and Environment in late 2006 and early 2007, Minister of Construction and Housing Meir Shitrit announced that he was setting up a unit in his ministry and would consult widely with community leaders in an effort to reach a compromise solution on land

⁴¹ Information in this paragraph taken from Shlomo Swirski, *Current Plans for Developing the Negev: A Critical Perspective* (Adva: Tel Aviv, January 2007). <http://www.adva.org/UserFiles/File/AdvaNegevJanuary2007.pdf> (accessed November 16, 2007).

⁴² Bnei Shimon Regional Council website, http://www.bns.org.il/site/he/eCity.asp?pi=2372&doc_id=12331 (accessed May 23, 2007).

⁴³ Jewish National Fund website, <http://www.jnf.org/site/PageServer?pagename=negevindex> (accessed May 23, 2007).

and housing issues. However, he also warned that Bedouin who did not go along with such an agreement would face strict enforcement measures.⁴⁴

On July 15, 2007, the Government passed a resolution establishing this new unit in the Ministry of Construction and Housing. It appears to be a coordination body to oversee all existing Bedouin matters, from enforcement activities against illegal building, to counter-claims, to arranging permanent residences in government-planned townships and the newly recognized villages.⁴⁵ Since the government has previously created numerous Bedouin units, inter-ministerial committees, and other bodies, and has announced various plans and promises that have remained unfulfilled over the years, the Bedouin are understandably wary of all official initiatives. On July 18, Mr. Shitrit proposed that the attorney general freeze demolition orders for up to one year, during which time the Bedouin would also forgo new building. In a July 23 letter to Human Rights Watch, the Ministry of Justice stated that “[t]his application is currently under examination in the Ministry of Justice.” However, in October 2007 the attorney general sent a letter to the Association of Civil Rights in Israel saying that he had rejected the request for a freeze.⁴⁶ Meanwhile, the authorities continue to carry out mass home demolitions: on July 19 they demolished 21 homes in Twayil Abu Jarwal, two in Khirbat al-Watan, and one in Wadi al-Ne’am. On December 12 the authorities demolished 27 homes in one day: 20 in the village of Twayil Abu Jarwal, two in al-Madbah and one each in Bir al-Hamam, Abu Tlul, al-Sira, Tel Arad and Bat al-Siraya.⁴⁷

The Bedouin community itself is divided in its approach to the problem. Some Bedouin insist that the government should de-link the issues of land ownership from the creation of adequate residential and housing options for today’s Bedouin community. They told Human Rights Watch that the government conditions every positive initiative—from staying a demolition, to granting limited compensation, to

⁴⁴ Protocol of 1/16/2007 meeting of the Knesset Internal Affairs and Environment Committee on Master plans of Bedouin settlements in the Negev and home demolitions (on file with Human Rights Watch). <http://www.knesset.gov.il/protocols/data/html/pnim/2007-01-07.html> [Hebrew] (accessed May 23, 2007).

⁴⁵ Information taken from a letter to Human Rights Watch from the Ministry of Justice dated July 23, 2007.

⁴⁶ Letter on file with Human Rights Watch.

⁴⁷ Email update from Regional Council for Unrecognized Villages in the Negev, December 12, 2007. On file with Human Rights Watch.

providing a plot in a recognized township—on the Bedouin beneficiaries’ renouncing all claims to land. Others argue that the land question is at the heart of the problem, and that without an honest attempt to settle the question of land ownership, possession, and use in a fair and just fashion, there can be no real solution.

Despite attempts over the years, including appeals to the Israeli High Court of Justice, no Bedouin has ever succeeded in registering land in his/her own name, for lack of a *tabu* ownership deed that is needed to prove ownership under Israeli law. Many Bedouin have other documentation proving long-term possession and use of the land—some, for example, showed Human Rights Watch tax receipts paid to Ottoman and British authorities, tribal land court documents, or sales contracts with other Bedouin bearing official Ottoman or British stamps. The failure of the courts and litigation to redress the land rights of the Bedouin has led some to suggest that a different approach is needed. For example, one Palestinian Arab academic, Dr. Thabet Abu Ras, said, “The solution to the land problem must be an ethical, not a legal, one.”⁴⁸

The Bedouin have organized their own leadership over the years, and in 1997, representatives from different unrecognized villages formed the Regional Council for the Unrecognized Villages of the Negev (RCUV). The RCUV’s main goal is to win recognition for all of the unrecognized villages. In 1997, the RCUV created its own master plan, the “Negev Arabs Plan for 2020,” and submitted it to the planning institutions and the Interior Ministry. While the RCUV was not successful in gaining recognition for its plan, it has continued in its efforts to raise awareness of the Bedouin plight and advocate for change through court cases, media campaigns, demonstrations, lobbying government and planning officials, and interventions at United Nations (UN) bodies. Most recently, on July 16, 2007, the RCUV launched a protest camp, housing victims of Negev home demolitions, outside the Knesset to protest ongoing home demolitions.

Other local and international organizations and the UN have criticized Israel’s policies in the Negev and have made a variety of recommendations on how the government could fairly resolve the issue. In May 2003, the UN Committee on

⁴⁸ Abu Ras, “Land Disputes in Israel,” *Adalah Newsletter*.

Economic, Social and Cultural Rights echoed the RCUV's proposal and called on the Israeli government to recognize all existing Bedouin villages. It also encouraged Israel to adopt an adequate compensation scheme for Bedouin who have agreed to resettle in towns.⁴⁹ In March 2007, the UN Committee on the Elimination of All Forms of Racial Discrimination recommended that Israel find alternatives to the relocation of inhabitants of unrecognized Bedouin villages to planned townships, in particular through the recognition of these villages.⁵⁰

Meanwhile, international allies and donors to Israel have done little to publicly acknowledge or pressure Israel to curb its violations of Bedouin housing rights. Just before the Israeli government withdrew settlers and military from the Gaza Strip in August 2005, Israel submitted an initial request for \$2.2 billion in funding from the United States, part of which was to be used for developing the Negev and Galilee.⁵¹ At the time, local advocacy groups called on the US to condition any aid to Israel earmarked for developing the Negev on Israeli promises of non-discrimination.⁵² This Israeli aid request has subsequently been frozen.

⁴⁹ United Nations Committee on Economic, Social and Cultural Rights (CESCR), Concluding Observations of the Committee on Economic, Social and Cultural Rights : Israel, E/C.12/1/Add.90, May 23, 2003, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/b313a3503107f1e6c1256d33002cea38?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/b313a3503107f1e6c1256d33002cea38?Opendocument) (accessed May 21, 2007).

⁵⁰ Committee on the Elimination of Racial Discrimination, "Concluding Observations of the Committee on the Elimination of Racial Discrimination: Israel," CERD/C/ISR/CO/13, June 14, 2007.

⁵¹ David R. Sands, "Israel seeks U.S. funding for pullout" *The Washington Times*, July 12, 2005. Israel later dropped their request after Hurricane Katrina devastated New Orleans and the Israelis recognized that the US would now prioritize domestic spending over development aid to Israel.

⁵² See, for example, "Development of the Negev and Galilee for Jews Only? A Proposal for equal development for Jews and Arabs in the Negev and Galilee," Sikkuy Policy Paper, July 2005, <http://www.orwatch.org/maakaven/Negev%20Galilee%2023.08.pdf> (accessed May 23, 2007).

IV. Discrimination in Land Allocation and Access

Land Ownership and Distribution in Israel

Unlike most industrialized countries, which have widespread private land ownership and a free real estate market, in Israel the state controls 93 percent of the land.⁵³ This land is owned either directly by the state or by quasi-governmental bodies that the state has authorized to develop the land, such as the Development Authority (DA)⁵⁴ and the Jewish National Fund (JNF).⁵⁵ A governmental body, the Israel Land Administration (ILA), administers all of this land.⁵⁶ This gives the government an exceptionally decisive role in land allocation, land-use planning, and development.

According to Israel's Basic Law, state land cannot be sold. The ILA usually leases land to individuals or institutions for periods of 49 or 98 years.⁵⁷

The JNF has a specific mandate to develop land for and lease land only to Jews. Thus the 13 percent of land in Israel owned by the JNF is by definition off-limits to Palestinian Arab citizens,⁵⁸ and when the ILA tenders leases for land owned by the

⁵³ According to Israel's Basic Law: Israel Lands (1960), lands controlled by the state, the Development Authority and the Jewish National Fund are known as "Israel Lands." State lands can be divided between those belonging directly to the state—71 percent (15.3 million dunams or 3.825 million acres); those belonging to the Development Authority—16 percent (2.5 million dunams or 0.625 million acres); and those belonging to the Jewish National Fund—17 percent (2.6 million dunams or 0.65 acres). Adalah, "Land Rights and the Indigenous Palestinian Arab Citizens of Israel: Recent Cases in Law, Land and Planning," Submitted to the Secretariat, UN Working Group on Indigenous Populations, 26 April 2004, p. 2. <http://www.adalah.org/eng/intlo4/unIndigpop.pdf> (accessed November 16, 2007).

⁵⁴ The Development Authority is a governmental agency established in 1952 (under the Transfer of Property law 5710-1950) to administer the lands of Palestinian refugees and make them available to the state for developing new settlements.

⁵⁵ The Jewish National Fund was established in 1901 with the aim of acquiring land in Israel for the settlement of Jews. Under Israeli law the JNF enjoys a special status and is granted the privileges of a public authority. The 1961 Memorandum and Articles of Association of the JNF state that the ILA will administer all JNF-owned lands and that the objectives of the JNF remain to acquire property in Israel "for the purpose of settling Jews on such lands and properties." The JNF interprets the Memorandum as prohibiting the allocation of its lands to "non-Jews." Information taken from Statement submitted by Adalah and Habitat International Coalition to the UN Commission on Human Rights at their Sixty-Second Session, 13 March – 21 April 2006, Item 6 of the Provisional Agenda. <http://www.adalah.org/eng/intlo6/un-i6-jnf.pdf> (accessed November 20, 2007).

⁵⁶ The Basic Law of 1960 established the ILA, an agency that manages 93 percent of Israel's 19.5 million dunams (78 million acres). See ILA website, http://www.mmi.gov.il/Envelope/indexeng.asp?page=/static/eng/f_general.html (accessed May 21, 2007). The ILA operates under the authority of a government ministry, although which ministry has changed over time. As of May 7, 2006, the ILA is under the Construction and Housing Ministry (Israeli Cabinet Meeting Minutes, May 7, 2006, on file with Human Rights Watch). It was previously under the Ministry of Industry, Trade and Employment.

⁵⁷ Israel's Basic Law: Israel Lands (1960). See also ILA website.

⁵⁸ According to the JNF, it owns 13 percent of the land of Israel, about half of which is settled. The JNF claims that 70 percent of the Israeli population lives on land owned by the JNF. See Stuart Ain and Joshua Mitnick, "Land Sales To Arabs Could Force JNF

JNF, it does so only to Jews—either Israeli citizens or Jews from the Diaspora.⁵⁹ This arrangement makes the state directly complicit in overt discrimination against Arab citizens in land allocation and use, and Israeli NGOs are currently challenging this practice in Israel's Supreme Court.⁶⁰ The ILA's Governing Council is comprised of 22 members—12 representing government ministries and 10 representing the JNF, giving the JNF a hugely influential role in Israeli land policies generally and the overall allocation of state lands.⁶¹

Notwithstanding the prohibition on sale of state land, the law allows the state to transfer directly owned state land to the JNF.⁶² The JNF acquired approximately 78 percent of its land holdings from the state between 1949 and 1953,⁶³ much of it the land of Palestinian refugees from the 1948 war that the state confiscated as "absentee property."⁶⁴

While by law Arab citizens can lease land owned directly by the state and not transferred to the JNF, in practice numerous obstacles limit Arab citizens' access to

Changes," *The Jewish Week*, February 4, 2005,

http://articles.findarticles.com/p/articles/mi_hb5092/is_200502/ai_n18522798 (accessed November 20, 2007).

⁵⁹ While the Israeli Supreme Court held in its March 2000 decision on the Qa'dan case that the State could not "allocate State land to the Jewish Agency for the establishment of the Katzir community settlement on the basis of discrimination between Jews and non Jews", in practice that decision has not been implemented. The Qa'dan family is still not living in the community of Katzir, the focus of the case, and the State and the ILA have found ways to bypass the Supreme Court decision. In July 2007 the Knesset, in its first reading, approved a bill which calls for all lands under the JNF to be allocated to Jews only. The bill passed by a majority of 64 MKS to 16. The bill must pass two additional readings before it becomes law.

⁶⁰ The human rights organization Adalah challenged this policy in a petition to the Israeli Supreme Court in October 2004. See H.C. 9205/04, *Adalah et al. v. The Israel Land Administration et al.* (case pending). According to media reports, Israel's attorney general responded to the petition by saying that the ILA cannot discriminate against Palestinian citizens in the marketing and allocation of lands including those of the JNF, but the Supreme Court has not handed down a judgment on the case. See Yuval Yoaz and Amiram Barkat, "AG Mazuz Rules JNF Land Can Now be Sold to Arabs," *Ha'aretz*, January 27, 2005. The Association for Civil Rights in Israel and the Arab Center for Alternative Planning also filed a petition to the Supreme Court in October 2004 challenging the ILA's discriminatory policy. See H.C. 9010/04, *The Arab Center for Alternative Planning et al. v. The Israel Land Administration et al.* (case pending). All information in this footnote taken from Adalah and Habitat International Coalition Statement to UN Commission.

⁶¹ See ILA website, http://www.mmi.gov.il/Envelope/indexeng.asp?page=/static/eng/f_general.html.

⁶² Adalah and Habitat International Coalition Statement to UN Commission.

⁶³ Ibid. See also Arnon Golan, "The Acquisition of Arab Land by Jewish Settlements in the War of Independence," *Catedra*, vol. 63 (1992), pp. 122–54 [Hebrew]; Yifa'at Holtzman-Gazit, "The Use of Law as a Status Symbol: The Jewish National Fund Law – 1953 and the Struggle of the JNF to Establish its Position in the State," *Iyoni Mishpat*, vol. 26, pp. 601–44, July 2002 [Hebrew].

⁶⁴ Israel's 1950 Absentees' Property Law, 5710- 1950 allowed the state to confiscate the land and homes of Palestinian refugees or internally displaced persons who were not present on their property as of 29 November 1947. Estimates vary as to how much land the state confiscated under this law. One estimate says that in 1954, more than one third of Israel's Jewish population lived on absentee property and nearly a third of the new immigrants (250,000 people) settled in urban areas abandoned by Arabs. Of 370 new Jewish settlements established between 1948 and 1953, 350 were on absentee property (Don Peretz, *Israel and the Palestinian Arabs*, Washington: Middle East Institute, 1958).

land, as described below. According to Adalah, a human rights organization representing the Arab minority in Israel, Arab citizens are blocked from leasing about 80 percent of the land controlled by the state.⁶⁵

Bedouins' lack of access to land occurs in a wider context affecting Israel's Palestinian Arab population generally. Not only has the state confiscated pre-1948 Palestinian Arab lands, it has not allowed Arab citizens to establish new towns; nor has it approved adequate expansion of existing ones. Since 1948 the state has authorized the creation of about 1,000 Jewish communities, but not a single Arab community except for the seven government-planned townships and the nine new or newly recognized villages, which concentrate the Bedouin in limited areas in the Negev, and some similar towns in the Galilee.⁶⁶ The state rarely grants expansion requests to Arab local authorities.⁶⁷ While Arab citizens of Israel comprise roughly 20 percent of the country's population, just 2.5 percent of the land of the state is under the jurisdiction of Arab local governments.⁶⁸ In the northern Negev region, Bedouin municipalities have jurisdiction over 1.9 percent of the land, while Bedouin citizens comprise 25.2 percent of the population in that area.⁶⁹

Discrimination in Land Jurisdiction

Israel has three types of local governments or local authorities: municipalities (governing individual cities), local councils (governing individual villages and towns larger than 2,000 people), and regional councils (governing a number of villages with fewer than 2,000 people and generally with jurisdiction of the land between the villages).

There are currently 53 regional councils in Israel with jurisdiction over 90 percent of Israel's land but only 10 percent of the country's population. Fifty of the regional

⁶⁵ Adalah and Habitat International Coalition Statement to UN Commission.

⁶⁶ Shmuel Groag and Shuli Hartman, "Planning Rights in Arab Communities in Israel: An Overview," <http://www.bimkom.org/dynContent/articles/PLANNING%20RIGHTS.pdf> (accessed May 21, 2007).

⁶⁷ Ibid.

⁶⁸ Abu Ras, "Land Disputes in Israel," *Adalah Newsletter*.

⁶⁹ I. Peleg, "Jewish-Palestinian Relations in Israel: From Hegemony to Equality?: Palestinian-Israeli Relations," *International Journal of Politics, Culture, and Society*, vol. 17, no. 3, 2004, pp. 415-437(23).

councils contain Jewish localities and cover vast land areas. There are only three Arab regional councils and, unlike their Jewish counterparts, they do not have territorial contiguity:⁷⁰ they control only land within the village boundaries of the communities under the council's jurisdiction, while all the tracts of land between these villages belong to a neighboring Jewish regional council.⁷¹ For example, the Abu Basma Regional Council in the Negev, which includes the newly recognized or established Bedouin villages/townships, covers just 49,000 dunams.⁷² The Jewish Regional Council of Bnei Shimon in the Negev covers approximately half a million dunams, and the Ramat HaNegev Regional Council covers 4.3 million dunams.⁷³

The following chart produced by Bimkom, an Israeli NGO promoting equality in planning, shows the stark difference between the land jurisdiction of Jewish and Bedouin local authorities in the Negev.

⁷⁰ Two of the Arab regional councils are located in the Northern District—Bustan al-Marj and al-Batouf—and one is located in the Southern District – the recently-created Abu Basma Regional Council covering the municipal territory of the newly recognized Bedouin villages.

⁷¹ Groag and Hartman, “Planning Rights in Arab Communities in Israel.”

⁷² Abu Basma size taken from Selected Data section of the The Negev Development Authority website <http://www.negev.co.il/> (accessed September 18, 2007).

⁷³ Taken from websites of Bnei Shimon and Ramat HaNegev Regional Councils <http://www.bns.org.il/site/he/eCity.asp?pi=1193> and <http://ramat-negev.org.il/> [Hebrew] (accessed June 18, 2007).

Distribution of Land Space among Selected Local Authorities in the Southern District

Regional Councils			Local Councils		
Name	Jurisdictional Area (dunams)	Population	Name	Jurisdictional Area (dunams)	Population
Eshkol	761,400	8,400	Beer Sheva	54,585	183,200
Merhavim	480,100	8,700	Ofakim	9,545	23,700
S'dot-Negev ('Azata)	200,000	5,400	Eilat	85,103	43,600
Lachish	500,000	6,300	Dimona	30,593	34,000
Sha'ar Hanegev	180,000	4,800	Hura	7,425	8,100
B'nai Shimon	450,000	5,900	Yerocham	34,098	8,800
Ramat Negev	4,432,000	3,530	Kseiffe	14,710	8,500
Tamar	1,675,000	2,300	Lagiya	2,525	6,500
Hevel Ayalot	2,200,000	2,900	Lehavim	5,700	5,100
Arba Tichona	1,400,000	2,200	Meytar	17,000	6,300
Abu Basma	~ 34,000	~30,000	Mitzpe Ramon	86,000	4,800
Areas under no jurisdiction	~960,000	~50,000	Netivot	5,695	22,800
			Omer	12,772	5,900
			Arad	75,934	24,300
			'Arora	14,500	11,000
			Rahat (before expansion)	8,850	35,500
			Segev Shalom	4,010	5,500
			Tel Sheva	4,762	11,800
			Sderot	4,302	19,900
			Kiryat Gat	8,440	48,400

Source: *Negev Statistical Yearbook*, 2003 74

In the Negev today many Jewish localities are expanding and new ones are being created. The spokesperson of the Bnei Shimon Regional Council, in the northern Negev, told Human Rights Watch that many of the council's *kibbutzim* and *moshavim* (collective farming communities) are developing new neighborhoods and each is planning to add more than a hundred new homes.⁷⁵ On the other hand, planning

⁷⁴ Taken from websites of Bnei Shimon and Ramat HaNegev Regional Councils <http://www.bns.org.il/site/he/eCity.asp?pi=1193> and <http://ramat-negev.org.il/> [Hebrew] (accessed June 18, 2007).

⁷⁵ Email to Human Rights Watch from Oshra Segal, Bnei Shimon Regional Council spokesperson, March 21, 2007.

officials have not allocated sufficient land for the residential, infrastructural, and livelihood needs of the seven government-planned Bedouin townships in the Negev or the newly recognized villages.

Nili Baruch, an urban planner working with Bimkom, highlights the plight of Segev Shalom, one of the seven Bedouin townships:

Segev Shalom ... has no developed industrial areas, even though the master plan for the town designates about 100 dunams for local industry. Most of the town's area is designated for residential dwellings. Despite this, the town lacks residential land... Lack of space for residential use is characteristic of most of the Arab Bedouin towns.⁷⁶

The government is actively pressuring Bedouin to relocate to these overcrowded and failing townships rather than allocating them additional land, recognizing the unrecognized villages, or allocating land for new rural communities.

