

## **Land Disputes in Israel: The Case of the Bedouin of the Naqab**

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### **Introduction**

Over 160,000 Arab Bedouin live in the Naqab (Negev) region in the south of Israel, constituting 25% of the region's population. Around half of them live in 38 villages which are unrecognized by the state and over which the state claims ownership.

The state has long considered the Arab Bedouin as an obstacle to the development of the Naqab. In recent years, the Israeli government has undertaken widespread measures detrimental to the Bedouin living in recognized and unrecognized villages alike in the Naqab. These measures include spraying agricultural fields with herbicides to destroy crops, uprooting tree saplings, confiscating cattle, demolishing homes and stiffening the enforcement of planning and building laws in the region. In addition, the National Security Council (a body comprised of former high-ranking army officers) recently recommended a plan, to be submitted to the government, to address the Bedouin issue, claiming that, "The State has already demonstrated its ability to deal with complicated organizational, budgetary and legal challenges in implementing the Disengagement [from the Gaza Strip]. With regard to the Bedouin issue, we [the NSC] recommend adopting a similar principle" (Brawer & Sarpos, 2006).

After a hiatus of over 20 years, the government also decided to resume legal action in the courts against ownership claims brought by the Arab Bedouin. What prompted the renewal of these inquiries was a desire to evict the Bedouin from their land. This action threatens to unravel the delicately-interwoven relations between the Bedouin, and to destroy any remaining trust and working relations between the Arab residents of southern Israel and the state. In this article I will discuss the background to and development of the Bedouin land issue in the Naqab, and propose a series of recommendations for an ethical solution.

### **Definition of the Problem**

In December 2000, just prior to the start of his term as Prime Minister, Ariel Sharon published an article in the journal *Land* entitled, "Land as an Economic Tool for Developing Infrastructure and Significantly Reducing Social Gaps." The article contains the following description of the Bedouin land problem:

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 (Sharon, 2000) [Emphasis added by author].

Three years later, in December 2003, Prof. Ismael Abu Saad, a Bedouin resident of the Naqab, wrote an article for the same publication entitled, "The Bedouins' Complaint: 'How can we be called intruders if we and our ancestors have been living in the Naqab for thousands of years?'" Abu Saad wrote:

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The government authorities claim the Bedouin do not own the land. But what can you do when, historically, the Bedouin never registered their land with the government land administration? Can this deny them ownership? The whole question of ownership of the land is seen by the Bedouin as a kind of paradox. "How is it possible," ask the Bedouin, "that in the 1920s and 1930s, the Jewish National Fund and the Jewish Agency purchased land in the Naqab from its Bedouin owners, and today they're suddenly not the owners? What has changed?"... The Naqab is expansive enough to accommodate all the needs – present and future – of the Israeli population. But there is also enough room to answer the needs of the Bedouin population. The correct solution must be mutually agreeable (Abu Saad, 2003).

As early as 1963, Moshe Dayan wrote an article for *Ha'aretz* on the problem of land policy and Bedouin in Israel:

The Bedouin must be made municipal workers in industry, services, construction, and agriculture. 88% 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 (Shamir, 2000).

These articles reflect two contradictory views of the same problem. In the Zionist myth of redeeming the land, the desert is viewed as a barren place that must be brought to life, made to bloom. The Bedouin were seen as part of nature, a collection of wanderers with no connection to the land. The Bedouin see themselves, however, as residents of the desert and landholders.

The fact that the government of Israel never recognized the rights of the Bedouin to their land makes the Bedouin criminals or lawbreakers in the eyes of the Jewish population. Lacking clear legal evidence in the form of land registry records, the Israeli courts adopted popular opinion by perceiving the Bedouin as a wanderer, with no land and no roots (Al-Huzayil, 2004).

### **The History of the Problem**

Israel's land policy dictates that none of the "state's land" should be sold. The government leases land for a period of 49 years, primarily to Jewish bodies and institutions. Israel is the only democratic nation in the world in which a percentage as high as over 93% of the land is state-owned. There is no free real estate market in Israel. Arab citizens of Israel, who represent 19% of the country's population, hold only 3.5% of the land, with only 2.5% of the land under the jurisdiction of Arab local authorities.

