

**The Role of the Judiciary in Dispossessing Indigenous Peoples' Land:
The Bedouin Case in Israel**

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ABSTRACT

The European discovery of the New World and its conquest, occupation, and colonization entailed many vicious acts against indigenous peoples. Through well-designed, multi-faceted plans, colonial powers gradually took over the indigenous peoples' land. While conquest and occupation enabled physical possession, colonial powers also utilized political and legal methods to legitimize their acts of dispossession.

The Bedouin in Israel have gone through similar processes of conquest and occupation, and have been dispossessed of their land through European Jewish/Zionist colonization. It is, in fact, much like Christian European colonization of the New World, which originally began as a colonization project that sent new European immigrants to settle on indigenous land. Later, the Zionist colonizers evicted most Palestinians, including the Bedouin, and established their new state, Israel, on their land. After the establishment of the State, it continued to utilize political, legislative, and legal methods in order to legitimize the seizure of the rest of the land.

This article describes the process that dispossessed the Bedouin of their land, focusing mainly on the legal aspects of the dispossession. It first introduces the processes and legal methods colonial states, in general, have practiced in dispossessing indigenous peoples of their land, and then describes the legal aspects and methodology of the seizure of Bedouin land in Israel.

The article examines and compares similarities between the dispossession of other indigenous peoples of their land and the case of the Israeli Bedouin while focusing on the judiciary's role. It considers whether the Israeli judiciary has been able to fairly adjudicate Bedouin land rights, or whether it was recruited in order to support the dispossession policy.

Introduction

Despite the recent achievements of indigenous peoples on both national and international levels, the dispossession of their land rights remains one of the most common and compelling human rights violations around the world.¹

The roots of this issue can be traced back to the European discovery of the New World, and the beginning of the conquest, occupation, and colonization of indigenous peoples' land.² The European colonial powers who had discovered the New World knew that indigenous land was essential for European colonization and settlement of the new immigrants in the colonies. Thus, they began taking over the land of indigenous peoples while refusing to acknowledge indigenous peoples' rights, and denying their sovereignty, their freedom to practice their culture, and, on several occasions, even their very existence.³

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¹ Erica-Irene A. Daes, *Prevention of Discrimination and Protection of Indigenous Peoples and Minorities: Indigenous Peoples and Their Relationship to Land* 38 (Comm'n on Human Rights, Working Paper No. E/CN.4/Sub.2/2001/21, 2001), available at http://www1.umn.edu/humanrts/demo/RelationshiptoLand_Daes.pdf.

² S. JAMES ANAYA, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW* 3 (2nd ed. 2004).

³ See FIRST NATIONS SUMMIT, *IMPLEMENTATION OF JURISPRUDENCE CONCERNING INDIGENOUS PEOPLES' RIGHTS: EXPERIENCES FROM THE AMERICAS - A CANADIAN PERSPECTIVE* 19-20 (2005), available at http://www.fns.bc.ca/pdf/ImplementationofJurisprudence_IP1005.pdf; see also PETER H. RUSSELL, *RECOGNIZING ABORIGINAL TITLE: THE MABO CASE AND INDIGENOUS RESISTANCE TO ENGLISH-SETTLER COLONIALISM* (2006) (discussing how Aboriginal peoples' leaders and state representatives, such as Edward Woodward, head of the Woodward Commission, traveled from Australia to the United States and Canada to learn about the recognition of indigenous peoples land rights); (2017) J. JURIS. 334

Indigenous peoples' land dispossession was done gradually in several phases through a process, driven by colonial powers. The first phases were conquest and occupation,⁴ followed by more sophisticated political and legal means. Conquest and occupation enabled physical possession, but colonial powers also utilized political and legal methods to legitimize their acts of dispossession while blocking any legal or political options indigenous people might use to defend their land rights.⁵

During that time, not only colonial powers legitimized and approved indigenous peoples' land dispossession but also international law supported such colonial acts and theories.⁶ Old International law principles and legal doctrines, such as the Doctrine of Discovery and *terra nullius*, justified the occupation and the dispossession of indigenous peoples' land. As Jeremie Gilbert describes, relying on international law, colonial powers made two major assumptions regarding indigenous peoples' land that severely affected their land rights: first, they claimed that indigenous peoples did not legally exist (thus their land could be acquired); then, they argued that indigenous peoples were inferior to the colonial powers (thus their right to lands could be extinguished).⁷ These principles continue to justify the dispossession of indigenous peoples' land even after the establishment of the colonial countries. In the United States, for example, Chief Justice of the Supreme Court John Marshall similarly justified the way in which colonial powers laid claim to indigenous peoples' lands during the Age of Discovery.⁸

EPHRAIM YUCHTMAN-YAAR& ZE'EV SHABAT, MAGAMUT BAHEVRAH HAYESRAILIT [TRENDS IN ISRAELI SOCIETY]1218 (2003) (discussing former Israeli Prime Minister Golda Meir's denial of the existence of a Palestinian nation).

⁴ See generally JÉRÉMIE GILBERT, *INDIGENOUS PEOPLES' LAND RIGHTS UNDER INTERNATIONAL LAW: FROM VICTIMS TO ACTORS* (2006) (describing methods of land dispossession).

⁵ See generally, Joseph William Singer, *Nine-Tenths of the Law: Title, Possession & Sacred Obligations*, 38CONN. L. REV. 605 (2006).

⁶ ANAYA, *supra* note 2, at 6, 15, 16-26.

⁷ GILBERT, *supra* note 4, at 1.