Minister of Interior Roni Bar-On told Knesset members in December 2006, "We will not permit and not supply all the wishes of the [Bedouin] sector on the issue of rural construction... there is a problem of land and it is impossible that everyone will build for himself a house with a plot of land next to it."⁷⁷ In fact, the Negev contains the regional council with the largest land mass and smallest population in all of Israel. Ramat HaNegev Regional Council covers an area of 4.3 million dunams (over 250,000 acres) with a population of just 3,700 residents in 10 rural communities, one of them numbering just nine families.⁷⁸ The Regional Council, actively trying to attract new residents, has hired a publicity company and started an advertising

⁷⁶ Nili Baruch, "Spatial Inequality in the Allocation of Municipal Resources," *Adalah Newsletter*, vol. 8, December 2004.

⁷⁷ Protocol of December 4, 2006 meeting of the Knesset Internal Affairs and Environment Committee on Master plans of Bedouin settlements in the Negev and home demolitions (on file with Human Rights Watch), <http://www.knesset.gov.il/protocols/data/html/pnim/2006-12-04.html> [Hebrew] (accessed May 23, 2007).

⁷⁸ Information taken from Ramat HaNegev Regional Council website [Hebrew], <http://www.ramat-negev.org.il/> (accessed May 21, 2007).

campaign. In the Ramat HaNegev Regional Council, moreover, the ILA has allocated large tracts of land to single families in order to create individual farms (see below).⁷⁹ Ramat HaNegev Regional Council has ignored the Bedouin already living within its jurisdiction and has not offered to recognize villages or give them any place within the council's exclusively Jewish communities.⁸⁰

Individual Farms

There are currently 59 individual farms in the Negev, covering more than 81,000 dunams of land, which is greater than the total land mass that the state granted to the seven Bedouin townships housing around 85,000 people.⁸¹ The idea of individual farms was first proposed in 1997 by the Green Patrol and accepted by then National Infrastructure Minister Ariel Sharon and then Agriculture Minister Raphael Eitan, as a means of "preserving state land."⁸² The newspaper *Haaretz* quoted Uzi Keren, the then-prime minister's advisor on settlements, as saying of the individual farms, "this is about a top notch group of people, each one empowered to care for vast areas [of land] and act as a state appointed 'policeman' protecting these areas."⁸³

State agencies built many of these settlements without the zoning or planning documents necessary to acquire permits; the farms are thus illegal. The ILA did not publicly tender the farms nor allocate the large plots in a transparent way, based on clear criteria. Government agencies allocated public funds to establish the farms and

⁷⁹ In Hebrew these individual farms are referred to as "*Havot Bodedim*."

⁸⁰ All the rural communities have strict acceptance policies and the Jewish Agency is involved in the applications for some of them. See section on Selection Committees, below.

⁸¹ The 59 individual farms were built between 1997 and February 2003. See Hana Hamdan, "Individual Settlement in the Naqab: The Exclusion of the Arab Minority," *Adalah Newsletter*, vol. 10, February 2005. In a letter to Human Rights Watch dated July 23, 2007, the Ministry of Interior said there were "about 60 individual farms."

⁸² Hamdan, "Individual Settlement in the Naqab," *Adalah Newsletter*. The "Green Patrol" was created by then-Minister of Agriculture Ariel Sharon in 1977, and operates as an enforcement arm of the Ministry of Agriculture and the ILA. The Green Patrol is much reviled in the Bedouin community and referred to as an "environmental paramilitary unit." The Green Patrol's methods include pulling down Bedouin tents, confiscating livestock, and destroying crops planted without the appropriate permit, all in the name of protecting Israel's green spaces and agricultural land. The State Comptroller severely criticized these plans for their attempts at circumventing standard planning procedures and developing the land in order to populate the farms exclusively with Jews. *Ibid*, quoting State Comptroller's Annual Report for 2000, p. 602.

⁸³ Zafir Rinat, "Sharon is promoting establishment of 30 settlements in the Negev and Galilee," *Haaretz*, July 20, 2003 <http://www.haaretz.co.il/hasite/pages/ShArtPE.jhtml?itemNo=319936&contrassID=2&subContrassID=1&sbSubContrassID=0> [Hebrew] (accessed September 9, 2007).

connect them to infrastructure and utilities, even where the farms were built illegally and are not close to other inhabited communities. This stands in direct contradiction to the government's assertion that they cannot provide services to Bedouin living in illegal housing and in dispersed locations. According to the ILA, "Israel provides its citizens with high quality public services in sanitation, health and education, and municipal services. These services can only be provided to those living in permanent [that is, legal] housing, and the fact that the Bedouin are dispersed over an extensive area prevents the state from offering these public services."⁸⁴

In its July 23, 2007 letter to Human Rights Watch, the Ministry of Interior confirmed that many of the approximately 60 existing individual farms in the Negev had not been built according to proper planning processes, but stated that this was based on environmental considerations:

The status of about 25 farms is properly arranged, concerning 20 additional farms, comprehensive action has been taken until now both by planning authorities and through a regulating procedure. However, the procedure of regulating the status of 15 more farms which are located in areas that have great importance to habitation, which has been going on for several years, has not been completed at this time.⁸⁵

The policy of individual farms has been criticized by Israeli state planners,⁸⁶ yet in September 2005 planning officials approved the "Wine Route" Plan, the most extensive plan for individual farms to date.⁸⁷ Submitted by the ILA at the request of the Ministerial Committee for the Development of the Negev and the Galilee, the plan

⁸⁴ ILA paper on "Bedouin in the Negev" available on ILA website, http://www.mmi.gov.il/static/HanhalaPirsumim/Beduin_information.pdf (accessed May 21, 2007).

⁸⁵ Letter to Human Rights Watch from the Ministry of Justice, July 23, 2007.

⁸⁶ Planners involved in creating National Master Plan (TAMA 35) submitted an expert opinion to the National Board for Planning and Building in July 1999, stating that "TAMA 35's team views the policy of individual settlements as a great danger as it is a means of population dispersion and 'land seizure,' which are not regulated or controlled by the planning system." The plan also contradicts the principles stated in other master plans including Master Plan for Israel 2020, adopted by the government in 1996, and the recently adopted National Master Plan 35, that clearly emphasizes the need for urban density and the preservation of open spaces as paramount planning values. See "Adalah Petitions Supreme Court to Cancel Wine Path Plan for Individual Settlements in the Naqab," *Adalah Newsletter*, vol. 24, April 2006.

⁸⁷ The plan was approved by the Sub-Committee on Planning Principles, under the auspices of the National Council for Planning and Building, according to Oren Yiftachel, "Inappropriate and Unjust: Planning for Private Farms in the Naqab," *Adalah Newsletter*, vol. 24, April 2006.

authorizes the construction of 30 individual farms, 20 of which already exist, within the Ramat HaNegev Regional Council's jurisdiction. While state officials marketed the plan's tourism features, their main goal appears to be to legalize retroactively existing individual farms that were built illegally, and to construct new ones.⁸⁸ The plan is remarkably similar to an earlier plan for individual farms in the Negev that the ILA and Ramat HaNegev officials promoted as a means to help "prevent the takeover of Negev lands by the Bedouin" and to strengthen the Jewish population in the region.⁸⁹ The Israel Union for Environmental Defense (Adam Teva Va'Din) had petitioned the Supreme Court protesting the previous plan, and the Supreme Court had canceled the plan in 2001.

Adalah and the Negev Coexistence Forum for Civil Equality (a joint Jewish-Bedouin organization commonly known as Dukium) petitioned the Supreme Court to overturn the Wine Route Plan, arguing that "the clear purpose of the plan is to secure exclusive use of these areas... and to prevent their use by Arab citizens."⁹⁰ As part of the documentation supporting the allegation of discriminatory treatment, Adalah submitted a draft report prepared by the Prime Minister's Office for the Negev-Galilee Ministerial Committees, entitled "Individual Settlements – Northern District and Southern District," which states, "The reasons for initiating [individual settlements] are to preserve state lands... [as] solutions for demographic issues."⁹¹

Prof. Oren Yiftachel, former head of the department of Geography and Environmental Development at Ben-Gurion University and a leading academic in his field, argued in an expert opinion supporting Adalah's petition that the Wine Route Plan violates both regional and universal planning principles, the right to equality, and the principle of distributive justice (see below), and would result in the further deprivation of Bedouin in the Negev.⁹² In a separate article, Yiftachel wrote,

⁸⁸ "Adalah Petitions Supreme Court to Cancel Wine Path Plan for Individual Settlements in the Naqab," *Adalah Newsletter*.

⁸⁹ Yiftachel, "Inappropriate and Unjust," *Adalah Newsletter*.

⁹⁰ "Adalah Petitions Supreme Court to Cancel Wine Path Plan for Individual Settlements in the Naqab," *Adalah Newsletter*. The case is H.C. 2817/06, Adalah et al. v. The National Council for Planning and Building et al. (case pending).

⁹¹ "Adalah Petitions Supreme Court to Cancel Wine Path Plan for Individual Settlements in the Naqab," *Adalah Newsletter*.

⁹² *Ibid.* One of the planning principles Yiftachel refers to is the preservation of open spaces and natural landscape.

From the perspective of the Bedouin population, the proposal is part of a series of plans aimed at establishing dozens of Jewish communities in the Naqab, for the purpose of, among other aims, limiting Bedouin control of their ancestors' land. For example, in July 2003, a government-approved plan to create 30 new Jewish settlements within the Green Line, 14 of which were to be built in the Naqab. This plan included the rhetoric of "creating a buffer between the Bedouin communities," "preventing a Bedouin takeover," and ensuring the security of the (Jewish) residents of the Naqab.⁹³

As late as July 15, 2007, the government confirmed its intention to continue developing individual farms as part of its development policy in the Negev and Galilee. In a government resolution passed that day, aimed primarily at creating the unit in the Ministry of Housing and Construction to coordinate Bedouin affairs mentioned above, the government stated:

The Government has decided, in continuation of its Resolution dated 8.11.2002, which determined that the "individual settlements" is a means to implement the policy of the Government to develop the Negev and the Galilee, and in continuation of the Government's dealing with the regulation of Bedouin residence in the Negev – to appoint an inter-Ministerial committee, headed by the General Director of the Prime Minister's Office, which will act to regulate the status of the existing individual farms, and recommend to the Government a procedure for establishing additional individual farms in the Negev and the Galilee.⁹⁴

The discrimination inherent in the promotion of individual farms is not lost on the Bedouin. "How can you explain that the state gives individual Jewish farmers thousands of dunams of land and the funding to fence in, close, and secure these areas, and stop others from entering?" one Bedouin activist said. He continued:

⁹³ Yiftachel, "Inappropriate and Unjust: Planning for Private Farms in the Naqab," *Adalah Newsletter*.

⁹⁴ Information taken from letter to Human Rights Watch from the Ministry of Justice, July 23, 2007.

How do you explain that the authorities supply him with water and electricity yet he only has a few goats or cows? Meanwhile, we, the indigenous people of this area, who depend on herding, grazing, and agriculture as our main source of income, are not allowed to access our own land and practice our livelihoods.⁹⁵

Human Rights Watch interviewed several Bedouin who claim that individual farms have been established on their ancestral land for which they have filed ownership claims. Sheikh Awde Abu Muamar told Human Rights Watch:

I registered my family's land in 1972. I have all the documents. I was never told by the state that they had confiscated the land. I never received any kind of notice or order. But now the state has given a part of my land to Jewish families to create tourist sites. In one area the family planted an olive orchard, and another plot is used for overnight desert accommodations. They are not allowing us to live our traditional lifestyles, to farm and herd, but they are allowing others to make money off of our land.⁹⁶

Mohamed Abu Solb, who served for 12 years in the Israeli army, told Human Rights Watch about the Jewish farm established on his family's ancestral land:

In 1991, the state confiscated 10,000 dunams [2,500 acres] of our land, and the whole village [of Kornub] was destroyed. They claimed the confiscation was for military purposes, and they moved us [45 families] forcibly to other locations. We had registered our claims to our ancestral land in the 1972 [land claims] process, and we appealed to the Supreme Court against the confiscation, but we lost. Now at least part of our land, supposedly confiscated for military purposes, has

⁹⁵ Human Rights Watch interview with Nuri al-Ukbi, Beer Sheva, April 3, 2006.

⁹⁶ Human Rights Watch interview with Sheikh Awde Abu Muamar, Sahel al-Bakkar, April 6, 2006.

been given to a Jewish farmer to establish a cactus farm. We have never seen the military or security forces using this land.⁹⁷

Later Abu Solb took Human Rights Watch on a tour of his old village, pointing out many landmarks from his childhood, including areas where he had picnicked with his grandparents, and the site of his former home.

Ariel Dloomy, a Jewish activist with Dukium, explained the anger of the Bedouin towards the individual farms:

You can see them signposted along the main road, and it is usually one family living on dozens of dunams. Near one of the unrecognized villages of Abde, near the city of Mitzpe Ramon, there are several single-family ranches. One of the Bedouin families told me that they wanted to set up a little stall to sell pita with *labane* [traditional Bedouin cheese] to tourists for a little income. The day he started to set up his stall a Green Patrol inspector showed up and told him to demolish the stall. He is very very angry. He says, “All these individual ranches, set up for tourist purposes, tout signs offering an ‘authentic’ Bedouin experience. But when I want to market my own traditions, I am not allowed.”⁹⁸

Salim Abu Alqian is from the unrecognized village of Um al-Hieran, where all the residents have received evacuation lawsuits and home demolition orders.⁹⁹ He pointed out to Human Rights Watch four separate farms whose legal status is unknown that have sprung up around the village in the past 10 years. Villagers struggle to get enough fresh water from the one available water pipe, 4.5 kilometers from the village. The villagers look enviously at the individual farms nearby which, unlike them, are connected to the water and electricity grids.¹⁰⁰

⁹⁷ Human Rights Watch interview with Mohamed Abu Solb, shop across from Bir Mshash, March 30, 2006.

⁹⁸ Human Rights Watch interview with Ariel Dloomy, Rahat, March 29, 2006.

⁹⁹ The legal basis for the evacuation lawsuits is Article 17 of the 1969 Land Law.

¹⁰⁰ Human Rights Watch interview with Salim Abu Alqian, Um Heiran, March 29, 2006.

Ibrahim al-Atrash, a Bedouin shepherd who heads a committee of Bedouin herders and grazers demanding additional grazing land and permits for their animals, has faced increasing problems accessing enough grazing land for his several hundred head of sheep in the past couple of years, after the state reduced the amount of available grazing land. He spoke incredulously about two individual farms where the owners had no livestock:

There is a private farm near the area where we used to graze [in Yatir] that is subsidized by the government, and the owner has 5,000 dunams of land even though he only has three dogs. Last year I went to the land with my herds and tried to graze there on all the wild growth that he wasn't using, but the owner wouldn't let me. What need does he have of all that land? Another nearby private farm has thousands of dunams of land and no sheep or goats.¹⁰¹

Selection Committees

Selection committees determine who can gain admittance to all communities of fewer than 500 households.¹⁰² The selection is based on vague criteria including “appropriate to social life in a small community” for which applicants must provide “an opinion of a professional institute which will examine whether they fit the social life of the community.”¹⁰³ Selection committees are made up of government and community representatives as well as a senior official in the Jewish Agency or the Zionist Organization, and have notoriously been used to exclude Arabs from living in rural Jewish communities.¹⁰⁴ The state owns the land and the ILA allocates the land to the communities and leases plots to individual residents, on the basis of the

¹⁰¹ Human Rights Watch interview with Ibrahim al Atrash, al Atrash, March 27, 2006.

¹⁰² Selection committees were established and governed through Resolutions of the ILA. The current Resolution governing the selection committees is Resolution no. 1064 of Israel Land Administration Council from July 27, 2005, which updated Resolution no. 1015 from August 1, 2004.

¹⁰³ According to article 2 of Resolution no. 1064 as quoted in a letter to Human Rights Watch from the Ministry of Justice, July 23, 2007.

¹⁰⁴ See “Israeli Arab couple petitions High Court after residency denied,” *Haaretz*, February 15, 2007. The make up of the selection committees is determined by Resolution 1064, and according to a letter sent to Human Rights Watch by the Ministry of Justice, “The selection committees in a communal town consists of a senior official in the Jewish Agency or the Zionist Organization, a senior official of the Ministry of Construction and Housing, a representative of the cooperative society, a representative of the regional council and a representative of the relevant settlement movement – in the relevant towns. In an agricultural town the composition of the selection committees will be determined by the society's institutions.”

committees' recommendations.¹⁰⁵ The ILA justifies this policy by saying that “social cohesion in small communities is important.”¹⁰⁶

Ariel Dloomy described his own recent experience with a selection committee:

Last year, I bought a plot of land in a *moshav* not far from here. My wife and I had to appear before the selection committee, and there was a group of four men and one woman who began to chat with us, asking us where we grew up, what our parents do for a living, where we served in the army and what we could contribute to the community. I don't believe there is any way a Bedouin could gain access to one of these agricultural communities. Everything is at the discretion of these selection committees. I don't think they even have to explain why they reject people.¹⁰⁷

The only time of which Human Rights Watch is aware that a Bedouin has successfully been granted admission to a rural Jewish community was in 2007, on appeal, after the selection committee initially rejected his application to live in Givaot Bar. In 2005 several Bedouin applied to live in Givaot Bar, a rural community founded on land claimed by Bedouin. One of the Bedouin applicants was rejected by the selection committee and submitted an appeal to the appeals committee, which ultimately overturned the decision of the selection committee and recommended that the Bedouin applicant be admitted to Givaot Bar.¹⁰⁸ At the time of writing, the other applicants had still not received a response.

¹⁰⁵ “Living in Sophisticated Rakefet,” *Haaretz*, February 16, 2007.

¹⁰⁶ *Ibid.*

¹⁰⁷ Human Rights Watch interview with Ariel Dloomy, Rahat, March 29, 2006.

¹⁰⁸ According to Resolution 1064, rejected applicants have a right to appeal to an appeals committee, headed by a public figure and consisting of representatives of the Register of Cooperative Societies and a representative of the ILA.

V. Discrimination in Planning

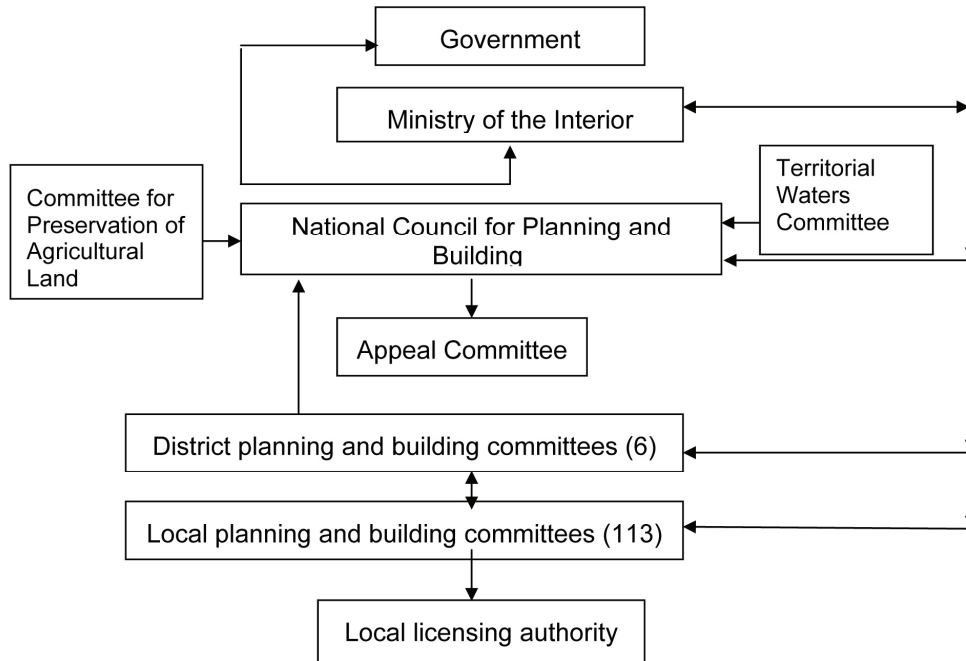
The 1965 Planning and Building Law centralized planning under the Ministry of Interior. The law creates a three-tiered structure with national, district, and local levels. Each tier is responsible for creating master plans and implementing approved plans in the areas under its jurisdiction.

At the highest level, the National Board for Planning and Building (National Board) prepares a national master plan and submits it to the government, which accepts, rejects, or amends it. Individuals have no right to lodge formal objections to national master plans. The approved national master plan represents the vision for the future development of the country. It dictates everything from land use to transportation, electricity and water networks, and industrial development.¹⁰⁹

Under the National Board there are district Planning and Building Commissions (District Commissions), and in each District there are multiple Local Planning and Building Commissions (Local Commissions). Some of these represent just one community and are part of the locally elected authority; others cover several communities and are appointed by the minister of interior (see below).¹¹⁰

¹⁰⁹ The Planning and Building Law - 1965, *Sefer HaHokim*, 467, p. 307.