Until the establishment of the State of Israel in 1948, the Bedouin were, for the most part, the sole residents of the Naqab. In 1947, over 90,000 Bedouins, members of 96 different tribes, lived in the expanse stretching southward from Kiryat Gat and Ashdod. According to several sources, including Jewish sources, these Bedouin held approximately two million dunams of land, for which they adhered to a clear and agreed-upon system of property rights. The land was divided according to inter-tribal agreements (Shamir, 2000; Al-Huzayil, 2004).

Land has always been the most important resource in the lives of Bedouin. Those who held large tracts of land held a high social status; those with no land remained at the bottom rungs of Bedouin society in the Naqab. Most of the land in the Naqab was held by Bedouins who had inherited it, with no written record of any sort.

In 1858, the Turks enacted a law requiring that the names of landowners be officially recorded as a means of regulating land-related matters in the Ottoman Empire. There were five categories of land in the Ottoman Empire: *Mulk* (land under private ownership), *Miri* (state-owned land that could be cultivated for a one-time fee), *Mauqufa* (land in a religious trust or Islamic endowment), *Metruka* (uncultivated land), and *Mawat* (wasteland unsuitable for cultivation). Most of the land in the Naqab was categorized as *Mawat*. The Bedouin of the Naqab were opposed to the creation of a written record of their land holdings, since doing so would make them subjects of foreign rule. As such, they would be required to pay taxes and serve in the Ottoman army.

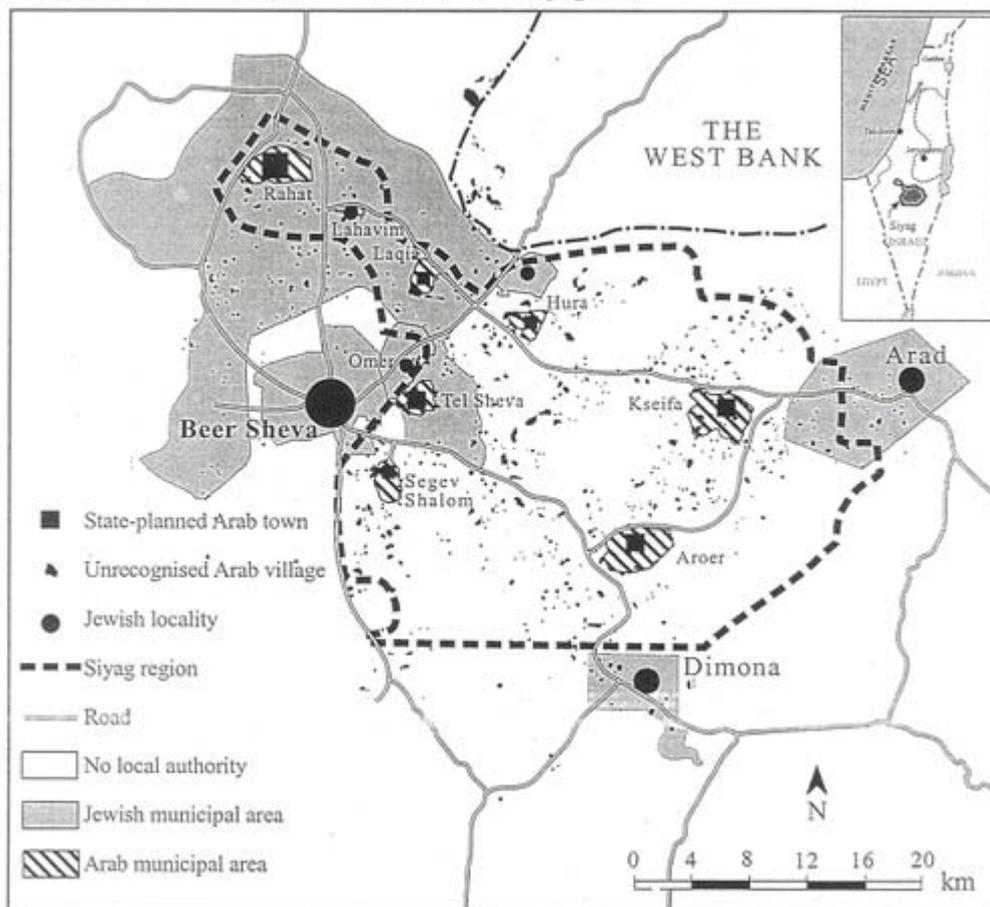
In 1921, the British Mandate government issued an order calling for residents of the Naqab to register their land. The Bedouin, who were given a two-month extension, did not do so, and their land remained unregistered. According to the Land Ordinance (*Mawat*) of 1921, a Bedouin who cultivated revitalized and improved *Mawat* land was given a certificate of ownership for that land, which was then re-categorized as *Miri*. The courts of the new State of Israel, a country born 27 years later, ruled that any Bedouin who passed up the opportunity to register *Mawat* land in his name in 1921 and did not receive a certificate of ownership was no longer eligible to do so (Ben-David, 1996).