⁸ According to Porat, Bedouin submitted land claims as early as the 1950s. They based their land claims on documents proving that they had paid taxes. However, the State claimed that no land titles settlement occurred in the Negev; therefore, Bedouin did not possess any proof of land ownership. In addition, the

On the other side, through the years indigenous peoples aggressively resisted the conquest and occupation of their land and continued struggling hard to protect their land in several ways.⁹ At the beginning, they engaged in wars against foreign invaders in order to resist the acquisition and the occupation of their land. Later, having lost those wars, they had no choice but to struggle through the colonialists' Western legal system in an attempt to assert their land rights. Unsurprisingly, and with little exception, colonial legal and political systems continued to support colonial policies, and dispossess indigenous groups of their land. Courts in these countries made it almost impossible for indigenous peoples to prevail in court.¹⁰

During the last few decades, however, indigenous peoples have succeeded in bringing their issues (including their land claims issue) to the attention of the international community, with some success in their movement toward rights recognition. Several international organizations, such as the International Labor Organization (ILO), have raised the issue and called for recognition of indigenous peoples' land rights.¹¹ Others have articulated several instruments that recognize and protect indigenous peoples' rights. In 2007, such efforts culminated with a major step towards supporting their struggle: the international community recognized indigenous peoples' land rights through the United Nations Universal Declaration for the Rights of Indigenous Peoples in 2007.¹² However, despite these developments, many indigenous peoples continue to have very limited success in land rights issues.

State claimed that tax documents were lost from the State archives. Chanina Porat, *Israel's Policy on the Bedouin Issue and Left-Wing Alternatives, 1953-1960*, 10 IYYUNIM BITEKUMAT ISRAEL 420–476, 457.

⁹ LOUIS A. KNAFLA, *ABORIGINAL TITLE AND INDIGENOUS PEOPLES: CANADA, AUSTRALIA, AND NEW ZEALAND* 173 (2010).

¹⁰ SHLOMO SWIRSKI & YAEL HASSON, *INVISIBLE CITIZENS: ISRAEL GOVERNMENT POLICY TOWARD THE NEGEV BEDOUIN* (2006).

¹¹ See generally ANAYA, *supra* note 2.

¹² Universal Declaration for the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc.A/Res/61/295 (Oct. 2, 2007).

This article examines the Negev Bedouin's land issue in order to show the many similarities with the general historic pattern outlined above of the colonial methodology of dispossession of indigenous peoples' land via the Western "justice system". This paper offers the particular details of another example of juridical involvement in indigenous peoples' land dispossession. The first part of this paper introduces two major elements that constitute the general framework for the policy of indigenous peoples' land dispossession and the land tenure in Israel and the State's land policy toward Arab and Bedouin land. Then it introduces the important court precedents (such the *Alhawashelah* case) and explains how the judiciary, that is supposed to grant them justice, rejected their land rights and supported the acts of the State. The second section describes how the law and the judiciary in Israel unjustly expropriated the Bedouin land rights using legal doctrines like the *Mawat* doctrine and other similar techniques, exactly like other Western European settler states did with the indigenous peoples they had conquered.

I. THE BEDOUIN IN ISRAEL

The Bedouin are part of the Arab-Palestinian citizens of the State of Israel.¹³ Their population is estimated between 200,000 – 230,000 people, making up 3.5 percent of the State's population.¹⁴ They represent about 15 percent of the Arabs in Israel overall.¹⁵ The Bedouin in Israel are divided into two groups. One is in the northern part of the State and the other in the southern part of the State, in the Negev.¹⁶ This paper deals with the Bedouin of the Negev region.

¹³See Salman Elbedour et al., *Bedouins of the Negev: Ethnicity and Ethnic Identity among Bedouin Adolescents in Israel*, 2 INTERNATIONAL JOURNAL OF CHILD HEALTH AND HUMAN DEVELOPMENT 177 (exploring Bedouin identity).

¹⁴*Lexicon of Terms: Minorities in Israel, Bedouin*, THE KNESSET (July 2007), <http://www.knesset.gov.il/lexicon/heb/bedouim.htm>.

¹⁵Shiri Bass Spector, Knesset Research and Information Center, *Sogiot Breut wesviva Bakfarim Habedouim Halu-Mokarim Banegev* [Environmental and Health Issues Among Bedouin in the Negev Unrecognized Villages](2011), <http://www.knesset.gov.il/mmm/data/pdf/m02809.pdf>.

¹⁶Ghazi Falah, *Israeli State Policy toward Bedouin Sedentarization in the Negev*, 18 JOURNAL OF PALESTINE STUDIES 71, 78 (1989).

The Bedouin have lived in the Negev for many centuries, well before the establishment of the State. Some claim the Bedouin have inhabited the Negev since the fifth century C.E.,¹⁷ while the Bedouin themselves insist they have been living in the Negev from time immemorial and, therefore, are the native people of the Negev.¹⁸

Before the establishment of the State in 1948, the Bedouin in the Negev numbered between 65,000-95,000 people.¹⁹ However, as a result of the 1948 War, the Bedouin population was significantly reduced. The majority of the Bedouin population, about 90 percent, was forced to leave or fled the country to neighboring jurisdictions, including Jordan and Egypt.²⁰ After the War, the remaining 11,000 Bedouin were rounded up by the Israeli military and forced to live within a restricted area called the *Siyag* (“the fence” in Hebrew), a triangular area in the northern Negev. They lived under a military rule in the *Siyag* zone, on one-tenth of the land that they had previously occupied, until 1966. During this period the State put into action a plan that later shaped the policy and laws to dispossess the Bedouin of their traditional lands in perpetuity.

Today, half of the Negev Bedouin population²¹ lives in 17 recognized towns and villages and the other half lives in about 35 unrecognized villages.²² The Bedouin who live in these unrecognized villages are deprived of very basic rights such as housing, running water, electricity, basic infrastructure, education, health services, and social services.²³ Furthermore, they are subject to harsh State acts such as ongoing house demolitions, crop destruction, livestock confiscation, and land expropriation that are part of an

¹⁷PENNY MADDRELL & YUNIS GRINAWI, *THE BEDUIN OF THE NEGEV* 4 (1990).