¹¹⁰ *Ibid.*



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Bedouin Needs Not Met

Israel's current national Master Plan, known as TAMA 35, fails to address the needs of the Bedouin population.¹¹² The plan ignores the existence of the unrecognized Bedouin villages in the Negev, which are not even marked on the maps of TAMA 35. The plan does not mention the population of these villages nor propose solutions to the desperate living situation of the tens of thousands of Bedouin citizens living in these communities. According to researchers at the Israeli organization Adva:

The phenomenon of excluding the Bedouin from government master plans is not a new one: the state, through its planning bodies, has acted this way for years. In a number of major regional master plans, the “unrecognized” Bedouin villages went totally unmarked, as if they did not exist, or their locations were marked as intended for public use

¹¹¹ Rachelle Alterman, ed., “National-Level Planning in Israel: Walking the Tightrope Between Government Control and Privatisation”, in *National-Level Planning in Democratic Countries, an International Comparison of City and Regional Policy-Making* (Liverpool University Press, 2001).

¹¹² Integrated National Master Plan for Building, Development and Preservation – TAMA 35, approved at the end of 2005.

such as sewerage works, public parks or industrial areas. Such plans included the 1972 district plan, the 1991 “Negev Front (Kidmat Negev) Plan,” the 1995 greater Beersheba metropolitan plan, and the 1998 renewed district plan.¹¹³

Rather than addressing existing inequalities, Israeli master plans and proposed new Jewish settlements appear to perpetuate them by consolidating state control over as much Bedouin land as possible while confining Bedouin in the smallest areas possible and breaking up the contiguity of Bedouin areas. Dr. Amer al-Hozayel, a planner with the municipality of Rahat, one of the seven government-planned townships, demonstrated to Human Rights Watch on maps how these goals were carried out in the Beer Sheva Metropolitan plan. He explained:

The goal of the plan is to expand Beer Sheva, and it clearly does this to the east—where 90 percent of the unrecognized villages lie—rather than to the north or west, which are relatively open areas. The plan also created new towns which the Israelis call “disconnecting and surrounding.” The black triangles show where new Jewish towns are being planned or built, and you can clearly see how they break up the continuity of the Bedouin areas and prevent expansion of the current Bedouin locales. Look at [the newly established Jewish town of] Givaot Bar—its goal is to prevent Rahat from expanding southwards. There is a Jewish town Omerit planned between these two unrecognized villages of Bir al-Mshash and al-Zarnung which breaks the link between them. In order to break up Bedouin continuity between Beer Sheva and Dimona they are planning a new Jewish town around [the unrecognized village of] al-Sdeir and another on top of the [unrecognized] village of Um Ratam.¹¹⁴

Al-Hozayel’s allegations have been echoed by various government officials. On July 21, 2002, the government issued Decision No. 2265 to establish 14 new settlements,

¹¹³ Swirski and Hasson, *Invisible Citizens*, p. 12.

¹¹⁴ Human Rights Watch interview with Amer al-Hozayel, Rahat, April 3, 2006.

six of them in the Negev. At the government meeting where the decision was made Minister Yitzhak Levi said, “The settlements are intended to stop the spread of illegal Arab settlements.” At the same meeting, then-Prime Minister Ariel Sharon said “If we do not settle the land, someone else will do so.”¹¹⁵ In July 2003 the government began promoting an additional plan for 30 new settlements in the Galilee and the Negev. In a July 2003 interview regarding this new plan, then-Advisor to the Prime Minister on Settlements Affairs Uzi Keren said “[an] important issue in the establishment of these settlements is closing breaches, or locating settlements in policy terms, in the places that are important to the state, that is, for Jewish settlement... this is simply to strengthen settlement in areas sparse in Jewish population.”¹¹⁶

Even while the government has created the nine newly-recognized or established Bedouin villages/townships in the Negev, unlike their Jewish counterparts, they have stagnated from lack of funds and political will. One official who advised the Abu Basma Regional Council, in which the nine communities are located, told Human Rights Watch:

In Abu Basma, what have they delivered? People want electricity, water, paved roads. Kalaji [head of Abu Basma] failed to deliver in these areas. He started only now, after two years and three months, to do anything. He paved one main road in Abu Karinat. He started to build schools in Qasr Sir and Abu Karinat and some public buildings. That’s it. Not more than that. None of these villages have water or electricity yet. There is a new generation of Bedouin today who can see what is happening in Jewish communities and make the comparison. When the government wanted to establish Givaot Bar it only took a couple of months to deliver water, electricity, and a paved road.¹¹⁷

¹¹⁵ D. Bachor, “The Government Approved the Establishment of 14 New Community Settlements,” YNET, July 21, 2002 [Hebrew], as quoted in Hana Hamdan, “The Policy of Settlement and ‘Spatial Judaization’ in the Naqab,” *Adalah Newsletter*, Vol. 11, March 2005.

¹¹⁶ Interview broadcast on Israel’s Channel 2 Radio on July 20, 2003, as quoted in Hamdan, “The Policy of Settlement,” *Adalah Newsletter*.

¹¹⁷ Human Rights Watch interview with Thabet Abu Ras, Beer Sheva, April 5, 2006.

On July 18, 2005, the Ministerial Committee on the Non-Jewish Sector, chaired by then-Prime Minister Ariel Sharon, announced “a comprehensive development plan for the Abu Basma Regional Council.” The government promised to invest NIS 470 million over three years (2005-08) to develop education, health, employment, and social services and to provide utilities, infrastructure, housing, and agricultural lands.¹¹⁸ Yet government ministries have handed over little of this money. In 2005 Abu Basma was supposed to receive NIS 30 million from the ILA for planning and construction, NIS 14 million from the Ministry of Transport for building roads, and NIS 4.6 million from the Ministry of Health for constructing and maintaining health facilities. In fact, the council received only NIS 210,000 for construction and planning, NIS 56,000 for sanitation, and NIS 318,000 for water infrastructure.¹¹⁹ When Human Rights Watch visited several of the Abu Basma villages in March and April 2006, they were indistinguishable from their unrecognized neighbors.

Government officials admit that the money has not been forthcoming. The head of the Ministry of Interior for the Southern Region, Dudu Cohen, told a Knesset committee debate, “The ministries are supposed to pass the money on to the council. They do not transfer the money itself, but authorizations, irregular allocations and so on. When there are budgetary cutbacks in a certain ministry, it will cut wherever it wants, it doesn't ask me or the government. We follow this and always try to understand where the budget intended for Abu Basma disappeared.”¹²⁰

Absence of Planning Participation and Consultation of Bedouin

In Israel, planning is highly centralized and, by law, the only way for individuals to participate in the process is by submitting objections to particular plans. Large parts

¹¹⁸ “Comprehensive Development Plan for Abu Basma Regional Council Approved,” Prime Minister’s Office press release, July 18, 2005, <http://www.pmo.gov.il/PMOEng/Archive/Press+Releases/2005/07/spokmes180705.htm> (accessed May 23, 2007).

¹¹⁹ Planned allocations appear on Budget Complements for Abu Basma Regional Council, Government Decision 3956, July 22, 2005, <http://www.pmo.gov.il/PMO/Archive/Decisions/2005/07/des3956.htm>. [Hebrew] (accessed May 25, 2007). Abu Basma financial activity on “Annual Supervised Financial report For Regional Council Abu Basma”, Department for the Inspection of Local Authorities in the Ministry of the Interior, September 28, 2006. <http://www.moin.gov.il/apps/pubwebsite/MainMenu.nsf/> [Hebrew] (accessed May 25, 2007).

¹²⁰ Protocol of 11/06/2006 meeting of the Knesset Internal Affairs and Environment Committee on Master plans of Bedouin settlements in the Negev and home demolitions. <http://www.knesset.gov.il/protocols/data/html/pnim/2006-11-06.html> [Hebrew] (accessed May 23, 2007).

of the system do not encourage participation or protect the right of various sectors of society to be fairly represented.

In 2000, the Israeli Supreme Court ruled that land and other resources should be allocated according to principles of distributive justice.¹²¹ In 2004, the Israeli Planning Association adopted a code of ethics supporting the need for consultation with minority communities and the obligation to pursue the well-being and empowerment of all members of society.¹²²

Yet in practical terms, Israel's Arab citizens, especially the Bedouin, remain systematically marginalized in the planning process. First, they are very thinly represented on any of the planning committees. Second, the master plans rarely take their needs into account. Israeli planning authorities have created plans to address the needs of particular communities—for example, the National Master Plan TAMA 31 in the 1990s dealt with the absorption of a large number of immigrants from the former Soviet Union. However, planning authorities have never designed a master plan to address the needs of the Arab community, even though Arab communities rank among the most distressed, with chronic land and housing shortages, poor economies, and low employment opportunities.¹²³ Regional master plans have also never properly addressed the dire need of the Bedouin of the Negev for adequate housing and residential options.

When the Southern District Plan (TAMAM 4/14) was first formulated, it completely ignored the existence and needs of the Bedouin in the unrecognized villages. After the Association for Civil Rights in Israel (representing the villagers, the RCUV, and Dukium) petitioned the Israeli Supreme Court, the planning authorities acknowledged the discrimination and, in July 2001, as part of a settlement with the court, agreed to meet with the petitioners and representatives of the communities to discuss ways to integrate the housing and residential needs of the residents of the

¹²¹ *Siach Hadash [New Discourse] v. the Minister of Infrastructure* (H.C. 244/00), para. 39. According to one definition, “Distributive justice is concerned with the fair allocation of resources among diverse members of a community. Fair allocation typically takes into account the total amount of goods to be distributed, the distributing procedure, and the pattern of distribution that results.” http://www.beyondintractability.org/essay/distributive_justice/. (accessed November 20, 2007).

¹²² Israeli Planning Association, Code of Ethics, 2004.

¹²³ See Chapter VII for information on the poor socio-economic status of Bedouin government-planned townships.

unrecognized villages into the Master Plan.¹²⁴ However, this process has dragged on for seven years; while some improvements have been made, the Plan still ignores the needs of most of the unrecognized villages.

Ariel Dloomy of Dukium described the consultation process to Human Rights Watch:

We petitioned the High Court of Justice to include Bedouin representatives and relevant NGOs in the master plan for the Negev, the Metropolitan Beer Sheva plan. They agreed. According to the court the working group for the Beer Sheva Metropolitan plan was obliged to consult with us. The working group invited us just two or three times. I took part in two meetings, and they just showed us the plan, briefly let us speak, ignored us and moved on. It was very depressing. Banna [Shoughry-Badarne, a lawyer with the Association for Civil Rights in Israel] had produced lengthy, detailed objections to the current plan and detailed alternatives, created with planners, and they gave her just a few minutes to present, ignored her, and moved on. Our opinions were never really taken into account, and when they claim that they consulted Bedouin and their allies and included us in the planning process, it is not accurate. It never really happens.¹²⁵

Lack of Local Representation

By law the minister of interior can determine which communities will be accorded their own local commissions (which are part of their elected local governments) and which communities will be joined together as part of a larger local planning area (to be governed by a ministry-appointed local commission).¹²⁶ Only 6 percent of Arab localities have an elected local commission, as opposed to 55 percent of Jewish

¹²⁴ Email from Banna Shougry-Badarne to Human Rights Watch, June 18, 2007.

¹²⁵ Human Rights Watch interview with Ariel Dloomy, Rahat, March 29, 2006. Banna is a lawyer from the Association for Civil Rights in Israel (ACRI).

¹²⁶ In areas where a local committee includes the area of more than one local authority, the Minister of Interior appoints an eight-member local committee, consisting of the official in charge of the district or his/her representative, and another seven members whom the Minister appoints from among a list recommended by the local authorities. Representation is not mandatory for all authorities. From: Hana Hamdan and Yosef Jabareen, "A Proposal for Suitable Representation of the Arab Minority in Israel's National Planning System," *Adalah Newsletter*, Vol. 23, March 2006.

localities. According to planners with the Israeli planning rights organization, Bimkom:

The importance of a local planning commission is implicit in, among other things, its ability to initiate a plan for a community and to issue building permits, an authority which gives the local authority a certain degree of planning autonomy. In the present circumstances, most Arab towns, except for relatively large ones, and even those designated formally as cities, are not authorized to, and cannot, initiate a plan or issue building permits. These places are dependent on decisions made by planning commissions on which, in the main, they have no representation....¹²⁷

Indeed, only three Arab members out of a total of 32 sit on the National Board.¹²⁸ The Northern and Southern District Commissions each have only two Arab members out of 17 members¹²⁹

Local commissions that are part of the elected leadership of a community are more likely to be in touch with the wishes of their constituencies and to try to respond favorably to their needs. An elected local commission also provides avenues for greater community participation in the planning process and is accountable to community residents. Conversely, in communities that have ministry-appointed local commissions, the central government has great control over planning and development, with minimal participation from affected populations and no means for residents to hold the local commission accountable.

Each newly recognized Bedouin village in the Negev has representatives sitting on the Abu Basma Regional Council, but the villagers did not democratically elect their

¹²⁷ Groag and Hartman, "Planning Rights in Arab Communities in Israel."

¹²⁸ Hamdan and Jabareen, "A Proposal for Suitable Representation."

¹²⁹ In the Northern District Planning and Building Committee there are two Palestinian members (men) out of 17, even though Palestinians make up more than half of the district's population. The Southern District Planning and Building Commission covering the Negev also has only one Bedouin member: the mayor of Rahat.

representatives, who were appointed by government officials.¹³⁰ The Abu Basma Regional Council also suffers from a dearth of Bedouin staff and is headed by a ministry-appointed Jewish mayor who runs the council from his office in Jerusalem. When asked at a Knesset committee debate about the lack of genuine Bedouin representation and involvement in Abu Basma, the minister of interior refused to answer and also forbade his deputy to do so.¹³¹

The head of the Ministry of Interior for the Southern Region, Dudu Cohen, claimed that the appointed Bedouin representatives on Abu Basma Regional Council were consulted with regard to the planning of the newly recognized villages in the Negev. However, in a particularly candid admission, he confirmed that these individuals were not selected by the community, but rather chosen by himself, by the department responsible for Bedouin affairs in the ILA, or by the police. When a member of the Knesset suggested that community organizations could better choose representatives from their community, Cohen retorted, "Unfortunately the organizations do not represent the residents ... [the council and the police] make recommendations based on their knowledge of the structure of the tribe, the family, the influential persons of the community, and they know them all very well."¹³²

At the far end of the spectrum, when it comes to local planning, lie the Bedouin unrecognized villages of the Negev. Since these villages are not officially recognized as residential localities, they do not fall under any local authority or the jurisdiction of any local commissions. As a result, they have no vehicle through which to propose municipal plans for their localities or determine the future of their communities. Since the submission and approval of a master plan represents the only way to build legally, they are forever stuck in a vicious cycle—no plan, no permits, and no legal community; no legal community, no possibility to plan and issue building permits. The only time that planning commissions (on which the Bedouin unrecognized villages are never represented) address the unrecognized villages is when they

¹³⁰ In December 2003 the Ministry of Interior created the Abu Basma Regional Council, which was officially launched on February 3, 2004. The Ministry tasked Abu Basma Regional Council with running the newly-recognized Bedouin villages.

¹³¹ Protocol of November 6, 2006 meeting of the Knesset Internal Affairs and Environment Committee on Master plans of Bedouin settlements in the Negev and home demolitions. <http://www.knesset.gov.il/protocols/data/html/pnim/2006-11-06.html> [Hebrew] (accessed May 23, 2007).

¹³² Ibid.

approve home demolition orders in unrecognized villages that sit on land under their jurisdiction.

No Criteria for Recognizing Communities

There are no clear criteria in Israeli law for determining when a new community will be created or when a locality can apply for and be granted official recognition. The age and size of the community do not seem to be relevant factors. Even though the Bedouin villages existed prior to the creation of the 1965 law, they were not included in the original master plans. Thus while Jewish communities with as few as one family acquire recognition, Bedouin villages with hundreds or even thousands of residents do not.

Existing master plans articulate some general principles. For example, TAMA 35 states that a new community can be established when “a planning institute has been convinced that a new town or village should be established.”¹³³ This vague benchmark provides ample room for maneuvering by savvy local planning commissions, while providing little opportunity for underrepresented communities such as the Bedouin. According to the policies of the Ministry of Interior, government officials must inspect an unrecognized village to determine whether it should attain recognition. But the Ministry of Interior has never conducted a thorough examination of the unrecognized Bedouin villages in the Negev to determine whether they merit recognition, even though Bedouin villagers filed a petition to Israel’s Supreme Court in 1991 asking the ministry to do so.¹³⁴

Since 1948, the state has built over one hundred small Jewish communities in the Negev, many of them with huge tracts of agricultural land, some of them on ancestral Bedouin villages. The website of the Sha’ar HaNegev Regional Council in the Western Negev boasts, “Every kibbutz in the region has well-developed agricultural areas that extend over thousands of acres of field crops, orchards, dairies and chicken

¹³³ A plan for a new community will be approved after HOLENTA (the Committee of Fundamental Planning) presents its recommendations to the National Council.” TAMA 35 (National Master Plan) – Directives, November 2000, p. 20, [http://www.moin.gov.il/Apps/PubWebSite/publications.nsf/All/7DCAB7169E94789F42256A01003B7C57/\\$FILE/Publications.pdf?OpenElement](http://www.moin.gov.il/Apps/PubWebSite/publications.nsf/All/7DCAB7169E94789F42256A01003B7C57/$FILE/Publications.pdf?OpenElement) [Hebrew] (accessed September 17, 2007).

¹³⁴ Court Case 1991/00. In a settlement with the Court, the Ministry agreed to conduct an examination that the Court was supposed to supervise. This has never happened. Email from Banna Shoughry-Badarne to Human Rights Watch, June 18, 2007.

houses.”¹³⁵ After Israel evacuated settlers from the Gaza Strip in 2005, many evacuee communities expressed their wish for new agricultural villages where they could continue to live as a community and pursue a rural and agricultural way of life. This demand is not dissimilar to that of the Bedouin, but in the settlers’ case the government addressed it swiftly. One example is the village of Shomria, in the Bnei Shimon Regional Council in the Negev. The authorities reestablished the village of Shomria, a former kibbutz, for the evacuees from the Gaza settlement of Atzmona. Due to fast-track planning and generous government budgets, just nine months after the Gaza evacuation more than 400 people were living in Shomria in temporary accommodation. Residents inaugurated the first permanent building in Shomria a year-and-a-half after the evacuation.¹³⁶ The government has planned, financed, and developed similar communities in the immediate aftermath of the evacuation.¹³⁷

Retroactive Legalization and Changed Zoning

One of the problems of the unrecognized villages, as mentioned previously, is that in the original Israeli master plan the government zoned the land that the villages already occupied as non-residential land, in most cases agricultural land. Under Israeli law it is illegal to plan or build buildings on land that is not zoned as residential. Planning authorities have zoned other areas of the Negev for military purposes, also off-limits for housing. On March 29, 2006, Human Rights Watch drove past the unrecognized village pictured below on the road to the unrecognized village of Um al-Hieran. Salim Abu Alqian told Human Rights Watch that although the village had been there for decades, in recent years the military put up firing zone signs forbidding entry.¹³⁸

¹³⁵ Sha’ar Ha Negev Regional Council website, <http://www.sng.org.il/english-site/first.htm> (accessed May 23, 2007).

¹³⁶ Information on Shomria from Bnei Shimon Regional Council website. See: <http://www.bns.org.il/site/he/eCity.asp?pi=2370>; http://www.bns.org.il/site/he/eCity.asp?pi=2386&doc_id=12434; and http://www.bns.org.il/site/he/eCity.asp?pi=2386&doc_id=13308 (accessed March 25, 2007).

¹³⁷ See, for example, Israeli government Cabinet Meeting minutes, May 7, 2006 (on file with Human Rights Watch), recording approval for a three-year development plan for the Halutzit dunes communities at a cost of NIS 159.2 for the first phase. The government also tasked a team of directors-general of various ministries to prepare a three-year plan for the establishment of residential communities in the Lachish district including expanding Amatzia, Shomriya, and Sheke that also housed Gaza evacuees. Finally, they decided to allocate NIS 70 million to the Construction and Housing Ministry for the planning needs at another new community, Yesodot.

¹³⁸ Human Rights Watch interview with Salim Abu Alqian, Um al-Hieran, March 29, 2006.