#### **Naqab Land Following the Establishment of the State of Israel**

Prior to the establishment of the state, Jewish institutions succeeded in purchasing around 95,000 dunams of Naqab land. Only in 1946 did the first Jewish settlements appear in the Naqab. With statehood came an immediate need for Jewish settlements, in order to "conquer the wilderness." During the 1948 War, most of the Arab Bedouin fled or were expelled to Jordan, the Gaza Strip and Egypt. Only approximately 10,000 remained in the Naqab. The first Israeli Prime Minister, David Ben-Gurion, decided to concentrate them in the northeastern Naqab, within a 1.5 million-dunam area named the *Siyag* ("enclosure"), where thousands of Bedouin already resided (see Map No. 1) (Yiftachel and Kedar, 2000; Ben-David, 1996). Over time, the bringing into close proximity of land-owning Bedouin and those who had been dispossessed of their land contributed to a general split of the population in two. There were now *Sumran* (largely landowners) and *Humran* (those who had largely become landless and resettled in the *Siyag*). The latter were promised that their transfer from their land was a temporary measure and that they would be able to return to their homes within two or three weeks. In 1948, a military regime was imposed on Israel's Arab population including the Bedouin of the Naqab. Bedouin land was expropriated, most of it in accordance with the Land Acquisition Law of 1953, which held that any land not in the possession of its owner in April 1952 could be registered as state property. By that date, the Bedouin had already been expelled from their land and transferred to other regions, and were prevented from returning by restrictions set by the military regime. Two Jewish "development towns" were established at the time (Dimona in 1955 and Arad in 1962) on portions of *Siyag* land.

Map No. 1

Jewish and Bedouin Arab Settlement and the Siyag Area



Following the termination of the military regime in 1966, the Israeli government decided to urbanize the Bedouin, concentrating them in purpose-built urban areas. The first such town was Tel Sheva. Its establishment in 1968 was marked by a multitude of planning errors, which became apparent by the time the second urban center, Rahat, was established in 1972. The towns of Kseifa and Arara were established in 1982 as a means of settling Bedouin evicted from their land in Tel Malhata following the Israeli withdrawal from Sinai and the construction of the Nevatim military airport on the site. Shegeb al-Salam (Segev Shalom) was established in 1984 and Hura and Lagiyya in 1990 (see Map No. 2).