¹⁸Oren Yiftachel, Alexander (Sandy) Kedar & Ahmad Amara, *Re-Examining the “Dead Negev Doctrine”: Property Rights in the Bedouin-Arab Space*, 14 *MISHPAT UMIMSHAL*, 134–36 (2012).

¹⁹PENNY MADDRELL, *BEDUIN OF THE NEGEV* 6 (First Edition ed. 1989).

²⁰*Id.*

²¹SHIRI BASS SPECTOR, KNESSET RESEARCH AND INFORMATION CENTER, *Environmental and Health Issues Among Bedouin in the Negev Unrecognized Villages* (2011), <http://www.knesset.gov.il/mmm/data/pdf/m02809.pdf>.

²²Ten of which have been recognized between 2000 and 2010 and they are now in the planning phase.

²³HUMAN RIGHTS WATCH, *OFF THE MAP* 57, <http://www.hrw.org/reports/2008/03/30/map> (last visited Sep 6, 2016).

apparent attempt to dislodge them from their historical villages in order to concentrate them in small villages and dispossess them of their land.²⁴ One of the main reasons behind the current situation is a long-lasting dispute over their lands and their customary rights on their historical lands, on the one hand, and the State's insistence to dispossess Bedouin lands, on the other hand.

II. THE DISPOSSESSION OF BEDOUIN LAND

Bedouin traditional lands are the lands that they own according to their customary tribal law. Such lands are not registered with the State of Israel's Land Registry Office. Therefore, Bedouin do not hold title deeds nor other *official* Israeli documents that prove their land ownership under the State's laws. However, many Bedouin hold traditional documents called *Sanadat* (singular: *Sanad*) or *Hujaj* that define their land rights and describe the source of that right, either by inheritance, purchase, rental, lease, or mortgage. These documents describe the borders of the land, the size, and the owners, just like any other deed.

Similar to the dispossession of many indigenous peoples' lands around the world, the dispossession of Bedouin lands²⁵ can be divided into three phases: occupation of the land, legalization of the occupation, and land dispossession. In the Bedouin case, the State first evicted Bedouins from their lands, concentrated them into a small area called the *Siyag*. Then, the State enacted several laws that further enabled the dispossession of Bedouin lands through legislative and judicial means. On the judicial level, courts have supported land dispossession and made sure the interpretation of the law maintained the same principles. The dispossession of Bedouin land was done, however, on two levels: The first on the general level, as part of the whole Arab lands dispossession, and the second one on the specific level, as a separate "process" for the Bedouin lands.

²⁴*Id.*

²⁵The dispossession of Bedouin land prior to and following the establishment of the State.

A. The General Dispossession of Arab Land

The roots of the Arab land issue in Israel go back to the beginning of the Zionist Movement's settlement in Palestine in the late 18th century and the need of the Zionist movement to own and possess land in order to establish their first settlements in Palestine. Over time, to establish its "Jewish National Home in Palestine," the Zionist movement, first, sought to occupy or take over any and all land it could in Palestine. Once the State of Israel was established, a significant part of Bedouin lands were expropriated or possessed under the policy of "expropriation of Arab lands," supported by ideological and practical justification. On the ideological level, many Zionists believe that the land in Israel is divinely given to the Jewish people and that Jews have a biblical obligation of "land redemption". Those beliefs and other similar theories have significantly shaped the land policy of the State. On a practical level, the colonial need to establish and protect the State during the first years of its existence also led to a concentration of land in the hands of the State. Zionist leaders, such as David Ben-Gurion, Avraham Ganott, and Moshe Dayan, believed that State control of land was an essential element for the Zionist State's existence.²⁶ After the establishment of the State in 1948, land control started to be an essential element in plans for settlement, development, and defense. These plans focused on demography and population distribution in the State, particularly on a Jewish presence in most areas of the country—a goal that relied heavily on State's control of land.²⁷

On the legislative level, the State adopted the British Mandate's legal system.²⁸ And through selectively applying earlier laws and legal doctrines, the State shaped legislative

²⁶ YEHUSHOA PORAT&YAKOVSHAVIT, THE HISTORY OF ERETZ YESRAEL: THE BRITISH MANDATE AND THE JEWISH NATIONAL HOME 102 (1998).

²⁷ IAN LUSTICK, ARABS IN THE JEWISH STATE: ISRAEL'S CONTROL OF A NATIONAL MINORITY 3 (1980); Rasseem Khamaisi, *Territorial Dispossession and Population Control of the Palestinians*, in SURVEILLANCE AND CONTROL IN ISRAEL/PALESTINE: POPULATION, TERRITORY AND POWER (Elia Zureik ed., 2011).

²⁸ HAYA NOACH, THE EXISTENT AND THE NON EXISTENT VILLAGES 31; HUSSEIN ABU HUSSEIN & FIONA MCKAY, ACCESS DENIED: PALESTINIAN LAND RIGHTS IN ISRAEL 105 (2003).

policy that deprived Arabs of their land. Through Article 46 of the Palestine Order in Council 1922, for example, the State adopted the Ottoman law the *Majallah*.²⁹ Over time, Israel amended or terminated many of the Ottoman laws and enacted new laws, changing the Ottoman land regime and establishing new property laws.³⁰ However, despite these changes, many components of the Ottoman land regime remain and continue to define land rights in Israel, especially land rights established before the creation of the State, such as Bedouin land rights in the Negev.³¹

Land Tenure in Israel

Zionist leaders have always viewed Jewish settlement and control of the land in Palestine as the major component of their success in their struggle for a Jewish state.³² For example, Menahem Ussishkin, the head the Jewish National Fund (JNF) during the British Mandate, stated that Jewish control of land in Palestine was essential for the establishment of a Jewish State.³³ Avraham Granott, another leader, stated that Jewish control of the land was literally a “question of life and death for Zionism and the Jewish National Home.”³⁴ According to scholars such as David Kretzmer, land was needed not only as a resource for Jewish settlement, but also for the transformation of the social and economic structure of the Jewish people who had been removed from their work in agriculture before they immigrated to Palestine.³⁵

On the ideological level, after the establishment of the State in 1948, the new State officially adopted Zionist ideology. This ideology continued to steer and shape the State’s land policy beyond its first years. The new Zionist leaders as well believed the

²⁹ Palestine Order in Council, art. 46, 1922 Stat. R.O. 1922/1282, *available at* <http://unispal.un.org/UNISPAL.NSF/0/C7AAE196F41AA055052565F50054E656>.