Firing Zone sign with unrecognized village in the background. A resident of a neighboring unrecognized village said the signs went up in the last couple of years, decades after the village was established. © 2006 Lucy Mair/Human Rights Watch

Dr. Amer al-Hozayel described the signs in front of this village as part of the government's broader strategy for Bedouin land confiscation in the Negev:

The government has a strategy to suddenly declare that areas in the Negev, where unrecognized villages are often located, are closed military zones. There are two large areas that have been affected by this, a Southern one that was declared in 1998 and the one in the area of Um al-Hieran that was declared after 2000. However, it is all a trick. After the government declares them as closed military areas and tries to evict everyone living there they plan to use this land for new Jewish towns. We know this for a fact since we received internal documents leaked from a sympathetic source in the ILA that detail the new Jewish towns planned for those areas. In 2001 we published a map with all the contours of the declared military areas and the names of the new Jewish towns planned for those areas [see map at beginning of this

report]. The ILA was shocked that we knew about its plans. The southern closed military zone measures 141,000 dunams and 42,000 dunams of that belongs to unrecognized villages. Two unrecognized villages fall fully within the military zone—al-Mizra and Gatamat al-Mathar. The other military zone around Um [al-]Hieran encompasses 50,000 dunams 12,500 acres, and 18,125 dunams of that belongs to unrecognized villages.¹³⁹

On the other hand, when the government seeks to establish new Jewish communities, non-residential zoning does not stand in its way. In the Hevel Lachish Regional Council near Kiryat Gat, in the Negev, officials are planning to build four or five new communities for the Gaza evacuees—one of them, Mirsham, on 1,500 dunams of lands formerly zoned for agriculture and forest.¹⁴⁰ In another example, in February 2007, Prime Minister Ehud Olmert and Defense Minister Amir Peretz agreed to change the boundaries of an IDF live-fire zone in eastern Lachish in the Negev to create the community of Gvaot Hazan for evacuees from the Neveh Dekalim settlement in Gaza. In the government press release on the decision, Olmert said, “If there is anything worth canceling a firing zone for, it is the establishment of life in this country.”¹⁴¹

The planning process is riddled with inconsistencies. In cases where construction by Jewish Israelis occurred contrary to the plan and without obtaining necessary permits, the authorities provide retroactive legalization. One example is the individual farms mentioned in Chapter IV, many of which had not secured appropriate zoning and building permits at the time they were built and which are now being retroactively legalized.¹⁴²

¹³⁹ Human Rights Watch interview with Amer al-Hozayel, Rahat, April 3, 2006. While Human Rights Watch has not seen the leaked ILA documents referred to by Dr. al-Hozayel, we have seen the subsequent maps mapping the closed military zones and the new Jewish villages planned or built in those areas.

¹⁴⁰ Taken from the Lachish website, <http://www.lachish.org.il> (accessed February 12, 2007).

¹⁴¹ “Agreement to Enable the Establishment of the Gvaot Hazan Community for Evacuees from Neveh Dekalim,” Government press release, February 11, 2007.

¹⁴² Retroactive legalization of illegal Jewish building occurs in the occupied West Bank as well. One such case involves the settlement of Modiin Illit in the West Bank where an entire new neighborhood of 1,500 apartments was built illegally since the apartments were not part of the original master plan. This illegal building was recently retroactively legalized by the Supreme Planning Council for Judea and Samaria. See Akiva Eldar, “Planning council approves illegal West Bank building plan,” *Haaretz*, February 25, 2007, <http://www.haaretz.com/hasen/spages/829740.html> (accessed February 25, 2007).

VI. Home Demolitions

Twayil Abu Jarwal—A Bedouin Village Repeatedly under the Bulldozer

On December 11, 8, 2007, officials from the Israel Land Administration, accompanied by hundreds of police, bulldozers, and trucks, entered the unrecognized Bedouin village of Twayil Abu Jarwal near the Goral junction in the Negev and demolished 20 structures. This was the last of eight times that ILA officials demolished homes of the al-Talalqah tribe in Twayil Abu Jarwal in 2007.



Women in Twayil cook outside after their homes were demolished. © 2006 Lucy Mair/Human Rights Watch

In the 1950s, Israeli military authorities had moved the inhabitants of Twayil from this area, which the al-Talalqah claim as their ancestral land. In 1978 the Bedouin bought options for plots of land from the ILA in the government-planned township of Lakiya, but they have never received their plots. Instead they have lived in “illegal” shacks on the outskirts of the township for over 20 years. Several years ago, after

giving up hope of ever receiving their plots in Lakiya, many families returned to Twayil and began to build there.¹⁴³ (The situation in Lakiya is discussed below, in Chapter VII.)

In 2006 Human Rights Watch visited Twayil Abu Jarwal on a day of demolitions on December 6 and again on December 21, a day residents received another round of demolition orders. Akil al-Talalqah showed Human Rights Watch the remains of a stone schoolhouse where he studied as a child and the family cemetery with headstones dating from the 1800s. His sister Aliya al-Talalqah, 37, showed Human Rights Watch the tents where she, her 15 children, and her one-year-old grandchild have been sleeping since the last round of demolitions. “Where are we supposed to go?” she asked.¹⁴⁴

Legal Authority for Demolitions

Under article 38 of Israel’s Legal Executions Law (1967), Israeli debt collection authorities may evict someone from his or her home for failure to pay a debt only after determining whether the person and his or her family have an alternative living arrangement. If the person has no adequate alternative, the debt collection office must stay the eviction or provide alternative housing.¹⁴⁵ Demolitions, however, come under the authority of planning officials in Israel. The Building and Planning Law, which provides the basis for home demolitions, fails to offer such basic protections to the inhabitants of unlicensed buildings. There is no provision in the law requiring officials to offer residents of a demolished home alternative shelter, either before or after the demolition. Nor is there a provision requiring authorities to ensure that the inhabitants of a structure used as a home will not be left homeless and provide them with temporary accommodation if they are. Finally, the law does not entitle victims of a demolition to compensation for their losses.

In some cases, planning officials need judicial approval to carry out demolitions, while in others—namely, where a building is still under construction or was

¹⁴³ See Chapter VII for more on problems of plots in the recognized townships.

¹⁴⁴ Human Rights Watch interview with Akil al-Talalqah and Aliya al-Talalqah, Twayil abu Jarwal, December 21, 2006.

¹⁴⁵ Article 38 (a) and (b) from The Legal Execution Laws (1967). Hebrew original on file with Human Rights Watch.

completed within the prior 30 days—authorities can carry out demolitions without judicial review. Even where judicial authorization is needed, the authorities file a lawsuit against the building, not the owner, who is never identified or invited to court. Therefore, it is unlikely that the owner will even know when the court case is taking place, and there are serious disincentives for approaching the courts as it may expose him or her to fines and criminal charges (see below).

In some instances the authorities appear to carry out demolition orders almost immediately, while in other instances they do not implement them for long periods. The authorities have the discretion to demolish homes singly or multiply, and at any time in the days, weeks, months, or years after a judicial order is issued: the demolition order does not specify when the demolition will occur. The authorities carry out the demolitions randomly and with no advance warning, usually in the early morning hours when villagers are sleeping or after the men of the village have left for work, with only the women and children remaining at home. In unrecognized villages, officials often carry out demolitions accompanied by a great show of force. Documentary evidence that Human Rights Watch examined and many witnesses to whom Human Rights Watch spoke described hundreds of heavily armed Israeli security forces accompanying planning officials on such occasions.

Demolitions on the Increase

The scale of the recent demolitions in Twayil Abu Jarwal, and the number of repeat demolitions in the same location, is exceptional, but for years Israeli authorities have routinely demolished the homes of Bedouin in the Negev; there have been thousands of such demolitions since the 1970s. Often the authorities destroy several homes in a village during each operation and sometimes homes in several villages. As the data below reveal, there has been a large upswing in the number of demolitions carried out against Bedouin structures in the Negev in recent years. Yet often these demolitions attract little domestic or international media coverage or attention.

Since the government does not make statistics public on home demolitions across Israel, it is difficult to gather accurate, comprehensive data on the number of warnings or judicial and administrative orders issued in a given year, in a given area,

and the number of demolitions actually carried out. Human Rights Watch requested specific data on home demolitions over the past three years in our letter to the government dated May 11, 2007. In its July 23, 2007 reply, the Ministry of Justice provided the following information:

The number of legal procedures against violations of the Planning and Building Law, 5725-1965 and illegal Bedouin structures are as detailed in the following table:

		2004	2005	2006
Warnings of Building Violations		481	394	793
Self Demolitions	Administrative Procedure	10	11	13
	Judicial Procedure	54	70	55
	Total	64	81	68
Demolitions by the Authorities	Administrative Procedure	6	6	24
	Judicial Procedure	162	16	108
	Total	168	22	132
Total Demolitions		232	103	200

The Ministry of Justice letter also stated, “As of today there are 45,000 illegal buildings in the Bedouin diaspora [unrecognized villages], there are 2,000 pending legal procedures against buildings and 700 valid demolition orders - 15 of them administrative.”

However, the ministry did not provide Human Rights Watch with information on levels of illegal building and number of actual demolitions in other communities in Israel requested in order to provide a comparative assessment.

Transparent and comparative official data is needed for public debate and accountability, especially to help determine whether state authorities have carried

out demolitions in a discriminatory fashion or in a way that violates Israel’s obligations under international human rights treaties.

However, Human Rights Watch was able to obtain several sets of government statistics—some sent to journalists or to members of the Knesset in answer to parliamentary questions and shared with Human Rights Watch, and in one case an internal Ministry of Interior database, obtained by an Israeli NGO, of outstanding judicial demolition orders in all regions of Israel as of January 2005. In the unpublished ministry database that Human Rights Watch reviewed, all 242 outstanding judicial demolition orders in January 2005 in the Southern region were against structures of Bedouin residents, even though Bedouin make up only 25 percent of the Negev population.¹⁴⁶

NGOs keep their own lists of demolitions based on news reports, field visits to the scene of the demolition, and reports from the communities. The Regional Council for Unrecognized Villages in the Negev tallied 227 home demolitions in 2007, up from 96 in 2006 and 15 in 2005.¹⁴⁷ The Association for Civil Rights in Israel reported 224 home demolitions in 2007.

Atwa Abu Frieh works with the Regional Council of Unrecognized Villages in the Negev, and confirms the trend visible in the RCUV statistics. “In all villages house demolitions are increasing” he told Human Rights Watch.

In villages that have received government recognition [the newly recognized villages], we believe they increase demolitions outside the blue line [official boundaries] to get people to move inside. In the unrecognized villages they increase demolitions to push people to move to recognized locations.¹⁴⁸

Another dramatic change in recent years is the fact that planning authorities have started issuing mass warnings or demolition orders against entire neighborhoods or

¹⁴⁶ Copy of list obtained with the help of the Israeli Committee Against House Demolitions, on file with Human Rights Watch.

¹⁴⁷ Statistics provided by Yeela Livnat and Said Abu Samur of RCUV on January 3, 2008. The full chart appears in Appendix B.

¹⁴⁸ Human Rights Watch interview with Atwa abu Frieh, Beer Sheva, March 2, 2006.

even entire villages, thus paving the way for further mass demolition operations. Banna Shoughry-Badarne, a lawyer with the Association for Civil Rights in Israel, said:

They go in with hundreds of cops and 20 or 40 demolition orders and put them on all the houses of a neighborhood or a village. These [judicial demolition] orders are open-ended, so you never know if and when the demolition will happen. You don't see the exponential increase in demolitions now, but you will see a huge increase in the coming years if all the orders are implemented.¹⁴⁹

During its research Human Rights Watch discovered several villages with these mass warnings or demolition orders, including the following:

1. Al-Sira, near the Nevatim air base. In June 2006 planning authorities distributed six warnings. On September 7, planning authorities distributed six judicial demolition orders for the houses that previously received warnings and warnings for all the other structures in the village. In July 2007 authorities distributed demolition orders to all the homes that previously had warnings. The villagers have been living on this land for generations. As already mentioned in Chapter III, while the authorities claim that the land was officially confiscated for building the air base in 1980, Bedouin villagers claim that the government never approached them over the past 26 years to inform them of the expropriation. Village head Khalil al-Amour showed Human Rights Watch a sales deed proving his great grandfather bought his plot of land in 1921 from another Bedouin.
2. Um al-Hieran/Atir, near the Yatir forest. In April 2004, the state filed 27 lawsuits to evacuate and expel the approximately 1,500 residents of these sister villages. In September 2006, the Beer Sheva Magistrate's Court issued approximately 40 judicial demolition orders against almost all the houses in Um al-Hieran, affecting most of the approximately 300 people living in the village. In June 2007, the ILA demolished 25 homes, even though the

¹⁴⁹ Human Rights Watch interview with Banna Shoughry-Badarne, Jerusalem, February 27, 2007.

villagers' lawyers had obtained court orders to stay some of those demolitions on procedural grounds.

The government had moved the residents from their land in the western Negev around today's Kibbutz Shoal to this location in 1956. The government has earmarked the land of Um al-Hieran for the construction of a larger Jewish settlement, Hiran, according to a report the ILA submitted to the prime minister detailing initiatives for the establishment of 68 new settlements throughout Israel.¹⁵⁰ The ILA has never informed the villagers about these plans. In a letter to Human Rights Watch, the Ministry of Justice did not attempt to explain the government's need for the land or future plans, but merely said, "The State invested close to 10 million NIS in developing Quarter 9 in the town of Hura. In this Quarter there are 380 available land plots. The Bedouin Administration had offered and is offering permanent housing solution in the framework of this quarter."

3. Wadi al-Ne'am, next to Ramat Hovav and the central electric plant for the Southern region. Wadi al-Ne'am is the largest unrecognized village, with approximately 5,000 residents. The government has presented many Wadi al-Ne'am neighborhoods with mass warnings and judicial demolition orders. Residents have been in this location since the 1950s when the government moved them there. Due to their proximity to the toxic waste from Ramat Hovav, the villagers are willing to move to a new location as long as they can continue their agricultural and herding way of life. So far the government has offered them only overcrowded neighborhoods in the government-planned townships, a new neighborhood that would still fall too close to the toxic fumes of Ramat Hovav, or a non-existent neighborhood in one of the newly recognized villages.

¹⁵⁰ "Adalah Files Motion to Cancel Orders to Demolish 33 Homes in the Unrecognized Arab Bedouin Village of Umm el-Hieran in the Naqab, on which the State Plans to Establish a Jewish Town," Adalah press release, February 14, 2007, <http://www.adalah.org/eng/pressreleases2007.php> (accessed May 21, 2007). The National Board for Planning and Building approved the establishment of the settlement of Hiran in April 9, 2002, and the government approved it in its decision no. 2265 of July 21, 2002.

4. Al Sirr, next to the Beer Sheva prison. The government presented most of al-Sirr's homes with warnings in March 2006. The government has offered the same kind of unsatisfactory solutions to this village as to Wadi al-Ne'am (see above). In its July 23, 2007 letter to Human Rights Watch, the Ministry of Justice did not detail any need for the village land. On November 1, 2007 the authorities demolished five homes in the village.
5. Al Qrein, southeast of Hura. In the 1950s the government moved the villagers to this spot. The residents of the village have requested that if they must be moved again they be moved as a community to another location. This request has not been answered and in March 2007 the authorities placed judicial demolition orders on all the houses of the village.

The people of this village have built a daycare and an open community space to alleviate the hardships created out lack of services, which is the result of the government's policy of non-recognition.

6. Tarabin al-Sane', next to Omer. The Omer municipality has expanded onto the land of the Tarabin, and rather than allow the Tarabin to be residents of the expanded Omer, municipal authorities are trying to evict them to an alternative site, where the government has created a new village for the Tarabin. Some of the Tarabin claim that the government negotiated their move to the new village with members of the Tarabin tribe who do not represent them. In addition, some of the Tarabin who have moved to the new village claim that the authorities did not provide adequate compensation or many necessary amenities to allow for an adequate standard of living in the new village and have urged the rest of the Tarabin not to move under these conditions (see Chapter VII for more details on the problems of the new Tarabin village.) Omer planning officials handed out 75 judicial demolition orders to all the remaining homes in the unrecognized Tarabin village in March 2007.

In none of these locations have government officials given the residents any information on the future use of the land or the public interest necessitating these

mass evictions. Human Rights Watch questioned government officials on the need for the land in our letter dated May 11, 2007. In its July 23 response, the Ministry of Justice provided a justification in only one of the above cases, stating, in the case of al-Sira, “that it shall be indicated that the land in the area of the airbase and its surroundings is necessary for the expansion of the airbase and other military needs.” This is the same reason that the government has previously asserted, but there is little to demonstrate that there is an actual necessity. On the contrary, the head of al-Sira’s village council, Khalil al-Amour, noted, “We spoke to the current Nevatim air base commander and the previous one. They told us that the military does not need this land.”¹⁵¹

Official statements also reflect the increase in enforcement activities. In a Knesset committee debate on home demolitions in November 2006, the head of the Ministry of Interior for the Southern Region, Dudu Cohen, said, “There is a government decision allowing the ministries and the ILA to increase the enforcement of the Planning and Building law. Recently the government has finished its preparation. All we are seeing now is the result of the state’s completion of the preparation stage, following the decision to enforce the law. There is nothing new here.”¹⁵²

Justifications

Israeli authorities give a variety of reasons for demolishing Bedouin homes in the Negev. These reasons include: that the home was built without securing the proper permit, on land that is not zoned for residential use, in an area that does not have an approved master plan, or where the building violates the specifications of that plan. As discussed previously, the Bedouin of the unrecognized villages live in a legal limbo whereby it is in fact impossible for them to meet the conditions of the Building and Planning Law and thus to comply with the law in building homes or other structures.

¹⁵¹ Human Rights Watch interview with Khalil al-Amour, al-Sira, December 22, 2006.

¹⁵² Protocol of 11/06/2006 meeting of the Knesset Internal Affairs and Environment Committee on Master plans of Bedouin settlements in the Negev and home demolitions. <http://www.knesset.gov.il/protocols/data/html/pnim/2006-11-06.html> [Hebrew] (accessed May 23, 2007).

Judicial demolition orders spell out the state’s legal argument for demolishing homes in order to uphold “public order”:

The purpose of a demolition order ... is to maintain civil order and prevent the nuisance caused to the public by the very existence of an illegal structure.... Public interest may lie, among other reasons, in the fact that in not carrying out the demolition the perpetrator is rewarded; in preventing the chaos caused by illegal construction; and in the concern that not issuing a demolition order may be interpreted as granting permission *de facto*, a situation which has no place in a proper state of law.¹⁵³

The order goes on to say:

Therefore, as long as such a structure remains standing without permission, there is no relevance as to when it was established, and the proper course of action against the violation in such an instance of construction without permit, where the owners are unknown, is to request a demolition order without conviction, as the plaintiff has done in this event.¹⁵⁴

Finally, this order acknowledges obliquely that, at least in the case at hand, Bedouin claim ownership of the land they are being accused of illegally building upon:

In this matter, the plaintiff claims that the structure has been built on lands undergoing a settlement process according to the settlement ordinance and that ownership hasn’t yet been established.¹⁵⁵

¹⁵³ Case BS 008759/05, State of Israel vs. Person Unknown, Beer Sheva Magistrate Court, November 21, 2005 (on file with Human Rights Watch). As explained later in this Chapter, Israeli NGOs criticize the state for claiming that they do not know the owner’s identity even in cases where they clearly do. This enables them to secure a judicial demolition order without having to bring the owner to court.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

The “settlement process” refers to the process established by the Land Rights Settlement Ordinance [New Version] - 1969, which (as explained in Chapter III, above) entitled Bedouin in the 1970s to register their claim to Negev land. Many Bedouin live in ancestral villages, established before the founding of Israel in 1948, over which they officially registered an ownership claim in the 1970s, yet whose presence Israeli planning authorities have stubbornly refused to acknowledge in master plans, rendering every home in these villages illegal. The same authorities who refused to include these villages in the planning process (a grossly negligent omission), or provide any adequate residential alternative to their inhabitants, prosecute the village home owners in court, claiming that their very presence is a “public nuisance” of such magnitude that the only appropriate remedy is to render an entire family homeless.

Mohamed Abu Solb was one of several people Human Rights Watch interviewed who had served in the Israel Defense Forces. “The men of Abu Solb served in the army—I was in the army as were my father and all my brothers.”¹⁵⁶

Jadwa Abu Sbeit told Human Rights Watch:

We are very loyal citizens, and look how they treat us. Our sons serve in the army and police. The Bedouin are the soldiers in the country who guard the borders—north and south—if there were no Bedouin soldiers in the army then the borders would not be secured. When Jewish soldiers finish their mandatory service the government enables them to study and get good jobs. When our sons finish the army they demolish their houses.¹⁵⁷

How Demolitions Are Carried Out

Warnings

In most cases, the first stage in the demolition process is when a supervisor appointed by the building and planning authorities posts a warning on a structure,

¹⁵⁶ Human Rights Watch interview with Mohamed Abu Solb, shop across from Bir Mshash, March 30, 2006.

¹⁵⁷ Human Rights Watch interview with Jadwa Abu Sbeit, Bir Mshash, March 30, 2006.

notifying the owner (who is never named in the warning) that he or she has violated some article of the Building and Planning Law. The warning states that the building has been built in violation of the law and that the owner should demolish the building that was built illegally or appear before the planning authorities, within a period up to 30 days from the time the warning was issued, to provide documentation that they have built legally. If the person does not comply with the warning, the authorities can take further action such as issuing an administrative demolition order or going to court for a judicial demolition order (the distinction between the two types of order is explained below).