Map No. 2

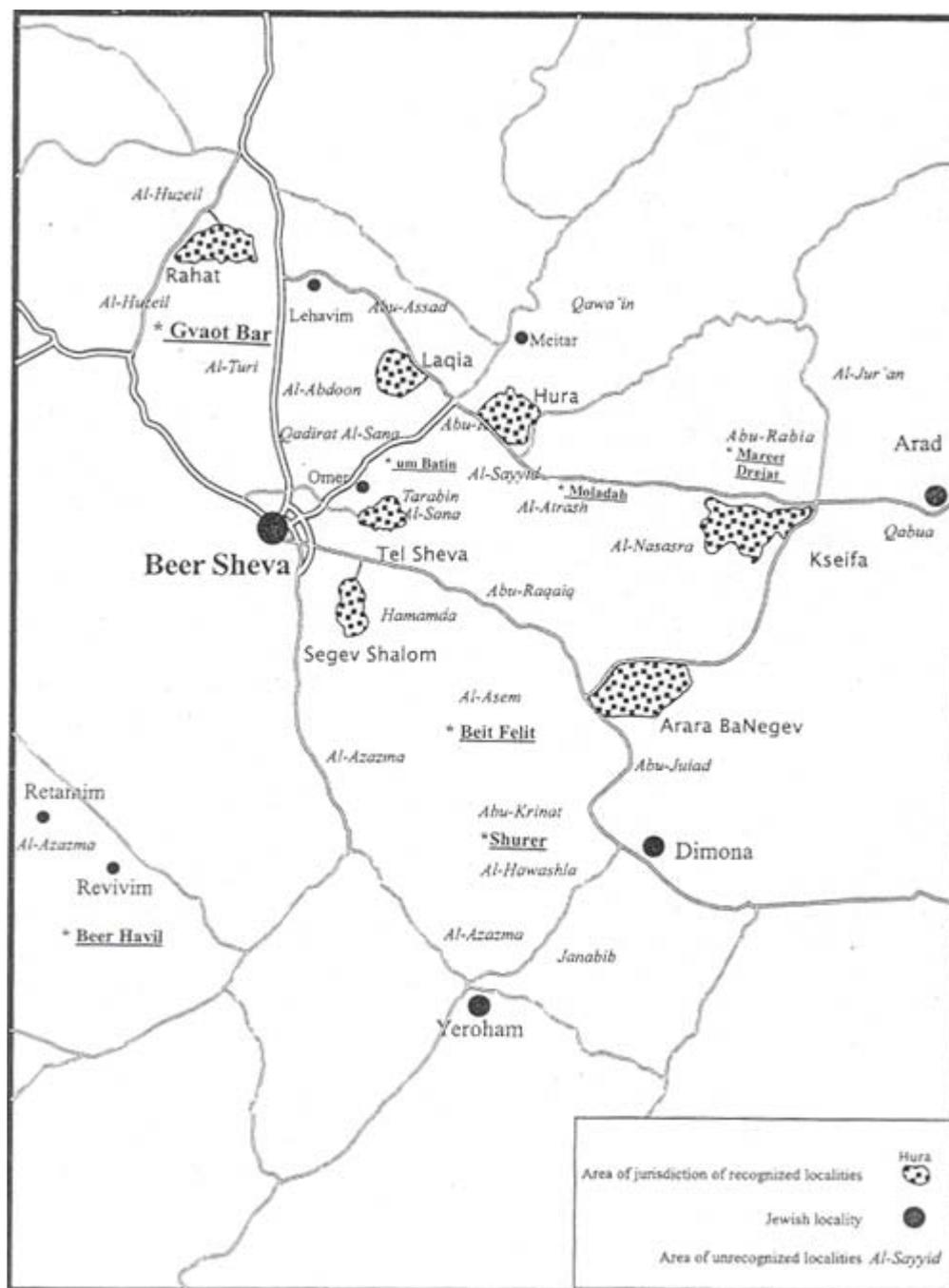


Figure 1.2: Bedouin Towns and Unrecognized Settlements

After ending the military regime, the government of Israel tried to register the land in its name through claims of ownership. Likewise, the Bedouin attempted to register the land in their names. The claims and counter-claims ended in 1974, when the government adopted the recommendation of Pliya Albeck (then head of the Citizens' Department of the Justice Ministry) to freeze all legal proceedings on claims of ownership in an attempt to reach a compromise with the Bedouin that offered some degree of compensation. Early in 1975, Albeck, acting on behalf of the Israeli government, proposed that the Bedouin maintain possession of 20% of the land and

be compensated for the remaining 80% at a rate of 2,000 shekels per dunam (Land Settlement Department – *Minhal Habitsua*, 1997; Ben-David, 1996).

The Bedouin rejected these proposals. Some had already tried and failed dozens of times to legally register the land in their names. The final blow came in the form of a precedent-setting decision delivered in 1984 by District Judge Halima (see Civil Appeal 218/74, *Salim Ali v. The State of Israel*), which held that by definition, a Bedouin has no connection and can have no connection, to the land. The government had thus far managed to achieve compromise arrangements for only 115,000 dunams of land. Some of this land, around 60,000 dunams in the Tel Malhata region, was expropriated following the Israeli withdrawal from Sinai and the construction of Nevatim Airport.