³⁰ MEIR DELBRI, NEHULNADLAN, LAND LAW IN REAL ESTATEMANAGEMENT 57-59 (1997).

³¹ See Oren Yiftachel, *Land, Planning and Inequality: the Division of Space between Arabs and Jews in Israel*, TEL-AVIV: ADVA CENTER (2000), <http://www.kibbutz.org.il/karka/igun/Mercaz-Adva.htm>.

³² DAVID KRETZMER, THE LEGAL STATUS OF THE ARABS IN ISRAEL 49 (1990).

³³ *Id.*

³⁴ *Id.*; see also AVRAHAM GRANOTT, THE LAND ISSUE IN PALESTINE 12 (1936).

³⁵ DAVID KRETZMER, THE LEGAL STATUS OF THE ARABS IN ISRAEL 49 (1990).

State must possess and control the land for Jewish settlement needs. Some have explicitly stated that the Arab population must be ejected from the land. In fact, Israel's first prime minister, David Ben-Gurion, wrote to his son: "We must expel the Arabs and take their place."³⁶

Therefore, in order to ensure close control of land, the State adopted a centralized land regime based on the principle of national ownership of land. It took control of almost every piece of land by changing the legal categorization of the land needed to establish ownership.³⁷ The State then "locked" land ownership alienation in order to prevent any land transfer from the State to any non-Jewish entity.³⁸ This allowed the State to acquire control and ownership of 93 percent of land in Israel.³⁹

Transfer of Land to the State and Limitation on Land Use

In addition to the traditional need of land for settlement and development, land policy in Israel has been considered one of the major tools used to achieve other goals, such as population distribution, Jewish presence, and, most importantly, security and population control.⁴⁰ Since the first years of its establishment, the State specifically utilized land policy to tighten control on the Arab population⁴¹ and to dispossess them of their land⁴² by limiting their use of land and limiting the State allocation of land for Arab development.

Such a policy limits the Arab citizen's option to obtain land in Israel. The only available option for Arabs, including Bedouin, to obtain land is to lease the land from the Israel

³⁶ Benny Morris, *Refabricating 1948 Fabricating Israeli History: The "New Historians"* Efraim Karsh, 27 J. PALESTINE STUD.81, 84 (1998).

³⁷ABRAHAM GRANOTT, THE LAND ISSUE IN PALESTINE 12 (1936).

³⁸KRETZMER, *supra* note 36 at 50.

³⁹*General Information: Israel Land Administration*, ISRAEL LAND ADMIN., http://www.mmi.gov.il/Envelope/indexeng.asp?page=/static/eng/eng_general.html (last visited Sep. 7, 2016)

⁴⁰see generally LUSTICK, *supra* note 15 (discussing how land regimes were used to control Arabs in Israel).

⁴¹ The term Arab for the purposes of this paper includes the Bedouin, unless otherwise stated.

⁴²Khamaisi, *supra* note 14, at 332.

Land Authority (ILA). Through this agency, the State has developed additional methods to control land allocation. Only the State can offer leases of land to individuals, companies, and other entities. As part of its policy to control population growth, population distribution, and economic development, the State also has been depriving Arab citizens of land acquisition by routinely discriminating against the Arab population.⁴³ Further, a large portion of the State land is unavailable to the Arab population. The Jewish National Fund (JNF), for example, sells land only to Jews, and prohibits the selling or leasing of land to Arab citizens.⁴⁴ Additionally, while Arab citizens cannot buy or lease public land that belongs to the JNF, Arabs from Jerusalem are banned from buying or leasing not only JNF lands, but any State land. According to Article 19 of the ILA land lease provision, “Under Israeli law, the ILA cannot lease land to foreign nationals,”⁴⁵ which includes Palestinian Arabs, residents of Jerusalem who are residents of the State, but not citizens.

⁴³ Sandy Kedar & Oren Yiftachel, *Land Regime and Social Relations in Israel*, in 1 SWISS HUMAN RIGHT BOOK: REALIZING PROPERTY RIGHTS (Hernando de Soto & Francis Cheneval eds., 2006).

⁴⁴ The prohibition on Arabs’ ability to buy or lease land in certain areas designated for Jews was recently challenged in the Supreme Court in Kaadan. (HCJ 6698/95 Kaadan v. Minhal Mekarke’ey Yisrael, Katzir Cooperative and Others 54(1) PD 258 [2000] (Isr.) In Kaadan case a Jewish town Selection committee rejected an Arab family’s application to lease a land for housing in a Jewish town. The Arab family appealed to the Supreme Court claiming discrimination based on racial identity. The Supreme Court, upholding the appeal, decided that such prohibition was discriminatory and impermissible. [See generally Sandy Kedar, *A First Step in a Difficult and Sensitive Road* 16 BULL. OF ISRAEL STUD. 3,3-11 (2000).] Despite that decision, in practice, however, Arabs continue to be banned from acquiring most State land both directly and indirectly. Moshavim are an example of acceptance committees in the Jewish towns and cooperative agricultural communities. See CA 7831/08 Navatim: Labor Moshav for Agriculture Settlement, Ltd. v. Zakai Wazman, Takdin Lite 1,701,140 [12/21/2010] (Isr.). The most common method is through “Selection Committees” in Jewish towns that are authorized by law to reject candidates who do not meet specific selection criteria, which discriminate against Arab citizens. See also Jonathan Lis & Jack Houry, *Knesset Panel Approves Controversial Bill Allowing Towns to Reject Residents*, HAARETZ (Oct. 27, 2010), available at <http://www.haaretz.com/news/national/knesset-panel-approves-controversial-bill-allowing-towns-to-reject-residents-1.321433>.