Every Planning and Building Commission, local as well as regional and national, has a statutory right to enforce building codes. Human Rights Watch studied copies of several warnings, including one issued by the Local Commission for Planning and Building of Omer¹⁵⁸ (see translated Warning in Appendix C.) In the warnings we studied, those responsible failed to fill out much of the form or did so sloppily. For example, in the Omer-issued warning, officials filled out none of the identifying lines, including the owner's name, the building targeted, or its location. In the section indicating what building violations were committed under the 1965 Planning and Building Law, officials often check multiple violations, such as building without a permit/in violation of a permit/plan, and using lands without a permit/in violation of a permit/plan. According to the warnings, the authorities require the unnamed owner to stop all work, return the land to the status quo ante, and appear before the supervisor by the date listed. In the Omer-issued warning, the supervisor's name is not printed and a scrawled signature makes it impossible to determine who signed the warning.

The village of Tarabin al-Sane' was first established in 1956, after Israeli military officials forcibly moved the Bedouin residents there from their ancestral village. The village thus existed before the nearby town of Omer was founded, in 1975.¹⁵⁹ By demanding that the residents "return the land to the status quo ante," the warning

¹⁵⁸ Most municipalities the size of Omer do not have their own committee. Usually a local or regional committee covers a number of localities (see Chapter V for more details).

¹⁵⁹ In 1975 Omer was established as a municipal council (*moatsa mekomit*) according to the municipality's website: http://www.omer.muni.il/hadover/omer/history2_heb.htm [Hebrew] (accessed November 20, 2007).

seems to suggest that the entire village can rewind over 50 years, from the time the Tarabin were moved to the area by the state and established their village there. It totally disregards the community's long ties to the land, and the fact that for decades, until Omer's desire to expand, they lived there with no interference from the authorities.

When planning officials come to hand out warnings, a large number of police often accompany them. Many Bedouin told Human Rights Watch about police and officials entering their homes or the open areas just in front of their homes and the terrified reaction of their families. In many of the cases Human Rights Watch investigated, the authorities had handed out mass warnings.

Residents of al-Sirr said they received mass warnings in March 2006. "Every single physical structure in the village got a warning," said Ibrahim al-Gradi. "They came from the beginning of the village to the end—even the animal pens. Not just recently built structures but even those built before 1948. They came just before the [March 2006] elections and promised they'd come back afterwards with demolition orders."¹⁶⁰

¹⁶⁰ Human Rights Watch interview with Ibrahim al Grady, al-Sirr, April 10, 2006.



An unrecognized village of al-Sirr. © 2006 Lucy Mair/Human Rights Watch

Nasim Jirjawi, from the unrecognized village of Wadi al-Ne'am told Human Rights Watch that planning officials and police came in 2005 to deliver warnings to a large number of families:

They came in April, and they distributed warnings for more than 70 families. They came in the morning around 8:30 or 9, with massive forces, and they distributed warnings to all the families of our neighborhood—placing them on the wall and in the entrances. There were regular police, special forces, border police and many others. We had no idea they were coming until we saw the massive forces starting to arrive. They aggressively entered the area without permission or warrants. There were kids and women inside the houses, and the kids were very scared. They violated the privacy of our homes in a very aggressive manner, and people were not prepared for it at all. Some people panicked. I have three kids, the youngest is only three. When

they came to put a warning on our house, the kids were terrified. There were hundreds of police surrounding the house.¹⁶¹

A Tarabin al-Sane' resident described the day that authorities delivered warnings there:

The forces started gathering at 6 a.m. in Omer. There were hundreds of police, special units, army, and border police. They surrounded the entire village, and there were helicopters overhead, as well as vehicles, jeeps, horses, and water cannons. They sealed the area off and began taping the warnings on houses. They had about 70 orders, and they didn't give one to every house. I think they targeted the homes of leaders in the community to try and pressure them, or maybe they picked the areas of the village where they [Omer residents] want to develop new housing plots.¹⁶²

Another resident of Tarabin al-Sane' told how the officers entered their homes during the delivery of the warnings:

About 30 police officers from one of the special units surrounded my house. They were heavily armed with weapons and with teargas, and they were really frightening. Then a representative of Omer and a number of officers entered the house. Some took photos. No one else was allowed in. They took measurements with a laser device.... I believe they entered illegally. They never showed any order saying they could enter and search. When I asked to see an order they said, "Don't speak. Just let us do our work."¹⁶³

The same resident talked about the impact of the large forces on his children:

¹⁶¹ Human Rights Watch interview with Nasim Jirjawi, Wadi al-Ne'am, April 9, 2006.

¹⁶² Human Rights Watch interview with Abu Khalid, Tarabin al-Sane', April 6, 2006.

¹⁶³ Human Rights Watch interview with Talal, April 6, 2006.

The kids were really affected by the incident. They have to leave the house around 6:30 a.m. to catch the school bus to [the recognized township of] Tel Sheva. They went to the gate and came back talking about lots of police and horses. They were really scared, and they refused to go back out there and catch the bus to school.¹⁶⁴

In some cases the authorities cordoned off the area when they came to hand out warnings. Adalah's lawyer Morad al-Sane' tried to go to Tarabin al-Sane' on the day that mass warnings were handed out, but he was blocked from entering the area:

We went to Tarabin at 8:30 or 9. A police patrol was blocking the entrance and preventing anyone from entering. They said they had an order from the police commander to block entry, and I asked to see it. I told them I thought they were lying about the order, and that made them really crazy. I told them, "You are exploiting the fact that people don't ask to see the orders because they don't know the law." I told them we were going to walk through the blockade and enter, and they screamed at me and said, "OK, we'll call the commander to bring the order and he'll be here in 10 minutes, so stay here."¹⁶⁵

When the police commander arrived he admitted to al-Sane' that he had no order and eventually said that al-Sane', as a lawyer, could enter, but not the other NGO and community members with him. Al-Sane' refused, continued to argue, and threatened to complain to the Police Investigation Division.

He let us just stay there arguing and negotiating with him until he knew that the police had finished what they needed to do in the village and finally let us in after all the warnings had been handed out. At least one-and-a-half hours had passed—it was around 10 or 10:30 then.¹⁶⁶

¹⁶⁴ Human Rights Watch interview with Talal, April 6, 2006.

¹⁶⁵ Human Rights Watch interview with Morad al-Sane', Beer Sheva, April 6, 2006.

¹⁶⁶ Ibid.

Some residents talked about the shock of receiving warnings, in many cases after having lived for decades in their current locations without any interference from the government. Ibrahim al Grady of al-Sirr told Human Rights Watch, “Our family has been living here for 50-60 years, and it’s really hard to deal with this sudden order to just get up and leave. The collective memory of 60 years is here. We can’t just pack it up overnight.”¹⁶⁷

Others told Human Rights Watch that after receiving warnings they did approach the authorities to find out why they were being targeted en masse and what they were supposed to do once they were evicted from their homes. None of them received information on the intended use of their land and, while authorities often told them in general terms that they should move to one of the government-planned townships, they were not given immediate, concrete living alternatives.

On September 7, 2006, planning officials distributed six judicial demolition orders and warnings to the rest of the 45 houses in the unrecognized village of al-Sira. When representatives of the approximately 300 residents of al-Sira approached the authorities, they found there were no alternatives for them:

We went to the offices of the inspector of building and construction at the Ministry of Interior and asked them what to do. They said they didn’t know, that they were under pressure from the government, which wanted to move military bases to the area. They sent us to the Bedouin Development Authority [a division of the ILA], which they said was responsible for finding a solution. When we got to the BDA it didn’t have any solutions either – more illusions than solutions. They always say maybe. Maybe you’ll get a neighborhood when [the township of] Rahat expands; maybe you can go to the [newly planned] township of Marit which does not even exist yet. We are invisible people to them, so perhaps we can live in invisible houses.¹⁶⁸

¹⁶⁷ Human Rights Watch interview with Ibrahim al-Grady, al-Sirr, April 10, 2006.

¹⁶⁸ Human Rights Watch interview with Khalil al-Amour, al-Sira, December 22, 2006.

Since that time the rest of the villagers, those who previously just had warnings, have also received judicial demolition orders. In its July 23, 2007 letter to Human Rights Watch, the Ministry of Justice said, “[T]hese residents are offered to move to one of the quarters in the new town of Makhol [official name of Marit] and/or to one of the other permanent towns.”

Orders and Demolitions

If an owner does not comply with a warning to demolish his or her home, the authorities may then issue a demolition order against the structure. Under the Planning and Building Law, there are several ways for authorities to lay the groundwork for demolishing structures that allegedly violate building regulations.

Administrative demolition orders

Under Article 238a, planning authorities can hand out demolition notices to structures that are in the process of being built or were finished within the past 30 days. These “administrative orders” (*tzav minhali*) do not require judicial oversight and can be issued by the planning commission in the jurisdiction where the building lies. The orders are valid for only 30 days from the date of issue and allow the authorities to demolish the building after 24 hours from the time the building inspectors affix the order to the building, if the building has been built without a permit, or after 72 hours in all other circumstances. This leaves home owners with little time to prepare for the imminent demolition or to appeal the order to the judicial authorities.

Human Rights Watch studied administrative demolition orders in three unrecognized villages, including one that the Ministry of Interior issued against homes in Twayil Abu Jarwal on December 20, 2006 (see translated order in Appendix D) The order was written only in Hebrew, not Arabic, and the type of language used was almost incomprehensible to a native Hebrew speaker whom Human Rights Watch consulted.¹⁶⁹ While the order does mention the right to appeal, it stipulates explicitly that “the court will not cancel or delay an Administrative Order unless it is proved

¹⁶⁹ Michael Yagupsky, consultant with Human Rights Watch, translated the orders from Hebrew to English and offered comments on the Hebrew originals.

that the construction for which the order was issued had been done legally.”¹⁷⁰ Since no Bedouin were able to build homes legally in the unrecognized villages, the order basically precludes any possibility for judicial remedy and provides a powerful disincentive against Bedouin appeals.

Judicial demolition orders

If 30 days have passed since the building was completed, the planning authorities can appeal to the courts to enforce the building laws, either under article 205 of the Building and Planning law, which lawyer Banna Shoughry-Badarne of the Association for Civil Rights in Israel says the authorities use in most areas of Israel, or under article 212, which she says authorities reserve almost exclusively for inhabitants of the unrecognized Bedouin villages. Under article 205 the authorities can prosecute the building owner and in some cases may decide to destroy the illegal structure. Under article 212 of the law, known as “demolition without conviction,” the authorities claim that they cannot identify or locate the building owner, and thus the only way to enforce the law is to demolish the structure. Human Rights Watch asked government officials about this practice in our letter dated May 11, 2007. In its July 23 response the Ministry of Justice did not answer the question about whether article 212 is used against any non-Bedouin structures in Israel. They did write that “[a]n ex parte demolition order, according to Article 212 of the *Planning and Building Law, 5725-1965*, is executed only as a final resort, when it is impossible to file an indictment against the owners in a usual manner (Articles 204 and 205) or when every other alternative was exhausted.” This assertion is disputed by NGOs, as discussed below.

According to a judicial demolition order from Um Mitnan (see Appendix E), the judge makes the following distinction between the two articles of the law:

While article 205 presents additional means for punishing the building offender, the point-of-departure in article 212 is that there is not and will not be a conviction in the matter of the structure’s construction, and that a demolition without conviction is not meant as a punitive

¹⁷⁰ Administrative Demolition order in Appendix IV.

measure against the building offender, but is done to remove an obstacle to others, to maintain civil order, and to prevent a nuisance to the public.¹⁷¹

According to the Building and Planning Regulations of 1982, which govern implementation of the Building and Planning Law, courts can grant demolition orders under Article 212 solely on the basis of a plaintiff's request "if the court sees that it is impossible or impractical to summon forth to the hearing a person who may be damaged by the enactment of the order...."¹⁷²

Under article 212, officials obtain a judicial demolition order by filing a suit against "owner unknown." Negev cases are always heard in the Beer Sheva Magistrate's Court. The process is more time-consuming and costly for the state than just issuing an administrative order, but the court requires minimal evidence and officials simply assert that the land is not covered by an approved master plan, is not zoned for residential use, and the owner did not acquire a permit. These are conditions that apply by definition to all buildings in unrecognized villages. Lawyers told Human Rights Watch that they knew of no case in which the court had not issued a judicial demolition order when requested to do so by the authorities.¹⁷³

Lawyers from Adalah contend that the authorities have abused the provisions of article 212 to secure judicial demolition orders. In a January 2007 motion to the Beer Sheva Magistrate's Court, Adalah charged that when authorities secured judicial demolition orders against "owners unknown" in the unrecognized village of Um al-Hieran, they were fully aware of the identity of all the inhabitants. In April 2004, the authorities had filed evacuation lawsuits against all residents of the village in which they had to clearly identify each one by name and identification number. Yet just the

¹⁷¹ Case BS 008759/05, State of Israel vs. Person Unknown, Beer Sheva Magistrate Court, November 21, 2005 (on file with Human Rights Watch).

¹⁷² Ibid.

¹⁷³ Human Rights Watch interviews with Shafeek Abu Hani, Beer Sheva, March 29, 2006; Banna Shoughry-Badarne, Jerusalem, February 27, 2007; Suhad Bishara, Shafa'amr, March 13, 2006.

next year, when the planning authorities wanted to issue demolition orders against the same buildings, they claimed not to know the identity of the owners.¹⁷⁴

The judicial demolition orders give planning authorities authorization to demolish the home. The homeowner has no real due process rights in these judicial demolition cases. While the Bedouin can appeal the court's decision, they have every incentive not to: in appealing such an order, the previously unidentified Bedouin will have to identify him/herself to the courts. In this case, the authorities can criminally prosecute him or her under Article 205 of the law for illegal building, and a conviction may entail a fine or even jail time. Many Bedouin are chiefly worried about having a criminal record, a fact that will prevent them from obtaining a civil service job such as teaching.

Several lawyers who have represented dozens of clients in home demolition cases told Human Rights Watch that, as far as they knew, no home demolition order in the unrecognized villages had ever been overturned, and the best case scenario was to get a postponement. According to lawyer Shafeek Abu Hani:

The home demolition is a criminal process—you have violated the law by building illegally, without a permit. When someone receives a home demolition order he has a limited time in which he can challenge it and try to overturn it in court. But then he is putting his name on the building, and it immediately becomes a criminal matter. And statistically you have a 100 percent chance of losing your case in court. When people come to me I advise them not to go to court and just let their house be demolished because honestly it will be less expensive for them that way. We had a donor who was prepared to fund us to go all the way to the High Court to challenge the legality of a home demolition. But then I decided not to follow through with this strategy because if we will lose such a case, which we undoubtedly would, then they can bulldoze the whole Naqab. It's not that we are not

¹⁷⁴ "Adalah Files Motion to Cancel Orders to Demolish 33 Homes in the Unrecognized Arab Bedouin Village of Umm el-Hieran in the Naqab, on which the State Plans to Establish a Jewish Town," Adalah press release.

courageous enough to take this step, but the risk appeared to be so high as to be idiotic.¹⁷⁵

Abu Hani went on to explain the vulnerability of the Bedouin in the legal system:

Unfortunately there are unscrupulous private lawyers who will take advantage of people's desperation. They will take the case to court on the promise that they can do something about it. They charge \$3,000-5,000 per case. They give improper legal advice. Then the lawyers go to court and ask for a postponement for 12 months so the owner can get a permit, but of course the owner can't get a permit because there is no building plan for the area. So after 12 months the authorities can just come and demolish the house. These lawyers don't explain that to the people. Hundreds of people have gone to court like this and lost.¹⁷⁶

Lawyer Banna Shoughry-Badarne confirmed the futility of challenging home demolition cases:

We can't really achieve anything legally with the home demolitions, but we can tell people their rights and at least they don't pay money for a court case if we know we can't win. When legal work doesn't help, we try to think of other spheres of action such as advocacy with the Knesset, media, etc. It's very hard to get into the media and talk about issues from a human rights point of view—because the media, like the general public, thinks the Bedouin are trespassers, who purposefully build illegally. Our response is that the state has to plan for them, that it can't discriminate in its planning and building processes, and that if this happens then the Bedouin won't be forced to build "illegally."¹⁷⁷

¹⁷⁵ Human Rights Watch interview with Shafeek Abu Hani, Beer Sheva, March 29, 2006.

¹⁷⁶ Ibid.

¹⁷⁷ Human Rights Watch interview with Banna Shoughry-Badarne, Jerusalem, February 27, 2007.

Suliman Abu ‘Bayid lives in an unrecognized neighborhood on the outskirts of the Bedouin township of Lakiya. The Abu ‘Bayid family is one of several families who bought options to plots of land from the government before Lakiya was even established but have yet to receive their plots, forcing many to build illegally on the outskirts of town (see Chapter VII, below). He told Human Rights Watch about a demolition order that his mother received in 1986:

We were building a home for her, and they came and gave the order. She went to the court to try and explain her situation to the judge, but he simply ordered her to pay 7,000 NIS and to demolish the home within six months. She didn’t destroy the house and until today nothing has happened, but the order could be implemented at any time. In addition, by not demolishing she violated the court verdict, and she could go to jail on criminal charges. She did pay the 7,000 NIS fine.¹⁷⁸

In March 2003, the regional court in Beer Sheva issued a demolition order for the mosque in the unrecognized village of Um al-Hieran.¹⁷⁹ Salim Abu Alqian told Human Rights Watch:

We appealed the order in court, and there was a trial two years ago. The court upheld the demolition order, and we got a 12,000 NIS fine. One of the elderly men in the community was the one who actually went to the court, so the criminal charges are against him and he received the fine. He has to pay it in installments of 500 NIS a month.¹⁸⁰

After receiving a judicial demolition order from a court, the planning authorities have to deliver it to the structure. In order to prove in any subsequent legal challenge that they actually delivered the order, they usually stick it on the structure and

¹⁷⁸ Human Rights Watch interview with Suliman Abu ‘Bayid, Lakiya, April 6, 2006.

¹⁷⁹ Negev Coexistence Forum for Civil Equality, “The Arab-Bedouins of the Naqab-Negev Desert in Israel,” p. 13.

¹⁸⁰ Human Rights Watch interview with Salim Abu Alqian, Um al-Hieran, March 29, 2006.

photograph it. They do not hand it to an individual, and they do not require a signature of receipt. Bedouin villagers and several lawyers told Human Rights Watch of instances where the orders had been placed on hard to see areas of the house, fallen off, blown away, or been removed by children.¹⁸¹

In Um al-Hieran, one resident told Human Rights Watch that on February 6, 2006, the authorities delivered demolition orders to the whole village:

A guy came to deliver the orders and gave them all to Mohamed Ibrahim, a 90-year-old illiterate man. He just threw all the orders at Mohamed because his is the first house in the village. This is the second time we got eviction and demolition orders. The first time was in June 2003.¹⁸²

Many of those who received demolition orders spoke of their feelings of hopelessness and lack of alternatives. In the words of one man:

We don't have any hope. We want to be able to develop and progress, like the rest of society. We don't want to always be thrown backwards. I pay taxes. I didn't occupy anyone's house. I inherited this land from my father who inherited it from his father and his father and so on. We have papers from the Ottoman period such as tax documents showing that they recognized that this is our land. The [Israeli] authorities don't offer us any solutions.¹⁸³

No Prior Warning of Demolition

Most victims of home demolitions said that they had received no specific warning in the days leading up to the actual demolition. The authorities had never indicated what day, month, or year they planned to implement the demolition orders. There are

¹⁸¹ Human Rights Watch interviews with Sarah Kishkher, Um Mitnan, April 6, 2006, Shafeek Abu Hani, Beer Sheva, March 29, 2006.

¹⁸² Human Rights Watch interview with Salim Abu Alqian, March 29, 2006.

¹⁸³ Human Rights Watch interview with Ali al-Ghanami, Um Mitnan, April 2, 2006.

no available criteria to indicate which demolitions will occur first, or how much time will likely pass between the notice of a demolition order and its implementation. In some cases years have passed. It is unclear whether the authorities even intend to carry out all the demolition orders they issue, and many Bedouin activists believe the demolition orders are no more than a pressure tactic. There is no way for families to adequately prepare, and they live with constant fear of the unknown. This also prevents families from making further investments or improvements that may make their structures marginally more habitable or comfortable.

In the Ministry of Interior list that Human Rights Watch obtained for all outstanding judicial demolition orders as of January 2005, there are orders dating as far back as 1994. Officials gave the orders a ranking of A, B, or C, indicating the importance attached to implementing the order. It is difficult to ascertain what dictated the ranking, other than that it is not the date of issuance.

Many people told Human Rights Watch that the demolitions are carried out early in the morning—when bulldozers woke the family—or around 9-10 a.m., after most males and school-age children have left the village and only women, the elderly and very young children remain. One woman in Um Mitnan village, Fatima al-Ghanami, 60, described the day her home was demolished:

They came at 10 o'clock in the morning. They didn't notify us the day before in order to let us prepare. They came at the house from behind, not from the front. They took everything out—all the furniture and utensils, all our belongings. The house had four rooms and a bathroom and it cost 70,000 NIS to build. We couldn't do anything, we were totally helpless. Some of my sons were here, but they didn't protest or resist because we all knew that no matter what we did they'd demolish the house anyway. We also had to pay for a bulldozer to come and remove the mess they left of the ruined home. That cost us 700 NIS right there. Afterwards my sons built me this temporary shack, but now it also has a demolition order.¹⁸⁴

¹⁸⁴ Human Rights Watch interview with Fatima al-Ghanami, Um Mitnan, April 2, 2006.