Over the past 20 years, the Bedouin have ceased their attempts to register their land. The clear result is a *fait accompli* with regard to the disputed territory: the Bedouin continue to cultivate the land and build light structures on it such as huts or sheds (Ben David, 2004; Ben David, 1996).

### **Naqab Land Today**

There are currently outstanding ownership claims by Arab Bedouin for 776,000 dunams of land in the Naqab. The government recognizes this sort of claim. According to government policy, which has been adopted by the courts, however, Bedouin do not own land. Rather, they have a right of “custody” granted to them as a gesture of good will on the part of the government.

In the entire 12,918,000-dunam Naqab region, the Bedouin (in both recognized and unrecognized towns and villages) occupy 240,000 dunams or 1.8% of the land. Residents of the unrecognized villages occupy 180,000 dunams, or 1.3% of the land (Al-Huzayil, 2004). The overall area of land claimed by the Bedouin is estimated at 5.4% of the total land area of the Naqab. (Ben David, 2004)

The absence of a master plan and regional planning for the *Syiah* area, the lack of a local planning committee with the power to grant building licenses and the needs of the increasing population have forced residents to build on their land, replacing the established notion of “illegal construction” with the term “unrecognized construction.” There are currently 30,000 unapproved buildings and light structures in the Naqab, 10,000 of which are built from sturdy materials. The destruction of dozens of homes each year has failed to deter residents from continuing to build on their land.

Recent years have witnessed parallel developments in the Bedouin land issue. While incitement against the Bedouin has increased, particularly in the print media, residents of the unrecognized villages and organizations have engaged in greater political and legal action to defend their rights. Nearly every success or investment made on behalf of residents of unrecognized villages – for service provision, education, welfare and health – was achieved as a result of court petitions as well as social advocacy undertaken by residents and non-governmental organizations.

The most serious governmental plan for “cracking down” on the problem of the unrecognized villages is the “Sharon Plan.” At its center is an arrangement for the land issue to be resolved through counter-claims of ownership by the government using the courts, demolition of homes and greater enforcement of construction laws, removal of squatters, long-term investment in the existing Bedouin towns, and recognition of a number of unrecognized villages. The government has budgeted New Israeli Shekels (NIS) 1.25 billion for this plan over six years.

Recognition of nine formerly unrecognized villages – Kassar Alsar, Moladah, Makhol, Darijat, Abu Qrenat, Um Batin, Bir Hadaj, Tarabin and al-Said – and the creation of the official Abu Basama Regional Council are two partial victories claimed by the Regional Council for the Unrecognized Villages in the Naqab (RCUV), a voluntary organization established by residents of the unrecognized villages in 1998 and comprised of elected representatives from these villages. However, the Abu-Basma Regional Council was created without a continuous territoriality between the villages, unlike other regional councils in Israel. The RCUV has demanded the recognition of all 38 unrecognized villages and adopted the regional council model as a municipal authority for all of the unrecognized villages. The government's intention to transfer the residents of the remaining unrecognized villages to nine newly-recognized villages will be fiercely opposed by the Bedouin community and the RCUV and is most likely to lead to a bitter confrontation with the authorities. The Bedouin see the attempt to concentrate them in urban settlements as an effort to disconnect them from their centers of livelihood and their historical lands and as an act of war against their existence in the Naqab. At the same time, they point to the establishment of dozens of vast and isolated individual settlements for Jews, particularly along the so-called "Wine Path" in the Naqab. These private farms have been developed with the rhetoric of "safeguarding the land" (from the Bedouin). The Bedouin, represented by the RCUV, oppose forced urbanization and protest the fact that they are not partners in decisions regarding their resettlement.

One strategy used by the RCUV to oppose the Sharon Plan was to initiate the establishment of The Together Forum (*Forum Beyahad*), consisting of 32 local and national organizations, Jewish and Arab. It speaks out against forced solutions and calls for an immediate dialogue between the government and representatives from the unrecognized villages.