⁴⁵ Nir Hasson, *Most Arabs Can't Buy Most Homes in West Jerusalem*, HAARETZ (Jul. 21, 2009), <http://www.haaretz.com/print-edition/news/most-arabs-can-t-buy-most-homes-in-west-jerusalem-1.280392>.

During the War of Independence in 1948, the State seized a large strip of land, but much of it continued to be owned by original Arabs.⁴⁶ Thus the State's leaders, who sought to transfer ownership of those lands to the State,⁴⁷ enacted several laws that,—such as absentee land, *Mawat* land, or unclaimed land—justified legal transfer of ownership of those lands to the State.⁴⁸ In addition, the State placed all public land under a State management agency called the Israel Land Administration (ILA). The State then utilized a constitutional act, called Basic Law: Israel Lands, to define all land managed by the ILA as State land. Basic Law: Israel Lands, enacted in 1960, defines State land as land owned by three bodies: the State of Israel, the JNF, and the Development Authority. These three bodies own 93 percent of the land in the State, distributed as follows: a) the State owns 75 percent of all land in Israel;⁴⁹ b) the JNF owns 13 percent; and c) the Development Authority, a statutory body established by the Development Authority (Transfer of Property) Law-1950,⁵⁰ owns 5 percent.

In the 1950s, the State transferred all the Arab land from the Custodian of Absentee Property, a governmental body that had taken charge of land owned by Arabs who were expelled (or fled) from Palestine during the 1948 War, to the Development Authority.⁵¹ Also, in 1960, the State enacted the Basic Law: Israel Lands.⁵² Article 1 stipulates that “ownership of Israel lands, being the lands in Israel of the State, the Development Authority, or the Jewish National Fund, shall not be transferred either by sale or in any other manner.”⁵³

⁴⁶Who became absent after they were displaced, evicted, or fled from the State.

⁴⁷SOUAD R. DAJANI, RULING PALESTINE: A HISTORY OF THE LEGALLY SANCTIONED JEWISH-ISRAELI SEIZURE OF LAND AND HOUSING IN PALESTINE 37 (Rob Stuart ed. 2005).

⁴⁸*Israel Lands: Privatization or National Ownership?*, JEWISH VIRTUAL LIBRARY, http://www.jewishvirtuallibrary.org/jsource/Society_&_Culture/land.html (last visited February 5, 2013).

⁴⁹*Id.*; ABU HUSSEIN AND MCKAY, *supra* note 28 at 144.

⁵⁰*Development Authority (Transfer of Property) Law*, 1950, 4 LSI 151 (1948-1987) (Isr.).

Available at:<http://www.israellawresourcecenter.org/israellaws/fulltext/devauthoritylaw.htm>

⁵¹Khamaisi, *supra* note 27 at 310.

⁵²Basic Law: Israel Lands, 1960 S. H. 56 (Isr.).

⁵³*Id.* (emphasis added).

These policies prevent land allocation to the Bedouin in the Negev as well. On the collective level, particularly, such policies prevent the recognition of many Arab villages under the claim that the land belongs to the JNF and cannot be allocated to a non-Jewish settlement.⁵⁴ Under this policy, the State amended existing laws to include goals based on Zionist ideology and canceled ones that did not support them.⁵⁵ Although the State initially operated under the Ottoman and British Mandate land laws, it gradually enacted new laws designed to increase the State's control of land. The Absentee Law and the Land Acquisition Law, both of which dispossessed many Arabs of their lands, provide the most dramatic examples of this policy.

The Absentee Property Law,⁵⁶ passed in 1950, authorizes the State to confiscate all Arab absentee property and lands (including that of the Bedouin in the Negev).⁵⁷ The law gives the State the right of possession to all land and property of Palestinian Arabs who were absent between 1949 and 1952. The State also utilized this law to confiscate land for military and other public needs⁵⁸ and transfer ownership of all absentee land to the State.⁵⁹ The Land Acquisition Law also retroactively legalized the confiscation of land belonging to non-absentee Arabs without legal authorization. After the War of 1948,

⁵⁴See generally ADALAH, THE LEGAL CENTER FOR ARAB MINORITY RIGHTS IN ISRAEL, NOMADS AGAINST THEIR WILL-THE ATTEMPTED EXPULSION OF THE ARAB BEDOUIN IN THE NAQAB: THE EXAMPLE OF ATIR-UMM AL-HIERAN 18 (2011), available at <http://www.adalah.org/eng/publications/Nomads%20Against%20their%20Will%20English%20pdf%20final.pdf>

⁵⁵Sabri Jiryis, *Domination by the Law*, 11 J. PALESTINE STUD. 67, 75 (1981).

⁵⁶The Absentees' Property Law was meant to serve as the legal basis to transfer the property of Palestinian refugees into the possession of the State of Israel. The law says that the land and property of Palestinian residents and nationals of Arab countries who were in one of the Arab countries or in any part of the Land of Israel that is outside of the area of Israel from November 29, 1947 until a declaration that the State of emergency declared in 1948 ended, which has not yet happened, would revert to the possession of the Custodian of Absentee Property, i.e. the possession of the State. 5710- 1950, SH No. 37, 86 (Isr.).

⁵⁷See *id.* at art. 4, 30.

⁵⁸Sabri Jiryis, *Domination by the Law*, 11 JOURNAL OF PALESTINE STUDIES 67-92, 84 (1981).