She described not expecting the first demolition but now living in fear of a second one:

When I got the first demolition order for the old house I was sure they would never come. Now I know better. I know they'll come and do it.... They might come tomorrow, they might come anytime. If they demolish this place I have nowhere to go and no money left. I have no idea what I'll do.¹⁸⁵

Sarah Kishkher, also of Um Mitnam, said the authorities had indicated a time when they would demolish her home but then came at a different time:

A week ago they came to distribute demolition orders. Then three days later they came and said that they would come in two hours to carry out the demolitions. But in the end they came a different day.¹⁸⁶

In one case in which authorities demolished a small shop on the road into the village of Bir al-Mshash, the residents didn't witness the demolition. "They did it while we were still sleeping. It was very early, around 5 a.m. When people started leaving the village later to go to work, they called us to tell us what had happened. No one saw it."¹⁸⁷

Destruction of Belongings

In some cases the authorities brought workers with them to remove the belongings from the houses before demolishing them, according to some victims, but in other cases belongings were crushed in the demolition. Some victims said that the authorities confiscated their belongings. Sarah Kishkher said:

They were here and got inside—they broke all the cupboards and closets and didn't leave us anything. Now we are living in a tent with

¹⁸⁵ Ibid.

¹⁸⁶ Human Rights Watch interview with Sarah Kishkher, Um Mitnan, April 6, 2006.

¹⁸⁷ Human Rights Watch interview with Sheik Abu Sbeit, Bir Mshash, March 30, 2006.

no toilet and nothing for the kids. It's terrible to live under these kind of conditions. We can't even bathe the kids properly.¹⁸⁸

Her daughter Hamda Kishkher added:

The young kids were here with us, the older kids in school, the men outside the village for work—when the bulldozers and police came at 8:30 or 9 in the morning. They didn't give any time to take our things out. They just demolished the homes on top of everything. We asked if we could remove the water tank with a solar heating panel from the roof of the house, but they didn't let us, and it was destroyed.¹⁸⁹

Suliman Abu 'Bayid, from the Regional Council of Unrecognized Villages of the Negev, said, "People invest everything in their homes and afterwards they can't even afford to buy materials to build a tent, which also costs money. In this case the authorities smashed everything."¹⁹⁰

On May 28, 2002, Israeli authorities demolished 52 homes in the unrecognized village of Al Araqib.¹⁹¹ Sheikh al-Turi told Human Rights Watch about the day of his home's demolition:

They confiscated all the contents of the house—even coffee, the children's medicine, etc. They loaded it all on trucks and took it away. They have special trucks with a forklift and they even took bales of hay—about 150 bales, expensive ones. The cupboards, kitchen equipment, clothes, water, food—they put everything on the back of these trucks and didn't bring it back. One big bag of flour costs 200 NIS and there are two bags in a container. They threw the flour out on

¹⁸⁸ Human Rights Watch interview with Sarah Kishkher, Um Mitnan, April 6, 2006.

¹⁸⁹ Human Rights Watch interview with Hamda Kishkher, Um Mitnan, April 6, 2006.

¹⁹⁰ Human Rights Watch interview with Sulimann Abu 'Bayid, Um Mitnan, April 6, 2006.

¹⁹¹ "Border Police and Green Patrol destroy 52 homes in the Negev," Arab Association for Human Rights press release, May 29, 2002.

the ground and took the containers away. We asked why they did that, and they said they wanted the containers.¹⁹²

Demolitions Accompanied by Police Violence/Clashes

On November 15, 2005, planning officials and a large number of police entered the unrecognized village of Bir al-Mashash to distribute mass demolition orders. Villagers tried to block police from delivering warnings by using their bodies as physical barriers and in some cases throwing stones at the forces. The police fired into the air and used clubs against villagers, and in the end 12 villagers were hospitalized, including a pregnant woman who later miscarried. The police arrested 42 residents of the village.¹⁹³ In December 2005, Adalah filed complaints with the Police Investigation Division (PID) against border policemen for using excessive force and injuring 12 protesters. By the end of 2006, the PID had not responded.

Suliman Abu 'Bayid, from RCUV, was there that day, recording the events on camera. He told Human Rights Watch:

The residents were trying to make a body barrier between the police forces and their homes. The police kept advancing until they reached them and then started beating them with batons. People started throwing stones in return. The police got inside the houses and broke things and even beat the women. I was taking photos from a spot between two homes and I found a woman on the ground bleeding. At one point I took a photo of someone who was being beaten by the police, and suddenly the police hit my camera with a stick. The police surrounded me and accused me of throwing stones earlier and then running away from them, which was ridiculous as I'd been photographing the whole time. Eight of them started beating me and every time a new policeman came around the corner he'd hit me too. I

¹⁹² Human Rights Watch interview with Sheikh al-Turi, Al Arakib, April 2, 2006.

¹⁹³ *The Negev Coexistence Forum Newsletter*, 5th Edition, January 2006, http://www.dukium.org/user_uploads/News-Letters/NL5E-4web.pdf (accessed May 23, 2007).

was beaten on the lips, head, back, legs. I couldn't walk for a week. After they finished one of them told me I was arrested.¹⁹⁴

Another woman was beaten badly on the head and suffered a concussion. She told Human Rights Watch how she found it hard to walk any distance or concentrate due to dizziness and headaches that she still suffered months later.

Salim Abu Alqian, from Um al-Hieran, described a similar incident at his village:

They came to demolish my father-in-law's house on June 14, 2004, at 8 a.m. They brought 200 policemen, border police, and the brigadier of the southern district. I negotiated with them. I said you can demolish, but give us time. They gave us two hours, and in that time we went to Adalah and got an injunction for 48 hours. When the police saw the order they became really angry and violent. They started beating people and told people not to go into my father-in-law's house. Some people went in anyway, including my sisters, and they beat them. There were clashes, and they arrested some people and evacuated others by ambulance. They arrested my son Rami.¹⁹⁵

Aliya al-Talalqah, 37, from Twayil Abu Jarwal, told Human Rights Watch how the authorities destroyed her home in September 2006. "The police came into the house and threw me on the ground. I was ripping at my hair and clothes and screaming. I was totally beside myself. The kids were terrified, hanging onto me and screaming."¹⁹⁶

Self-demolition

Several people described how owners demolished their own homes. Shiekh Abu Sbeit, from Bir al-Mshash, told Human Rights Watch:

¹⁹⁴ Human Rights Watch interview with Suliman Abu 'Bayid, Um Mitnan, April 6, 2006.

¹⁹⁵ Human Rights Watch interview with Salim Abu Alqian, Um al-Hieran, March 29, 2006.

¹⁹⁶ Human Rights Watch interview with Aliya al-Talalqah, Twayil Abu Jarwal, December 20, 2006.

My brother was forced to demolish his house in 1993. The court decision was either a fine and jail or demolish the house himself. My brother had a beautiful house, and it was expensive to build. He had taken loans to build it, and then he had to demolish it. My brother served in the [Israeli] army his whole life and still lost his home.¹⁹⁷



The brother referred to in the above testimony in front of ruins of his house demolished in 1993. © 2006 Lucy Mair/Human Rights Watch

Sarah Kishkher, whose home in Um Mitnam was demolished (see above), said, “We were about to demolish the homes ourselves so that we could salvage as much as possible.” She explained:

My husband was already removing some of the metal that formed the top and sides of the house. The inspectors used to come every week to

¹⁹⁷ Human Rights Watch interview with Sheik Abu Sbeit, Bir Mshash, March 30, 2006.

say they were going to demolish the house. We got tired of the threats, and that's when we decided to do it ourselves.¹⁹⁸

A resident of the unrecognized village of Wadi al-Ne'am told Human Rights Watch:

When they came there were three houses they wanted to demolish. We said, we don't want you to cause panic in the community so we'll demolish them ourselves. They were waiting outside the village, and we demolished them ourselves, and then they came back to check. We didn't leave anything showing except the foundation because you need special equipment to dig that out. The officer said it's not enough and brought his bulldozer anyway and started digging out the foundations. They were very aggressive. I don't think they came to do a demolition, since we did that ourselves, but rather to provoke us and to cause panic.¹⁹⁹

Mohamed Abu Solb told Human Rights Watch how he demolished his own shops, built on family land:

Three years after I built my first shop, they came and told me to demolish it. Just the sand I brought to level the land cost about 30,000 NIS for 1,850 tons. They issued a demolition order, and I demolished it myself in February 2003. They don't come when you are building or have just finished—they wait until your business is up and running so you will suffer the worst financial impact. I had borrowed money from people, and I'm still paying off the loans today. The total amount of loss was 150,000 NIS.²⁰⁰

¹⁹⁸ Human Rights Watch interview with Sarah Kishkher, Um Mitnan, April 6, 2006.

¹⁹⁹ Human Rights Watch interview with Nasim Jirjawi, Wadi al-Ne'am, April 9, 2006.

²⁰⁰ Human Rights Watch interview with Mohamed Abu Solb, shop across from Bir Mshash, March 30, 2006.



Above, Abu Solb's destroyed shop; below, his new shop, also built without a permit. © 2006 Lucy Mair/Human Rights Watch



Impact of Home Demolitions

After a demolition families often live in makeshift shelters that do not protect them against the elements and that lack basic facilities. Many people do not have the money to rebuild or are afraid that rebuilding will invite future demolition. Human Rights Watch asked a group of women in Um Mitnan whether they would rebuild again after a demolition left several families homeless, some for the second or third time. One replied adamantly, “No, that’s it. We are not building again.” The family now lives in tents made from burlap sacks, plastic sheeting, and other materials they managed to salvage. Hamda Kishkher asked, “Even if they come again and demolish our tents, what do we care? How much worse could it be?”²⁰¹

Many feel cheated or incredulous. Sarah Kishkher asked, “Why would they demolish such basic structures? You can hardly call them homes. We didn’t even have electricity. It’s not that we built palaces, it’s just cement blocks on the sides and a tin roof.”²⁰²

The same group of women spoke about the physical and emotional impact of the demolition, including the struggle to keep the children’s food and milk from spoiling and the family’s meager belongings clean. Sarah Kishkher said:

We wake up with a thousand questions such as, “How are we going to store and prepare the food?” and “How are we going to keep the children and the place clean?” Nothing works properly in the tents. Everything used to be so clean and neat. We could keep the home organized—we had cupboards to fold the children’s clothes and keep them in. We could bathe the children whenever we wanted. Everything is in this sandy dirt. We can’t even keep food for the baby in the fridge. We have lost everything.²⁰³

²⁰¹ Human Rights Watch interview with Hamda Kishkher, Um Mitnan, April 6, 2006.

²⁰² Human Rights Watch interview with Sarah Kishkher, Um Mitnan, April 6, 2006.

²⁰³ Human Rights Watch interview with Sarah Kishkher, Um Mitnan, April 6, 2006.

Hamda Kishkher, five months pregnant, and with a nine-month-old son, described the discomfort of sleeping on the rocky ground and the lack of privacy. “In this small tent we have no space. We all have to lie packed closely together in this small space. If someone actually wants to get some sleep they go sleep in the car.”²⁰⁴

Fadia Kishkher spoke of health problems and her feeling of despair: “The last few days were really hard because of the strong rains at night. We found out that the tent leaks. I’m sick with ulcers. Sometimes I feel so bad that I can’t even take care of the children. Only the children keep me from killing myself.”²⁰⁵

“We were very sad when we came from school and saw that our house was gone,” said Saher Kishkher, age 11.²⁰⁶

Aliya al-Talalqah from Twayil Abu Jarwal said, “It took us five-six days after the demolition to make these tents. We slept outside on mats, like wild animals, with the sun in the day and the cold at night, with small children.”²⁰⁷

Fatima al-Ghranami, 60, talked about the loss of her home:

I was living in a nice brick house with a metal roof, and the bricks protected me from the heat and cold. Now I’m settling for this makeshift home because I’m afraid they’ll come to demolish it, too, and anyway I don’t have money to build another nice house. In the winter it’s extremely cold and in the summer it’s so hot, and this house doesn’t protect me from the elements. I have diabetes, and it is very hard to live under these conditions. But I have no alternative. I sold all my gold to build the other house. I lost all my savings when they demolished it. I don’t have anything left.²⁰⁸

²⁰⁴ Human Rights Watch interview with Hamda Kishkher, Um Mitnan, April 6, 2006.

²⁰⁵ Human Rights Watch interview with Fadia Kishkher, Um Mitnan, April 6, 2006.

²⁰⁶ Human Rights Watch interview with Saher Kishkher, Um Mitnan, April 6, 2006.

²⁰⁷ Human Rights Watch interview with Aliya al-Talalgah, Twayil Abu Jarwal, December 20, 2006.

²⁰⁸ Human Rights Watch interview with Fatima al-Ghanami, Um Mitnan, April 2, 2006.

In 2006, the Israeli NGO Physicians for Human Rights-Israel published findings on the emotional impact of home demolitions on children in the Negev. They said that the demolitions are a source of serious trauma for children, including the physical trauma of being without adequate housing during winter months and the emotional trauma of losing stability and security of shelter.²⁰⁹

²⁰⁹ Orli Almi, *The Ramifications of House Demolitions in Israel on the Mental Health of Children* (Tel Aviv: Physicians for Human Rights Israel, January 2006).

VII. Lack of Compensation or Adequate Alternatives

Since the 1970s, Israel has offered the Bedouin some form of minimal payment or other compensation for structures and land, but only if the family agrees to move to one of the government-planned townships and signs away any claims to its ancestral land and home. The Bedouin reject the compensation amounts as being insultingly low, especially when compared to the much more favorable amounts the state has paid to evacuated Sinai and Gaza settlers, or farmers whose land the state expropriated for building the Trans-Israel Highway (see below). The Bedouin do not receive any compensation at all, and their land claims are not recognized, if they reject the conditions attached, and the government subsequently demolishes their homes.

The Israel Land Administration portrays the compensation it offers as “generous.” On its website, the ILA boasts: “Bedouin families that leave the dispersion for permanent villages receive exceptionally high compensation from the state. Israel offers Bedouin families compensation to leave their buildings in the dispersion. The compensation is many times the value of the illegal structures they leave.”²¹⁰

Yet in 2002, Dudu Cohen, the head of the Ministry of Interior for the Southern Region, noted a different reality: “The conversion ratios (in money and in land) offered the Bedouin,” he acknowledged, “are not reasonable/fair when the Bedouin does his feasibility calculation, i.e. – how much will the state pay him for the land he claims, and how much will he have to pay the state for the land/building plot in the existing/planned localities.”²¹¹

Villagers from Tarabin al-Sane’ described the problem of inadequate compensation. Some of the villagers signed an agreement with the ILA to leave their unrecognized

²¹⁰ Israel Land Administration, “The Bedouin of the Negev,” http://www.mmi.gov.il/static/HanhalaPirsumim/Beduin_information.pdf (accessed May 21, 2007). The ILA does not use the term “unrecognized village” but rather prefers to refer to the Bedouin in the Negev as the Bedouin “dispersion.”

²¹¹ Swirski and Hasson, *Invisible Citizens*, p. 24.

village next to Omer and move to a newly established village for the Tarabin near Rahat. Talal, who still lives in Tarabin al-Sane', said:

My brother moved to the new town because he has disabled children, and he needed a real home. He got 180,000 NIS compensation for the structure he left here and an 800-meter plot. But it turns out the compensation they paid him wasn't enough to build a new house. He had to use all his savings, and it still wasn't enough.²¹²

Human Rights Watch visited the new Tarabin village, which looks like a ghost town with tens of half-built homes along deserted streets, in April 2006. Talal's brother, Kamal, said:

I can't finish the house and live in it due to lack of money. I even managed to save a lot of money because I'm a builder, so I laid my own tile and did the pipes and electricity myself. But still there are no light fixtures, no counters in the kitchen, no toilets or sink, no furniture. Thirty percent of the compensation I received was gone before I even started to build because we had to pay for the utility companies to open electricity, sewerage, and water infrastructure on our plots.²¹³

When Human Rights Watch visited the new village the family was living in a tin shack they constructed behind their unfinished home. Kamal also complained that the government had violated their agreement with him. He said ILA officials promised him a plot of agricultural land that he never received. He also complained that the village offers no employment, health services, or public transport. To take his disabled son to his regular appointments at Soroka medical center in Beer Sheva, Kamal has to pay a taxi 125 NIS each direction. Kamal said: "The bottom line is that the rest of the Tarabin villagers should stay where they are [in the unrecognized village next to Omer] and not come to this place to suffer the humiliation, isolation, and defeat that we are suffering. At least in the old village we could get public

²¹² Human Rights Watch interview with Talal [last name withheld], April 6, 2006.

²¹³ Human Rights Watch interview with Kamal [last name withheld], Nahal Shamariya, April 11, 2006.

transport to the doctor. At least there it was possible to find some work, but here there is nothing. One day there is worth a year here.”²¹⁴

Comparison of Compensation Rates

The exact compensation offered Bedouin over the years has increased slightly, although the basic formula has remained the same: Bedouin with less than 400 dunams of land receive no alternative land but only monetary compensation, while those with more than 400 dunams receive 20 percent in alternative land and 80 percent in monetary compensation. In the unrecognized villages, the actual monetary compensation varies between 1,100 and 3,000 NIS per dunam, a fraction of the market value of the land.²¹⁵

By way of comparison, the average Jewish family who owned a housing plot in a Gaza settlement received or will receive between 1.5 and 2 million NIS in compensation.²¹⁶ Owners of agricultural land confiscated to build the Trans-Israel Highway received compensation in the form of the same amount of good quality farmland at nearby Kibbutz Bahan.²¹⁷

Recognized Townships

Bedouin not only reject the low compensation rates the state offers, but also what they view as the unacceptable alternative living arrangements that exist in the government-planned townships. As mentioned earlier in the report, the townships are among the most deprived locations in Israel and do not offer the Bedouin any situation that is compatible with their traditional way of life.

The Israeli Central Bureau of Statistics periodically compiles a chart showing the socioeconomic ranking of all localities in Israel with 1 being the lowest and 198 being the highest. The following extract from the 2003 chart shows that the Bedouin

²¹⁴ Ibid.

²¹⁵ Swirski and Hasson, *Invisible Citizens*.

²¹⁶ Meirav Arlosoroff, “Each Gaza evacuee family to get NIS 1.5-2 million in compensation,” Haaretz, February 22, 2007 <http://www.haaretz.com/hasen/spages/828913.html> (accessed September 16, 2007).

²¹⁷ Central Bureau of Statistics ranking of 204 local authorities in Israel in 1995 taken from Swirski and Hasson, *Invisible Citizens*.

townships constitute seven of the poorest eight localities in Israel.²¹⁸ For comparison, some of the Jewish locales in the Negev are also included below. Two of them fall within the five wealthiest communities in Israel.

Kseifa	1
Tel Sheva	2
Rahat	3
Arara	4
Segev Shalom	5
Lagiya	7
Hura	8

Dimona	95
Arad	109
Beer Sheva	118
Meitar	193
Lehavim	195
Omer	197

Researchers from Adva Center collated data from several existing studies on the problems of the townships and described the following major problems in their report:²¹⁹

- The budgets available to the local authorities in the seven government-planned Bedouin townships are the lowest in the entire country.
- At the end of the 1990s, half of the houses in the townships were still not connected to a sewerage system.
- There is no public transportation either within the townships or between the townships and other cities.

²¹⁸ Israel Central Bureau of Statistics. http://www.cbs.gov.il/publications/local_authorities2003/pdf/to1.pdf (accessed June 19, 2007).

²¹⁹ Shlomo Swirski and Yael Hasson, *Invisible Citizens Israel Government Policy Toward the Negev Bedouin* (Tel Aviv: Adva Center, February 2006), <http://www.adva.org/UserFiles/File/NegevEnglishFull.pdf> (accessed May 23, 2007).

Ariel Dloomy from Dukium points out that there are no public libraries, sports centers, swimming pools, or real industrial areas in any of the townships. Some of the townships lack post offices or community centers.²²⁰ And according to researchers at Ben Gurion University of the Negev, the townships also suffer from poor roads, the absence of economic activity, and inadequate health, education, social, and recreational services.²²¹ The researchers conclude:

The Bedouin are not party to the planning process in any meaningful sense. Moreover, often-repeated government commitments to rectify wrongs, to meet obligations, and to correct discrimination have almost never been honored. An urban Bedouin would be justified if he/she concluded that the failure of the urbanization process was by design, since it is hard to believe that so much could have gone wrong by accident or by sheer incompetence.²²²

Another major problem facing the government-planned townships, mentioned earlier, is the fact that the state confiscated land for the townships that is claimed by other Bedouin. In the areas of townships where Bedouin have registered ownership claims over the land, it has been difficult for planning and land authorities to develop housing plots, exacerbating a real shortage of housing options in the townships. Ahmed al-Asad, head of Lakiya Local Council, claims that of the township's 9,000 residents, 3,000 live outside the official municipal borders, in unrecognized neighborhoods. Meanwhile, there are 4,000 empty plots inside Lakiya that cannot be allocated due to Bedouin ownership claims over them.²²³

Some government officials continue to argue that the Bedouin of the unrecognized villages can and should be housed inside these seven government-planned townships. According to the Ministry of Justice, "the existing towns can accommodate most of the needs of the Bedouin population. In all of these towns

²²⁰ Email to Human Rights Watch, June 8, 2007.