### **Jewish Settlement on Bedouin Land**

The incitement against the Bedouin and their image as squatters on state land, has spurred the Israeli government to plan new Jewish settlements "in order to preserve the state's land." The current government, led until recently by Ariel Sharon, and now by Ehud Olmert, has planned dozens of new settlements and isolated individual farms in the Naqab. These farms are not being created out of an essential need to strengthen outlying areas: 13,000 apartments in the Naqab currently stand empty, and several existing towns and villages are on the verge of collapse. The situation begs the question: Why not strengthen what already exists? Some of these new settlements, such as Givot Bar, sprang up in the middle of the night, despite opposition by the Israeli planning institutions. None of the plans for the settlements took environmental damage into account.

### **Summary**

There can be no doubt that the Arab Bedouin are caught in a political-legal trap set by successive Israeli governments and the Israeli courts. Although certain achievements have been made through the court system, the overall political-legal climate prevents Israeli society from reaching a permanent, equitable solution. Hebrew literature has perpetuated the myth that the Naqab is a desolate wasteland and the Bedouin is a wanderer who has no connection to the land. These images have been perpetuated by the Israeli courts, leading to Judge Halima's precedent-setting decision in 1984. Despite the discriminatory and dangerous policies directed toward the Arab Bedouin over the last 56 years, the Bedouin have not disappeared. Rather, the Bedouin land problem has become both more serious and more complex. The country has much to lose as time goes on. The sight of an airplane which is spraying toxic herbicides over a field of crops, or of a Bedouin child crying on the remains of his demolished home, are stronger than any court decision. The disgrace

of the neglect of the unrecognized villages along the roads of the Naqab speaks louder than any case of non-registry of Bedouin land. The connection between the Bedouin and land is all-encompassing. It is virtually the only resource that anchors their lives. The new policy of counter-claims brought by the government is an attempt, among other things, to deal with Bedouin citizens on an individual basis only. By focusing the conflict on individual claimants rather than on the collective group, the government weakens the Bedouin and portrays their behavior as isolated cases of trespassing. The reasons for Pliya Albeck's decision to freeze ownership claims in 1975 remain valid. The solution to the land problem must be an ethical, not a legal, one. A change in the legal system or political circumstances is not a sufficient reason to evict a group of citizens – and a native population – from their land. The policies of democratic nations throughout the world have recently reflected an understanding of the importance of affording special treatment to indigenous populations.

In order to achieve justice in policies regarding land allocation and environmental impact, democratic countries must adopt new policies that are more egalitarian and ethical toward groups of native citizens. A solution to the Bedouin land problem demands a new land discourse in Israel centered on the concept of citizenship: its definition and political-social significance in Israel. As long as the discourse of Israeli citizenship runs parallel to the boundaries of Jewish nationalism – and not to the country's geo-political boundaries – we will continue to speak about state land as the land of the Jewish people and perpetuate the existing image of the country's Arab citizens as land-grabbers, in particular with regard to the Bedouin inhabitants of the Naqab.

### **Recommendations to the Government of Israel**

1. Relate to the issue of land in the Naqab and the unrecognized Arab Bedouin villages as a national problem. As such, special laws must be enacted to settle the matter and special resources must be allocated to that end.
2. Determine a solution to the issue based on ethical, not legal, grounds.
3. Do not impose a solution. Mediation between the two sides – the Bedouin and the state – may be the best strategy if the mediators are an independent international body with expertise in the area of land and indigenous populations.
4. Allow Bedouin claimants holding 240,000 dunams (less than 2% of the total area Naqab) and over and living on their land to register the land in their name. Allow all other claimants to lease the land in question for a period of 49 years.
5. Pay compensation for land expropriated for public purposes or land with legal owners according to its full value, to be determined by an independent assessor.
6. Offer a number of settlement options to Bedouin citizens, not only urbanization. For example, the model of the agriculture village, the Jewish *moshav*, is quite popular among the Bedouin.
7. Separate the question of land ownership from the granting of services and recognition of unrecognized villages.
8. Recognize all of the unrecognized villages under the jurisdiction of one or two regional councils.

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