⁵⁹M. CHERIF BASSIOUNI&SHLOMO BEN AMI, A GUIDE TO DOCUMENTS ON THE ARAB-PALESTINIAN/ISRAELI CONFLICT: 1897-2008 198 (2009).

those lands were allocated for military bases or Jewish communities.⁶⁰ The Prescription Law of 1958⁶¹ is another law the State utilized for Arab land dispossession. The law utilized legal technicalities to dispossess Arab land. It extended the ten-year period of land cultivation to gain title for *Miri* land⁶² to fifteen years for land that had not been settled and twenty-five years for settled land.⁶³ In addition, the Prescription Law further stated that the new provisions applied even if the fifteen or twenty-five year periods had elapsed before the Prescription Law came into effect.⁶⁴ Thus, as Kretzmer shows, a person who had already acquired title through possession under the Ottoman law could be deprived of that title through retroactive application of the extension of the prescription period.⁶⁵ According to Mohsen Sabri,⁶⁶ only by changing the prescription period, the State expropriated about 50,700 acres (205,000 dunams) of land from Arabs.⁶⁷

Administrative tools, such as planning and zoning, provide additional methods for transferring Arab land to the State.⁶⁸ Through planning laws and policies, the State allocated most of the Arab land for Jewish settlement, public development, and military

⁶⁰DAVID A. WESLEY & E. MARX, STATE PRACTICES AND ZIONIST IMAGES: SHAPING ECONOMIC DEVELOPMENT IN ARAB TOWNS IN ISRAEL 113–14 (2008); YIFAT HOLZMAN-GAZIT, LAND EXPROPRIATION IN ISRAEL: LAW, CULTURE AND SOCIETY 111–12 (2007).

⁶¹ The Prescription Law, 5718-1958, SH No. 251, p. 112, 251.

⁶²*Miri* land is the private land according to the Ottoman Land Code of 1858.

⁶³ According to the Ottoman Land Code, a person who cultivated *miri*land for a period of ten years was entitled to ownership. See KRETZMER, *supra* note 36 at 52.

⁶⁴ 5718-1958, SH No. 251, p. 112, § 29(b).

⁶⁵KRETZMER, *supra* note 36 at 53.

⁶⁶ Mohsen Sabri is a scholar who wrote about the Prescription Law and land transfers from Arabs to the State of Israel. See Mohsen Sabri, *maamadam Hamishpati shel Arvee Yisrael [The Legal Status of Israel's Arabs]*, 2 IYUNEI MISHPAT 568 (1972).

⁶⁷Mohsen Sabri, *The Legal Status of Israel's Arabs*, 2 IYUNEI MISHPAT 568, 569 (1972).

⁶⁸ISSACHAR ROSEN-ZVI, TAKING SPACE SERIOUSLY: LAW, SPACE, AND SOCIETY IN CONTEMPORARY ISRAEL ch. 3 (2004).

needs, while preventing or reducing land for Arab use. Planning policy affected all Arab land dispossessions, but the Bedouin land in the Negev disproportionately so.⁶⁹

While native Arabs have been pushed outside of the State's boundaries and their villages gone unrecognized within them, the State has distributed their lands to immigrant settlers who would be qualified as Jews under the Law of Return.⁷⁰ The fact that foreigners may be allowed to lease land in Israel if they show that they would qualify as Jews under the Law of Return,⁷¹ while physically present Arab citizens cannot, emphasizes how land policy is used to perpetuate inequality within the State of Israel.

The judicial system played an additional role in Arab land dispossession. Courts subjugated the legal policy and interpretation of law to further Arab land dispossession. They narrowed the definition of Arabs' legal rights in order to deny them land ownership,⁷² thus enabling the State to acquire the majority of the Arab land.⁷³ As part of this policy, the State has made it difficult for Arabs to win land cases in courts, as the law has made it nearly impossible to recognize Arab land rights.⁷⁴ Professor Alexander Kedar from the University of Haifa explains how Israeli law and the "legal activism" exercised by the courts⁷⁵ have eliminated any possibility for Arab claimants to win their land claims through the Israeli court system. Relying on several cases where courts interpreted the

⁶⁹ Oren Yiftachel, *Land, Planning and Inequality: the Division of Space between Arabs and Jews in Israel*, (Heb) TEL-AVIV: ADVA CENTER (2000), <http://www.kibbutz.org.il/karka/igun/Mercaz-Adva.htm>.

⁷⁰ The Law of Return 5710 (1950) S.H. (Book of Laws) No. 51, 159. (Isr.).

⁷¹ *Id.*

⁷² KRETZMER, *supra* note 36 at 52–53.; George Bisharat, *Land, Law, and Legitimacy in Israel and the Occupied Territories*, 43 AMERICAN UNIVERSITY LAW REVIEW (1994), <http://digitalcommons.wcl.american.edu/aulr/vol43/iss2/3>.

⁷³ KRETZMER, *supra* note 36 at 52.

⁷⁴ Jamil Dakwar, *The Supreme Court and the Confiscation of Palestinian Lands: On the Politics of Legal Formalism*, 2 ADALAH'S REV. 14, 14–15 (2000).

⁷⁵ The legal activism regarding this subject began with case law originating in the 1950s and 60s and concluded with the 1996 decision in *Shibli* where the court restricted further interpretation of land cases, foreclosing Arab land recognition.

Ottoman laws to restrict and even deny Arab land rights,⁷⁶ Kedar shows that ideological reasoning is behind such policy. The connection between the Zionist ideology and the State's laws dictate court decisions. This "judicial activism" protects Jewish land and State land, and discriminates against Arabs.