²²¹ Abu Asad and Lithwick, *A Way Ahead*, p.11.

²²² Ibid.

²²³ Protocol of 01/16/2007 meeting of the Knesset Internal Affairs and Environment Committee on Master plans of Bedouin settlements in the Negev and home demolitions. <http://www.knesset.gov.il/protocols/data/html/pnim/2007-01-16.html> [Hebrew] (accessed September 9, 2007).

vacant lots await additional occupants.”²²⁴ In its July 23, 2007 letter to Human Rights Watch, the Ministry of Justice declared that there were plans to expand the existing townships and market new housing plots. The Ministry stated that “there are 3,000 empty land plots in the existing permanent towns which can be populated immediately by the Bedouins from the diaspora. In addition, there are another 4,400 plots which can be developed if demand will require it.”²²⁵

Yet other government officials who are more intimately involved with the problem of Bedouin housing acknowledge the complex reality of the situation. Dudu Cohen, the head of the Ministry of Interior for the Southern Region, told a Knesset committee, “In Kseife and Lakiya you can find thousands of developed plots that cannot be marketed because of ownership claims.”²²⁶ The minister of housing himself stated, “If there is an ownership claim over a plot, no Bedouin will agree to live there.”²²⁷

The problems are known, and yet planning authorities continue to issue demolition orders and demolish homes, while claiming that the Bedouin can simply relocate to one of the seven government-planned townships. Human Rights Watch interviewed several Bedouin who bought options for plots in the original seven government-planned townships decades ago and have yet to receive a plot. The case of the Abu ‘Bayid clan below is illustrative. There are hundreds of families in the township of Lakiya alone who have bought plots from the ILA but never received them.²²⁸

The Abu ‘Bayid clan is originally from Sharia (near today’s Netivot), but the military government forcibly transferred them to Lakiya, and later to Tel Arad, in the early 1950s. When the government announced the building of the recognized township of

²²⁴ Letter from the Department for International Agreements and International Litigation in the Ministry of Justice, to unknown party, dated February 13, 2005 and published on the Ministry’s website.

²²⁵ Letter to Human Rights Watch from the Ministry of Justice, July 23, 2007.

²²⁶ Protocol of 11/06/2006 meeting of the Knesset Internal Affairs and Environment Committee on Master plans of Bedouin settlements in the Negev and home demolitions. <http://www.knesset.gov.il/protocols/data/html/pnim/2006-11-06.html> [Hebrew] (accessed May 23, 2007).

²²⁷ Protocol of 01/16/2007 meeting of the Knesset Internal Affairs and Environment Committee on Master plans of Bedouin settlements in the Negev and home demolitions, <http://www.knesset.gov.il/protocols/data/html/pnim/2007-01-16.html> [Hebrew] (accessed September 9, 2007).

²²⁸ According to lawyer Banna Shoughry-Badarne at the Association for Civil Rights in Israel, some of the other clans whose families are affected by this problem are the Abu Rteewish, abd al-Khaleq, Abu Bader and al-Talalqah, and families in the township of Hura face the same problem. Email from Banna Shoughry-Badarne to Human Rights Watch, June 18, 2007.

Lakiya in the 1970s, many members of the Abu ‘Bayid clan were eager to go, as some clan members had ancestral land in the area.

Sultan Abu ‘Bayid, 48, was a teenager in the 1970s when Lakiya was being planned. He told Human Rights Watch: “I dreamed about a real, modern house with electricity and running water. We had been moved from place to place. We felt like paper that the wind had picked up and blown wherever it wanted. We just wanted to settle down somewhere permanent.”²²⁹

When Sultan Abu ‘Bayid’s family first agreed to move to Lakiya, along with many other members of their clan, the authorities had not yet planned the town. Many members of his family purchased land options that were supposed to translate into actual plots when the town was completed. “The Israel Lands Authority made an offer that each nuclear family or household could buy a plot of one dunam of land and the authorities would do the zoning and planning for Lakiya, after which we could start building homes on our plots,” Sultan Abu ‘Bayid said, adding:

They told us that “you have an option to buy a plot now even though there is no Lakiya and no planning document approved for Lakiya. But don’t worry, you’ll get your plot later.” For us, we believed that if we bought the option we were securing our future. We thought it was in the interests of the government to concentrate us in these new townships, and therefore when the government said it was planning the town we thought it would happen immediately. We had no reason to think the government would renege, as the whole scheme was clearly in its interests.²³⁰

Sultan Abu ‘Bayid bought his option in 1979. Over the years, after many rounds of negotiations, he believed that he had reached an agreement with the ILA over a particular plot:

²²⁹ Human Rights Watch interview with Sultan Abu ‘Bayid, Beer Sheva, April 10, 2006.

²³⁰ Ibid.

I wrote the number of this plot on my ID card—here you can see it—I am supposed to be in neighborhood 3, plot 281, Lakiya. I went to the Ministry of Interior and asked it to register this as my official address, and now it is in my ID card as you see. And yet today it is still an empty plot. From the beginning the real Bedouin owner of this piece of land agreed to let me take the plot there and to build on it. I am an active member of the community and have been active in the struggle to recognize the villages and improve the quality of life in Lakiya and the townships. I don't have enemies in the community. In 1992 the Bedouin owner of this plot agreed to let me use the land and gave me a signed letter. When I got this letter from the owner in '92 and went with my wife to the ILA I even had to pay more money since the plot was a bit larger than the original one dunam option I had purchased. So I paid the additional money. But I still didn't get the plot. Then two years ago the Bedouin owner said, "Let's go together so you can finally get the plot." While there are many other people who have a problem because the real Bedouin owner or claimant of the land won't let them develop, that is not my problem—on the contrary he is willing to help solve the problem.²³¹

Despite all of Sultan Abu 'Bayid's efforts, today he still lives in an unrecognized neighborhood in an unlicensed building, waiting for the ILA to hand over his plot. "It is almost 30 years later, and I still don't have my plot."²³²

Hundreds of families in Lakiya suffer the same problem as the Abu 'Bayids. In 1999 the Association for Civil Rights in Israel submitted a petition on behalf of some of these families, this time from the Abu Rteewish clan. After seven years, ACRI and the Abu Rteewish clan received a high court judgment on December 17, 2006.²³³ During the high court proceedings, the ILA promised to expand Lakiya and add additional residential plots, but the high court refused to put this promise into its final judgment (see below). In addition, according to Banna Shoughry-Badarne, the ACRI

²³¹ Ibid.

²³² Ibid.

²³³ High Court of Justice Case 6459/99, December 17, 2006 [Hebrew], on file with Human Rights Watch.

lawyer who represented the Abu Rteewishs clan in court, even if the ILA is sincere, this process could take at least several more years. She told Human Rights Watch:

The area where these plots will supposedly be allocated is currently outside the “blue line” or official town boundaries of Lakiya. First, Lakiya has to receive permission to expand, the blue line has to be changed and the new district master plan covering this area has to be approved, all before the families could receive these new plots from the ILA.²³⁴

Shoughry-Badarne also complained that the entire arrangement was based on a verbal promise by the ILA, which has continually reneged on its promises to the Abu ‘Bayid and other Lakiya clans. “They promised verbally that they would provide plots after the expansion of Lakiya is finalized. The court accepted the promise. We asked the court to officially record this by writing it into the court’s verdict, but it refused, claiming that the government will stand by its promise.”²³⁵

The court’s final verdict reads:

The appellants [Abu Rteewish family] requested that the agreements reached between them and the respondents [the state] will be restated in the verdict, but the judge sees no need for that since the respondents must act according to the statements made to the court, and he sees the case as closed.²³⁶

²³⁴ Human Rights Watch interview with Banna Shoughry-Badarne, Jerusalem, February 27, 2007.

²³⁵ Ibid.

²³⁶ High Court of Justice Case 6459/99.

VIII. Israel's Obligations under International Law, and Comparative Practice

The Prohibition Against Discrimination

Equality and freedom from discrimination are fundamental human rights norms. The prohibition against discrimination is spelled out in Article 2 of the Universal Declaration of Human Rights²³⁷ and codified in the major human rights treaties that Israel has ratified including the International Covenant on Civil and Political Rights (ICCPR),²³⁸ the International Covenant on Economic, Social and Cultural Rights (ICESCR),²³⁹ the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),²⁴⁰ and the Convention on the Rights of the Child (CRC).²⁴¹

Israel does not have any constitutional or legislative guarantees of equality. Nor do Israel's land laws or the regulations governing the Israel Land Administration and planning authorities prohibit discrimination in allocation of land and housing or promote planning as a means of creating civic equality.

²³⁷ Article 2 states, "Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948).

²³⁸ Article 2.1 states that State Parties will ensure that the rights in the Covenant will be ensured "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, acceded to by Israel on October 3, 1991.

²³⁹ Article 2.2 states that State Parties will guarantee that the rights in the covenant "will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, acceded to by Israel on October 3, 1991.

²⁴⁰ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969, acceded to by Israel on January 1, 1979.

²⁴¹ Article 2.1 states that States Parties will ensure the rights in the Convention "to each child within their jurisdiction without discrimination of any kind irrespective of the children's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status." Convention on the Rights of the Child, adopted November 20, 1989, G.A. Res. 44/25, U.N. Doc. A/RES/44/25, entered into force September 2, 1990, acceded to by Israel on October 3, 1991.

In its February 2007 consideration of Israel's report, the Committee on the Elimination of Racial Discrimination (CERD), which oversees states' compliance with their obligations under the ICERD, recommended "that the State party assess the extent to which the maintenance of separate Arab and Jewish 'sectors' may amount to racial segregation."²⁴²

Regarding land allocation and the role of selection committees in governing admission to small communities, the CERD recommended "that the State party takes all measures to ensure that State land is allocated without discrimination, direct or indirect, based on race, colour, descent, or national or ethnic origin. The State party should assess the significance and impact of the 'social suitability' criterion in this regard."²⁴³

Alexander Kedar, an Israeli law professor, has documented Israel's discriminatory treatment of Bedouin regarding access to land, and identified both direct and indirect forms of discrimination. "The right to equality is also infringed when 'suspicious' use is made of group membership as a criterion for providing social benefits, and in cases in which the relevant criterion is perceived as neutral, but its application creates discriminatory results," he writes. "For example, allocation of land rights in the Negev, particularly the granting of the right to live in suburbs and on individually-owned farms to Jews only, grossly violates, in my opinion, the principle of equality set forth in international law."²⁴⁴

Right to Adequate Housing, Privacy, and Choice of Residence

Israel has ratified a number of international human rights treaties that guarantee the right to adequate housing and to privacy, protect against forced evictions, and allow for choice in place of residence. Yet Israel has failed to uphold these obligations with regard to its Bedouin population. The ICESCR obligates states parties to use "all appropriate means" to promote and protect the right to housing and to protect against forced evictions.

²⁴² Committee on the Elimination of Racial Discrimination, "Concluding Observations of the Committee on the Elimination of Racial Discrimination: Israel," CERD/C/ISR/CO/13, June 14, 2007.

²⁴³ Ibid.

²⁴⁴ Alexander Kedar, "Land Settlement in the Negev in International Perspective," *Adalah Newsletter*, vol. 8, September 2004.

In its General Comment 4, the Committee on Economic, Social and Cultural Rights, which monitors the compliance of states parties to the ICESCR, held that “the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity.”²⁴⁵ The General Comment goes on to list the factors that are necessary for the provision of adequate housing, including legal security of tenure, cultural adequacy, and the availability of services and infrastructure.

Human Rights Watch’s visits to unrecognized villages and interviews with Bedouin homeowners found that Bedouin in the unrecognized villages live in circumstances wholly devoid of security, peace, and dignity. Israel’s planning apparatus has denied any legal standing to villages in which tens of thousands of Bedouin live and has, in the process, denied Bedouin citizens security of tenure, adequate services, infrastructure, and habitable housing. As a result, Bedouin are reluctant to invest in their current housing to make it habitable, knowing that it may be demolished, and are compelled to live in squalid and inadequate conditions following demolitions.

General Comment 4 also stipulates:

[T]he right to freedom of residence and the right to participate in public decision-making are indispensable if the right to adequate housing is to be realized and maintained by all groups in society. Similarly, the right not to be subjected to arbitrary or unlawful interference with one’s privacy, family, home or correspondence constitutes a very important dimension in defining the right to adequate housing.²⁴⁶

Since 1948, Israel has developed few residential opportunities for Negev Bedouin—just the seven government-planned townships and the nine newly recognized or created villages. In theory, Bedouin can apply to live in Jewish rural or semi-

²⁴⁵ UN Committee on Economic, Social and Cultural Rights, “The right to adequate housing,” General Comment No. 4, UN Doc. HRI/GEN/1/Rev.7 (1991), para. 7.

²⁴⁶ *Ibid.*, para. 9e.

agricultural villages, but “selection committees” closely guard the demographic profiles of these small communities and consistently reject non-Jewish applicants based on lack of “suitability.” The ILA, in turn, allocates state land on the basis of the selection committees’ recommendations. Thus the state effectively denies Bedouin equal access to state land as well as suitable options regarding where they want to live.

Many Bedouin described to Human Rights Watch the ways in which planning authorities and police aggressively entered their home and land, with no prior warning and without providing of any legal order for entry, in order to hand out orders, take measurements of the property, and inspect for new construction. These actions often amount to arbitrary interference with Bedouin’s privacy, family and home.

Security of Tenure

The Economic and Social Council, in its General Comment 4, has written:

Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.²⁴⁷

In Israel, large sectors of the population do enjoy security of tenure, protected by property laws. However, Bedouin of the unrecognized villages suffer disproportionately from lack of tenure. Despite the state’s central role in creating this situation, and despite the wide gap between the Bedouin’s lack of tenure and that enjoyed by the rest of the population, the government has taken insufficient steps to provide the Bedouin secure tenure. In fact, the state has exploited the Bedouin’s vulnerability in this regard through the use of punitive enforcement measures.

²⁴⁷ Ibid., para. 8a.

Right to Land

In General Comment 4, the Committee on Economic, Social and Cultural Rights recognized the importance of accessibility to land as a housing resource. In relation to disadvantaged groups, the General Comment states: “Disadvantaged groups must be accorded full and sustainable access to adequate housing resources.... Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal.”²⁴⁸

In Israel the opposite appears to be happening. While the majority population has access to land through the expansion of existing communities and the development of new ones, Bedouin cannot even win recognition for most of the existing unrecognized villages.

Forced Evictions

Regarding forced evictions, the Committee on Economic, Social and Cultural Rights has written that “instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.”²⁴⁹ In its General Comment 7, on forced evictions, the Committee noted, “Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction.”²⁵⁰ The Committee also emphasized the government’s obligation to ensure there is no discrimination when evictions do occur and that those affected by evictions be consulted, offered feasible alternatives and adequate compensation, and provided with legal remedies and procedures.²⁵¹ In none of the cases documented in this report did individuals receive compensation for home demolitions; nor did they believe they had real legal remedies, given the serious disincentives for approaching the courts. Furthermore, many of the

²⁴⁸ *Ibid.*, para. 8e.

²⁴⁹ *Ibid.*, para. 18.

²⁵⁰ UN Committee on Economic, Social and Cultural Rights, “The right to adequate housing (art. 11.1): forced evictions,” General Comment No. 7, UN Doc. HRI/GEN/1/Rev.7 (1997), para. 10.

²⁵¹ *Ibid.*, para. 13.

individuals or communities slated for demolition or eviction testified to the fact that even where they had attempted to cooperate with the authorities to find adequate alternatives, their efforts had failed.

General Comment 7 also states, “In cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality.”²⁵² Home demolition for lack of a building permit, in circumstances where the owner has no opportunity to obtain such a permit, is manifestly unreasonable and disproportionate to any legitimate aim that the demolitions are alleged to be pursuing.

General Comment 7 states that individuals facing eviction should receive adequate prior warning, and that the evictions should not result in homelessness. “Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.”²⁵³

Bedouin in the unrecognized villages rarely receive prior notice regarding the specific time or date that a demolition will take place and do not know when or even if demolition will follow an official demolition order. The authorities do not offer Bedouin temporary shelter or alternative accommodation after a demolition, unlike other Israeli victims of demolition or evacuation, such as the Gaza settlers.

Finally, General Comment 7 notes the importance of appropriate information since “effective monitoring of the right to adequate housing, either by the Government concerned or by the Committee, is not possible in the absence of the collection of appropriate data.”²⁵⁴ Basic information on the scope and trends of demolitions in Israel is not publicly available.

²⁵² *Ibid.*, para. 14.

²⁵³ *Ibid.*, para. 16.

²⁵⁴ *Ibid.*, para. 21.

Indigenous Land Rights

During the past two decades states and indigenous peoples have been working to develop a UN Declaration on the Rights of Indigenous Peoples. In June 2006, the UN Human Rights Council adopted a Draft Declaration on the Rights of Indigenous Peoples and recommended its adoption by the General Assembly.²⁵⁵ While the Draft Declaration is not legally binding and will be subject to significant debate and negotiation following its adoption, it reflects the evolution of international discussion on norms around indigenous rights that may be codified in a binding document in the future. The Draft Declaration states that indigenous peoples have the right to “own, develop, control and use the lands... which they have traditionally owned or otherwise occupied or used” as well as “the right to the full recognition of their laws, traditions and customs, land-tenure systems and institutions for the development and management of resources and the right to effective measures by States to prevent any interference with, alienation of, or encroachment upon these rights.”²⁵⁶ While the scope of these rights is to be balanced with competing claims including those of the public good, the core right to protection of indigenous lands and property is clear.

In some regions with large indigenous populations, such as the Americas, regional human rights treaties have more explicit guarantees of the right to property, and regional human rights courts have reached important decisions regarding indigenous land rights. In the case of the *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, the Inter-American Court of Human Rights ruled that there is an international human right to enjoy the benefits of property, including the right of indigenous people to the protection of their customary land and resource tenure and to enjoy the lands that they have traditionally used and occupied.²⁵⁷

²⁵⁵ In 1995 the UN Commission on Human Rights adopted resolution 1995/32 to create an open-ended inter-sessional Working Group with the sole purpose of elaborating a draft declaration on the rights of indigenous peoples. The Working Group has convened 11 sessions to date and drafted the Draft Declaration adopted by the UN Human Rights Council (the successor to the UN Commission on Human Rights) in June 2006. Resolution 2006/2, adopted June 29, 2006.

²⁵⁶ Draft Declaration, article 26.

²⁵⁷ *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of August 31, 2001, Inter-Am. Ct. H.R., (Ser. C) No. 79 (2001).

One of the difficulties of creating a universal legal framework to protect the rights of indigenous peoples lies in the fact that there is no single, universally accepted definition of “indigenous people.” However two basic definitional approaches have gained prominence in the international community: (1) a subjective definitional approach, through which indigenous groups are allowed to identify themselves as indigenous, and (2) an objective approach, through which classification as “indigenous” is pursuant to a group or individual meeting objective, set characteristics such as a distinct language, culture, and tribal affiliation, and having been or descended from the original inhabitants of the territory at the time of conquest or colonization. Bedouin in Israel meet many of the objective criteria, and increasingly segments of the population self-identify as indigenous. In trying to reach a final “settlement” with its Bedouin population on the scope of land ownership, use and possession in the Negev, Israel would do well to consider the comparative practice of other states as detailed in the next section.

Recent Practices of Other Governments

In some other states where there is a conflict over indigenous lands, governments and courts have attempted to address these claims and provide redress where there have been historical injustices. For example, governments in New Zealand, Canada, and Australia have established national processes, ranging from commissions to tribunals, to address the problem, and their national courts have passed precedent-setting judgments recognizing indigenous land rights and the concept of “native title.”²⁵⁸

New Zealand

In New Zealand, an Act of Parliament in 1975 established a permanent commission of inquiry, the Waitangi Tribunal. The act charges the tribunal with investigating and making recommendations on claims brought by indigenous Maori relating to a variety of issues. This tribunal process has settled many aboriginal land claims,

²⁵⁸ According to Australia’s Native Title Act of 1993, “The expression ‘native title’ ... means the communal, group or individual rights or interests of Aboriginal people... in relation to land or waters, where: a. the rights and interests are possessed under the traditional laws ... and ... customs observed, by the Aboriginal people...; and b. the Aboriginal peoples ... have a connection with the land or water; and c. the rights and interests are recognized by the common law of Australia.”

returning crown (state) land to its original Maori owners or instructing the government to pay compensation.

Canada

In Canada, in 1991, then-Prime Minister Brian Mulroney created the Royal Commission on Aboriginal Peoples (RCAP). RCAP issued its five-volume, 4,000-page report in 1996 with 440 recommendations calling for sweeping changes including new legislation and institutions, additional resources, a redistribution of land, and the rebuilding of Aboriginal nations, governments, and communities. In addition, a precedent-setting Supreme Court of Canada decision, *Delgamuukw v. British Columbia* [1997] 3 S.C.R. 1010, addressed for the first time the notion of “aboriginal title.” In this case, the court ruled in favor of the indigenous people’s claim of ownership and legal jurisdiction over 133 individual territories, a total of 58,000 square kilometers of northwestern British Columbia.