In regard to Bedouin land in particular, the rules for court procedures established by the State were designed for the purpose of denying Bedouin land rights.⁷⁷ Professor Oren Yiftachel from Ben-Gurion University,⁷⁸ sheds light on the reality that the law has limited power when dominated by strong political forces that shape legal policy and even dictate court decisions. He notes that several petitions to the Supreme Court⁷⁹ regarding Jewish settlements in the occupied territories show a "legal backup – as well as a broad institutional and political legitimization to the Israeli-Jewish colonialism, and to a distinct and unequal definition of property rights of Palestinians and Jews . . . creating *de facto* a regime of apartheid."⁸⁰

B. The Specific Dispossession of Bedouin's Land

The dispossession of Bedouin land, as well, began before the establishment of the State of Israel in 1948, as part of the general Arab land dispossession. The desire of the Zionist movement's to establish a Jewish presence in the Negev in the 1930s so as to

⁷⁶Alexandre Kedar, *Minority Time, Majority Time: Land, Nation, and the Law of Adverse Possession in Israel*, 21 TEL AVIV U. L. REV. 665 (1998).

⁷⁷ Ronen Shamir, *Suspended in Space: Bedouins Under the Law of Israel*, 30 L. & SOC'Y REV. 231 (1996).

⁷⁸ Professor Oren Yiftachel is one of the leading researchers on the Arab and Bedouin land rights in Israel, ⁷⁹ HCJ114/78Burkanv. Minister of Finance32(2) PD 800 [1978] (Isr.) (Palestinian resident of Jerusalem appealing the ban on Arab purchases of housing in the Jewish Quarter); HCJ 390/79 Ka'adan v. Government of Israel Ld(1) PD 1 [1979] (Isr.) (known as the "Elon Moreh case" in which Palestinians appealed against establishing a settlement on their private lands); HCJ 2056/04 Beit Sourik Village Council v. Government of Israel 58(5) PD 807 [2004] (Isr.) (available at:http://elyon1.court.gov.il/Files_ENG/04/560/020/A28/04020560.A28.pdf) (addressing a petition by Palestinians against the damage that was caused by the Separation Wall to Palestinian residents).

⁸⁰ Oren Yiftachel, *A Geographer in Legal Space: Teaching Legal Geography as a Journey in an Academic Frontier*, 2 DIN U'DVARIM 211, 217 (2005).

convince the League of Nations to annex the region to the Jewish State in the Partition Plan of Palestine.⁸¹

Ironically, similar to other indigenous peoples, the first Bedouin land dispossession was facilitated by the international community. In 1947, the United Nations' Partition Plan of Palestine granted approximately 2.7 million acres (11 million dunams) in the Negev to the Jewish State, ignoring the Bedouin presence and their land ownership.

In addition to the above land dispossession and the general land dispossession policies the State practiced against the entire Arab population, the Bedouin were subject to additional specific land dispossession policies that were performed using administrative, legislative, and judicial means to dispossess Bedouin land. The State first evicted and displaced the Bedouin from their traditional lands, forcing many of them to flee out to surrounding countries; after the War ended it refused to let them return; then, it concentrated the remaining Bedouin into a small area called the *Siyag*, placing them under a military rule and restricting their movements to that fraction of the Negev. At the same time, the State enacted several laws that further enabled Bedouin land dispossession by additional administrative and judicial means. Finally, courts followed the administrative and legislative branches to make sure the interpretation of the laws would correspond to the State's goals (and to legalize what needed legalization). These methods were very effective and granted the state a full control of the Bedouin lands. However, among the many acts, means, and methods that the State has utilized, the judiciary has been and continues to be the most important and effective one.

⁸¹Chanina Porat, *Policy of Land Purchase and Settlement in the Negev before the War of Independence*, 62 CATHEDRA 123–154 (1991). (describing the Zionist movement and establishment of 35 Jewish settlements in the Negev, illustrating the Jewish existence in the Negev).

Judicial Land Dispossession

After the State expropriated about 86%⁸² of Bedouin lands using eviction, displacement, and legislative means, it turned to judicial means to expropriate the rest of the Bedouin lands. The judiciary was utilized not only to support the State's policy of Bedouin land dispossession but also to legitimized Bedouin land expropriation and prevented any attempts to challenge the State acts of dispossession. Therefore, the State enacted the Land Settlement Ordinance (1969). The Ordinance required the Bedouin to file land settlement claims and provide the evidence that supported their claims. After the Bedouin filed their land claims, the State disputed Bedouin customary land rights and refused to accept their ownership claims; it filed mass counterclaim lawsuits against all Bedouin claimants.⁸³ This action marked the beginning of the process of Bedouin land dispossession through the judiciary.⁸⁴

At the beginning, during the early 1970s, only a few cases were adjudicated in courts, but recently, after the Negev Plan (2003), the judicial method has become the main tool for Bedouin land dispossession. During the early cases, the State based its argument on two premises. It argued that Bedouin land is *Mawat* land, and that the Bedouin were required to "revive"⁸⁵ the land but did not do so. Therefore, the State claimed that the land in question is State land and the Bedouin had no rights to it.

By filing counterclaims, the State turned Bedouin claims into "disputed claims,"⁸⁶ which required them to be forwarded to the court for adjudication.⁸⁷ In court, Bedouin claimants found (and continue to find) themselves in a labyrinthine process of trying to prove their land rights. Obstacles, include the obligation to follow the State's law and its

⁸²2.34 million acres of 2.7 million (9.5 million dunams, of 11 million).

⁸³HUMAN RIGHTS WATCH, *supra* note 23 at 18; THE NEGEV COEXISTENCE FORUM FOR CIVIL EQUALITY, THE ARAB-BEDOUINS OF THE NAQAB- NEGEV DESERT IN ISRAEL (SHADOW REPORT 2006) 4.

⁸⁴ See CA 218/74 Salim El-Huashlla v. State of Israel 38(3) PD 141, 151 [1974] (Isr.).