Australia

Australia’s High Court set an important precedent in its June 3, 1992, decision in *Mabo v Queensland*. In this case, the aboriginal Meriam people sought recognition that they were the owners or possessors of the Murray Islands in Queensland, based on long possession. The Queensland government argued that after colonization the British government had acquired ownership of all the territory. In the decision, the majority of justices held that there was a concept of “native title” in common law and that the aborigines’ native title to the area was not extinguished upon conquest.

In response to the *Mabo* judgment, the Australian Federal Parliament enacted the Native Title Act of 1993, which it has amended several times since. The act created a statutory definition of native title based on the High Court decision, and enabled indigenous people to make a claim for land with which they had a continuous and traditional association. The act also created a Native Title Tribunal, under the Attorney General’s office, which mediates native title claims under the direction of the Federal Court of Australia. The Tribunal has made determinations in 95 native

title cases; in 64 of those the court determined that native title existed in all or part of the disputed area. An additional 595 determinations are still pending.²⁵⁹

In addition the Native Title Act gave native title holders the right to negotiate Indigenous Land Use Agreements (ILUAs), which are voluntary agreements between a native title group and others, such as mining interests or development projects about the use and management of land and waters. The agreement is legally binding once finalized. Indigenous peoples of Australia have negotiated 268 of these.²⁶⁰

According to Fred Chaney, the outgoing deputy president of the Native Title Tribunal, the court has determined that indigenous groups in substantial areas of Western Australia have exclusive possession native title and that in other, substantial areas of the country indigenous people hold partial native title.²⁶¹

Creating a Land Claims Mechanism in Israel

These examples illustrate what is possible when governments make a good faith attempt to negotiate just solutions to contested land claims. Israel has an opportunity to create such a mechanism to adjudicate the outstanding claims in the Negev.

The current “settlement of title” process described in Chapter III is not a legitimate mechanism in the eyes of most Bedouin, who see the renewed litigation as an attempt to dispossess them of their small remaining claims. Currently many Bedouin representatives and community organizations are advising Bedouin not to engage in the process if the inevitable outcome is losing their rights to their land. Another problem is the length of time that has passed since the original registration of claims to title process in the 1970s. Sometimes the original claimants have died, and the number of descendants entitled to a share of the original claim has grown. In addition, the current process is far from transparent. Most Bedouin organizations

²⁵⁹ “National native title statistics,” *Talking Native Title*, Issue 22, pg. 8, March 22, 2007, http://www.nntt.gov.au/metacard/files/TNT22/issue22_march07.pdf (last accessed on March 25, 2007).

²⁶⁰ *Ibid.*

²⁶¹ “Native Title has been the greatest single agent of positive change,” *Talking Native Title*, Issue 22, March 22, 2007, http://www.nntt.gov.au/metacard/files/TNT22/issue22_march07.pdf (accessed March 25, 2007), p. 4.

said the first time they had heard of the renewed government counter-claims lawsuits was when Bedouin villagers had approached them for advice after receiving notice of one of these lawsuits. The government never formally announced that it was restarting the process, nor gave any information on how the process would work. This would have allowed community organizations and lawyers to assess various legal strategies, consult with outside experts, and prepare their clients.

Rather than litigating contested land claims in Israeli courts under restrictive land legislation that ensures that Bedouin cannot meet the evidentiary burden for ownership, Israel should establish a new, independent mechanism to negotiate with the community, such as a special tribunal. This process may entail establishing an independent commission to study the problem and make recommendations for the mechanism. The commission's work and any subsequent mechanism should be transparent, participatory, and inclusive.

IX. Detailed Recommendations

To the Government of Israel:

- Establish an independent mechanism, such as a special commission, to investigate the way in which land allocation, planning, and home demolitions are implemented with regard to the rights and entitlements of the Bedouin population. The commission's work should be guided by the right to housing as defined in Israel's international human rights obligations and should give special regard to any discriminatory and arbitrary impact that current policies and practices have on the Bedouin population.
 - The commission should be fully independent and make comprehensive recommendations as to how the government can provide secure tenure, adequate housing, and protection against forced evictions for residents of unrecognized villages.

To the Ministry of Interior, and to National, District and Local Planning Authorities:

- Conduct a comprehensive examination of Bedouin citizens' residential needs, in consultation with their communities, and create a national master plan and corresponding regional and local outline plans to address their housing and community needs.
 - Ensure the right of communities to choose residential options. Offer a range of settlement options to Bedouin citizens, not only urbanization.
- Review immediately the plans submitted by the Bedouin community and their advocates for recognizing and developing the unrecognized villages and/or for the creation of other rural and semi-agricultural residential options for Bedouin.
- Review the jurisdictional boundaries of the seven government-planned Bedouin townships and the nine newly recognized/established villages/townships, and where these boundaries are insufficient to meet the housing and livelihood needs of the population, plan for their expansion. Where the government and planning authorities have already submitted or approved expansion plans, ensure that these are adequately funded and

constructed in a timely manner. Jurisdictional expansions should never occur on land with contested land claims as it will be virtually impossible for Bedouin to live on these plots of land.

- Establish transparent and just criteria for the creation/recognition of new residential localities in Israel.
- Create legislative guarantees for the inclusion of Arab citizens of Israel, including Bedouin, in the planning process, including representation on planning bodies and mandated public sessions of these bodies in which affected individuals can participate.
- Cancel the Wine Route Plan. If the policy of establishing individual farms in the Negev continues, farms must be publicly tendered and awarded based on objective and transparent criteria. These farms should not be created on ancestral Bedouin land over which the Bedouin have registered a claim to title.
- Pay compensation for land expropriated for public purposes according to its full value, as determined by an independent assessor.
- Impose a moratorium on all Bedouin home demolitions and evictions until the aforementioned review has taken place and appropriate measures have been taken to ensure that the rights and interests of the Bedouin will be fully respected and protected in future implementation of planning and development policy.
- Enact legislation that provides the greatest possible security of tenure to residents of houses and land, and ensures that any evictions are carried out in a nondiscriminatory way and in accordance with international human rights norms.
- In cases where victims of home demolitions have been, or are, unable to provide for themselves immediately following a demolition, take immediate measures to ensure that adequate alternatives are available, including temporary housing.
- Separate the question of land ownership from the provision of services and official recognition of unrecognized villages.

- Withdraw all outstanding counter-claims lawsuits and establish a special tribunal for adjudicating land ownership claims that recognizes the traditional land ownership customs of the Bedouin and accepts evidence of possession, use, and ownership other than a formal land deed (*tabu*). The special tribunal should be guided by the principles spelled out in the UN Committee for the Elimination of All Forms of Racial Discrimination's General Recommendation No. 23 on Indigenous Peoples. These include the recommendation that governments take steps to return indigenous peoples' land and territories traditionally owned by them, and, only when this is not possible, due to factual reasons, grant fair and prompt compensation.
- Place in the public domain comprehensive information regarding home demolitions and forced evictions in the Negev, and comparative data on similar enforcement actions against unlicensed building elsewhere in Israel.
- Issue invitations to the UN special rapporteur on adequate housing and the special rapporteur on the situation of human rights and fundamental freedoms of indigenous people to study the problems of the Negev Bedouin and provide recommendations.
- Ratify the International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries (Convention No. 169).

To the United States and other international donors:

- Ensure that any aid funds allocated to, or used by, Israel for development of the Negev region are not used for further home demolitions and are conditioned on non-discrimination in planning, land allocation, and development.
- Urge Israel to conduct planning in consultation with the affected communities and to provide compensation and adequate alternatives to all those threatened with forced eviction.
- Urge Israel to publish all information regarding home demolitions and forced evictions in the Negev, and comparative data on similar enforcement actions against unlicensed building elsewhere in Israel.

To the United Nations special rapporteur on adequate housing and the special rapporteur on the situation of human rights and fundamental freedoms of indigenous people:

- Raise concerns with the government of Israel about ongoing evictions and home demolitions in the Negev.
- Request an invitation to conduct a visit to the Negev to study the problem in more depth and make recommendations addressing indigenous land claims.
- In any consideration of Israel's reports to UN treaty bodies, request specific information about Israel's treatment of the Bedouin, with regard to issues of non-discrimination, land allocation and access, adequate housing, and evictions.

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Appendix A: Special Procedures Address the Bedouin Problem

In 1998, during a review of Israel's compliance under the International Covenant on Economic, Social and Cultural Rights, the Committee stated in its concluding comments:

The Committee notes with deep concern that a significant proportion of Palestinian Arab citizens of Israel continue to live in unrecognised villages without access to water, electricity, sanitation and roads. Such an existence has caused extreme difficulties for the villagers in regard to their access to health care, education and employment opportunities. In addition, these villagers are continuously threatened with demolition of their home and confiscation of their land. The Committee regrets the inordinate delay in the provision of essential services to even the few villages that have been recognised. In this connection, the Committee takes note that while Jewish settlements are constructed on a regular basis, no new Arab villages have been built in the Galilee.[para. 26]

In 2007 Israel appeared before the Committee for the Elimination of Racial Discrimination (CERD), which commented in its concluding observations:

The Committee expresses concern about the relocation of inhabitants of unrecognized Bedouin villages in the Negev/Naqab to planned towns. While taking note of the State party's assurances that such planning has been undertaken in consultation with Bedouin representatives, the Committee notes with concern that the State party does not seem to have enquired into possible alternatives to such relocation, and that the lack of basic services provided to the Bedouin may in practice force them to relocate to the planned towns.[para. 25]

Furthermore, the CERD recommended that Israel:

enquire 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 Bedouin 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.

The Human Rights Committee, in its 1998 examination of Israel's compliance with the International Covenant on Civil and Political Rights, stated in its concluding observations that it:

also deplores the practice of demolitions, in part or in whole, of "illegally" constructed Arab homes ... The Committee considers the demolition of homes to conflict directly with the obligation of the State party to ensure without discrimination the right not to be subjected to arbitrary interference with one's home (article 17), the freedom to choose one's residence (article 12) and equality of all persons before the law and equal protection of the law (article 26).

[CCPR/C/79/Add.93, para. 24]

The special rapporteur on the right to housing, while primarily looking at housing rights violations in the Occupied Palestinian Territories, talks about administrative demolitions carried out in East Jerusalem:

[W]hatever the pretext in terms of builders breaking administrative norms, such destruction and suffering cannot be justifiable under the principles of necessity and proportionality in the State's use of force in the application of civil law.[para 21]

...

The demolitions ordered either for lack of permit or another pretext have a military dimension and a gratuitously cruel nature. Orders are

often issued without specifying the affected home(s), without indicating the date of the order or demolition, and without sufficient warning to inhabitants. Some administrative demolitions are carried out with no orders at all. In most cases of demolition for lack of permit, authorities wait until construction is complete before coming to destroy the home, inflicting the heaviest possible material loss to the victim. [para 22]

Appendix B: Home Demolition Statistics

Statistics provided by the Regional Council for Unrecognized Villages in the Negev

Date	2007			2006	2005	2004	2003	2002	2001
Total number of demolitions	227			96	15	23	63	23	8
	Number of demolitions	Date	Village name						
	14	1/9	twail	2	4	2	1	14	2
	2	1/16	wadi naam	2	1	1	4	2	6
	6	2/7	al batal	1	1	5	3	4	
	7	2/7	twail	6	2	1	1	1	
	30	5/8	twail	3	1	1	4	1	
	4	5/21	im al hiran	1	1	5	1	1	
	4	6/6	hashem zaneh	3	1	3	1		
	2	6/13	amra	1	1	1	1		
	13	6/13	twail	2	1	4	1		
	28	6/25	im al hiran		1		1		
	1	7/19	wadi naam	8	1		1		
	2	7/19	hirbat al watan	2			1		
	21	7/19	twail	5			1		
	2	8/1	al jurf	2			2		
	1	8/15	saaweh	2			1		
	15	8/30	twail	1			8		
	6	9/5	qatamat	1			1		

	15	10/24	twail	1			3		
	10	11/1	wadi naam	2			1		
	5	11/1	a-sir	2			2		
	3	11/7	bir el hamam	6			9		
	1	11/7	zarnuk	5			1		
	1	11/7	al qrein	1			1		
	2	11/15	Tel Arad	1			3		
	2	11/15	Al Zaarura	2			1		
	3	11/21	Abde	1			1		
	1	12/11	bir el hamam	1			6		
	2	12/11	Al Madbah	2			1		
	1	12/11	Abu Tlul	8			1		
	1	12/11	A-Sira	17					
	1	12/11	Tel Arad	5					
	1	12/11	Bat-A Siraya						
	20	12/11	Twail Abu Jarwal						
Total excluding Twail (2007)	92								
Twail Abu Jarwal	135								

Appendix C: Sample Warning

[Translated by Human Rights Watch from the Hebrew original]

Omer Municipal Council
Local Committee for Planning and Building – Omer

["601" encircled] [hand written]

To: building owner [hand written]

Date: April 5 2006 [hand written]

File #: _____

WARNING

In accordance with the Planning and Building Law – 1965

1. An inquiry conducted revealed that at: Town _____ Parcel _____
Plot: _____ Coordinates: x _____ Y _____
Street and Number _____

[checked box] You are building/ have built without a building permit.

[checked box] You are building/ have built in violation of the permit / plan.

[checked box] You are using lands without a permit / in violation of the permit / plan.

[checked box] You are carrying out work / making use which requires a permit
(according to the Planning and Building Regulations).

2. You are hereby required to immediately cease all construction work / use and
return the situation to its previous condition.

3. You are immediately required to appear before the supervisor in order to provide an explanation for the aforementioned construction / use. No later than May 1, 2006.
[typed in]

[signature-like marking, unreadable]

Supervisor's name

[signature]

Signature

CC: _____

Our address: Department of Engineering, the Committee for Planning and Building –
Omer Commercial Center

Tel.: 08-6291144

Fax: 08-6291146

Appendix D: Sample Administrative Demolition Order

[Translated by Human Rights Watch from the Hebrew original]

Local Planning and Building Commission “Shimonim”

Administrative Demolition Order

By the power invested in me according to article 238a of the Planning and Building Law – 1965, and having read over the statement of chief supervisor of the Local Planning and Building Committee of “Shimonim”, Yaniv Gorevich, a statement submitted to me on 12.20.06.

And after being convinced that the structure mentioned below was built without a permit, and having consulted with the head of the Regional Council Bnei Shimon, Mr. Paul Moshe, in whose [municipal] territory the structure without permit is located, I hereby order the demolition and removal of the entire structure as defined in the engineer’s statement.

Structure Description: Block and concrete structure, tin roof and concrete floor on an area of approximately 42 sq. meters.

The Structure is located: on coordinates 180999/580685 north of Goral Junction.

The following are the contents of sub-articles (c), (f), (g), and (h) of article 238a of the Planning and Building Law – 1965.

(c) An administrative Demolition Order will also apply to any additional construction done without permit after the order was issued, and it will be unnecessary to issue another order for the aforementioned addition.

(f) An Administrative Demolition Order can be carried out:

(1) If the structure was build without a permit – from 24 hours of being affixed [to the building].

(2) In any other circumstance – from 72 hours of being affixed.

(g) Anyone considering himself wronged by the Administrative Demolition Order is entitled to petition the court for its dismissal, though such a petition will not delay the validity of the order. An appeal against the decision of the court on such petitions has the same status as an order issued according to article 250 of the Planning and Building Law – 1965.

(h) The court will not cancel or delay an Administrative Order unless it is proved that the construction for which the order was issued had been done legally or that carrying out the order is not necessary for preventing the former from becoming an established fact.

Given on 12.20.06

Sincerely,

Amir Ritov

Chairman of the Local Planning and Building Commission “Shimonim”

Affixation Confirmation

I, the undersigned, Mr [Yaniv], hereby confirm that this [notice] has been affixed to the outer wall of the building on 12.21.06 at 10:40.

[signature]

Appendix E: Sample Judicial Demolition Order

[Translated by Human Rights Watch from the Hebrew original]

The Courts

Beer Sheva Magistrate Court

BS 008759/05

Before: The Honorable Judge Ido Rozin

In the Matter: The State of Israel

Represented by Attorney Igal Mindel

The Plaintiff

AGAINST

Person Unknown

The Defendant

DECISION

I am presented with a request according to article 212 of the Planning and Building Law, 1965 (“The Law”), to issue a demolition order without conviction against a structure built without permit, after the plaintiff’s efforts to locate the individual who had built the structure have failed.

The statement attached to the request reveals that on September 7, 2005 an inspector from the national unit for building supervision in the South District made a visit and discovered that construction had taken place, land was used, and a structure was erected in an area west of route 25, at coordinates 195214/557302 (new Israel Grid) or in its vicinity (“The land”).

At the aforementioned site, on the aforementioned date or close to it, a tin structure was erected, apparently used as a livestock shed (“the Structure”), on a total area of

30 square meters, without being issued a building permit, in an area where such a permit cannot be granted, and against the law.

In accordance with the Planning and Building regulations (legal procedures for granting orders solely on the basis of the plaintiff's request), 1982, instated by law, the plaintiff has been granted the right to submit this request, in the presence of one party alone.

[page 2]

It shall be noted, that in accordance with regulation 2 of these regulations, it has been determined, that the condition for granting such an order, in the presence of one party alone, can be done only "if the court sees that it is impossible or impractical to summon forth to the hearing a person who may be damaged by the enactment of the order..."

In the statement which accompanies the request, it is argued that the plaintiff cannot prove who had committed the offence, or locate that person, and that even after the notice had been affixed to the structure, no individual had approached the plaintiff to argue against the demolition.

In these circumstances, the conditions justifying a hearing in presence of the plaintiff alone have been fulfilled.

The purpose of a demolition order according to article 212 is to maintain civil order and prevent the nuisance caused to the public by the very existence of an illegal structure. On this issue, there is a clear distinction between the power to grant a demolition order according to article 205 to that provided by article 212. While article 205 presents additional means for punishing the building offender, the point-of-departure in article 212 is, that there is not and will not be a conviction in the matter of the structure's construction, and that a demolition without conviction, is not meant as a punitive measure against the building offender, but is done to remove an obstacle to others, to maintain civil order, and to prevent a nuisance to the public (see criminal appeal 1250/00 **Hativa Savag vs. the State of Israel**, Supreme Court

rulings, volume 58, pg. 421). Therefore, while a demolition order on the basis of article 205 is aimed against the offender, the demolition order on the basis of article 212 is aimed against the structure built illegally (see on this matter the statements made by His Honor Judge Kedmi in criminal appeal 3490/97 **Eliahu Itzhak vs. The Regional Planning and Building Council of Kfar Sava**, verdicts 52, 136 (1)).

On the other hand, in order to grant a demolition order, without conviction, it does not suffice to prove the existence of conditions enabling a demolition, but to also prove that in the circumstances of the matter there is an important public interest that justifies issuing the demolition order (on this matter see the aforementioned criminal appeal 3490/97 as well as criminal appeal 124/01 **Ze'ev Nikar vs. The State of Israel**, verdicts 56 151(3), criminal appeal (Beer Sheva) 432/90 **Jibrin S'liman vs. The State of Israel**, 'Takdin' regional 93 (2), 420 and criminal appeal (Haifa) 1051/98 **Breir vs. The State of Israel**, Regional rulings 24 (10), 397).

[page 3]

Public interest may lie, among others reasons, in the fact that in not carrying out the demolition the perpetrator is rewarded; in preventing the chaos caused by illegal construction; and in the concern that not issuing a demolition order may be interpreted as granting permission *de facto*, a situation which has no place in a proper state of law.

Unfortunately, building violations have become a common occurrence, a fact that constitutes a serious and direct assault on the rule of law and the Supreme Court has emphasized in a long list of verdicts, that the court is instructed to not tolerate the situation and to implement a policy that will prohibit individuals from taking the law into their own hands (see aforementioned criminal appeal (Beer Sheva) 432/90 **S'liman** and the references listed within it).

Therefore, as long as such a structure remains standing without permission, there is no relevance as to when it was established, and the proper course of action against the violation in such an instance of construction without permit, where the owners are unknown, is to request a demolition order without conviction, as the plaintiff has

done in this event (see aforementioned criminal appeal 1253/00 **Savag** and the references listed within it).

In this matter, the plaintiff claims that the structure has been build on lands undergoing a settlement process according to the settlement ordinance and that ownership has not yet been established.

Since it has been claimed, that the structure had been built without permit, and on the basis of all the above, it is possible to determine that the conditions of article 212 have been fulfilled and that there is public interest in issuing a demolition order.

Due to all that has been stated above, a demolition order is hereby granted for the structure as defined above.

The plaintiff will see to it that a copy of the demolition order will be posted to the wall of the aforementioned structure and that demolition will not be carried out until after the period of time granted for appeal – as stated in article 250 of the law.

[page 4]

As a footnote, the court recommends that the plaintiff document the act of posting [the demolition order].

Granted today November 21, 2005, in the absence of both parties.

____[signature]____

Ido Rozin, judge