⁸⁵ To revive *Mawat* land means to turn it into usable land, usually through consistent use.

⁸⁶ Land Rights Settlement Ordinance [Revised], 5729- 1969, 13 OSI 293, art. 43 (293) (Isr.).

⁸⁷ *Id.*

rules of evidence.⁸⁸ These rules, often, support the State's goal of Bedouin land dispossession. Under such rules, the Bedouin plaintiffs must carry the burden of proof; they must introduce sufficient evidence to prove their ownership of the land. This requirement may include providing official documents from the mid- and late-19th century to the beginning of the 20th century. Often, Bedouins have been unable to present this evidence in court.

The Denial of Bedouin Customary Law

In addition, the State refuses to recognize the Bedouin's customary land rights.⁸⁹ The denial of Bedouin customary law and their indigenous culture is another method of land dispossession. Unlike the Ottoman and the British Mandate approach, courts in Israel followed a new approach, established under the Land Rights Settlement Ordinance and other subsequent laws and court decisions.⁹⁰ This approach disregarded Bedouin customs, laws, and evidence that could support the recognition of their land.

As several scholars have shown, the recognition of Bedouin tribal law, tribal courts, and tribal characteristics can be found in several levels of Israeli law, including State law, official documents, and case law of the Supreme Court of Israel.⁹¹ One of the best examples of such recognition can be found in Article 45 of Palestine Order in Council 1922-1947, which recognizes tribal courts in the Negev (Beer Sheva) through the Tribal Court Regulation of 1937. The Order authorizes the State to establish tribal courts in the Negev and authorizes these courts to rule according to Bedouin tribal law.⁹² Both the

⁸⁸ Cf. The Canadian recognition of land rights where the court modified the rules of evidence and accepted evidence under specific rules according to Aboriginal needs and traditions.

⁸⁹ Morad Elsana, *The Recognition of Indigenous People's Land: Application of the Customary Land Rights Model on the Arab-Bedouin Case in Israel*, 7 GEO. J. L. & MOD. CRITICAL RACE PERSP. 45–68, 51 (2015).

⁹⁰ *Id.* at 52.

⁹¹ Eliakim Rubinstein, *From the Ancient East to the Middle East: legal dimensions of belonging and distinction between Israel and the neighboring countries*, <http://www.lifshiz.macam.ac.il/m/pages/m0581/m0581194a.html> (last visited Oct 16, 2012); see also Yiftachel, Kedar, and Amara, *supra* note 138.

⁹² *Id.*

Palestine Order in Council and the Tribal Court Regulation were adopted into the State's laws. Although the Tribal Court Regulations were never applied in Israel, and Tribal Courts were never established, they continue to be valid laws since they were never nullified.⁹³ Elyakim Rubinstein, previously attorney general of the State of Israel, and former Supreme Court justice, argues that, theoretically, a Bedouin tribal court could convene and rule in Beer Sheva as per the Bedouin tribal law.⁹⁴

In addition, on several occasions, both the State and the judicial system indirectly recognized elements of the unique characteristics of Bedouin in the Negev. For example, in the Supreme Court case of *Avitan v. Israel Land Authority*,⁹⁵ Avitan, a Jewish police officer, petitioned the Supreme Court against the ILA's decision that refused to sell him a building lot in the Bedouin town of Segev-Shalom at a subsidized price similar to the price it offered to Bedouin who were willing to move and live in the Bedouin recognized townships. Avitan claimed that the State discriminated against him based on his ethnicity.⁹⁶ The State argued against Avitan's request and claimed that it sells such subsidized residential building lots for Bedouin only as part of its efforts to encourage Bedouin to transfer from a nomadic way of life to a settled way of life in the designated townships. The State articulated that "Bedouin in Israel constitute an ethnic minority with character and uniqueness. Bedouin have an old culture and heritage derived from Arab tribes since before the advent of Islam. Since then until the first half of this century, only a few changes have occurred in the habits and customs of their lives."⁹⁷

Further, in several official documents the State recognized the "special character" of the Bedouin society. In its response in the Avitan case, it stated, "Given its *special character and unique customs of the Bedouin society that were preserved . . . to a great extent even during the*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ HCJ 528/88 Eliezer Avitan v. Israel Land Admin.43(4) PD 297 [1988] (Isr.). (Available at: <http://www.hamoked.org.il/files/2015/1159493.pdf>)

⁹⁶ *Id.*

⁹⁷ *Id.*

process of transition to permanent settlement there was a need to study and consider carefully the needs of the Bedouin society.”⁹⁸ In the same case, the State recognized the tribal nature of the Bedouin of the Negev when it indicated that “Bedouin towns were designed, in advance, for Bedouin tribes and certain factions, in light of Bedouin sensitivity to tribal, factions and family affiliations.”⁹⁹

The unique tribal characteristic of the Bedouin of the Negev was also recognized in the Supreme Court decision in *Abu Ghanem v. Ministry of Education* case, in which Bedouin petitioned to the Supreme Court against the Ministry of Education, claiming that its policy discriminated against the Bedouin in budget allocation for educational drop-out officers.¹⁰⁰ In that case, the Court indicated again the uniqueness of the Bedouin of the Negev. The Court referred to the Bedouin as a unique population with a different character that deserved an affirmative action in that issue.¹⁰¹

However, despite the “recognition”¹⁰² of Bedouin tribal courts, tribal law, and tribal characteristics, the executive, legislative, and judicial branches of the Israeli State refuse to recognize Bedouin tribal law with regard to land rights. On this issue, the executive and the legislative branches in Israel ignored Ottoman and British law, both of which recognized Bedouin land rights based on their customs and tribal law. The State also ignored the fact that both the Ottomans and British Mandate specifically separated the Bedouin and Bedouin land rights from other communities in Palestine.¹⁰³ In so doing,

⁹⁸ *Id.*

⁹⁹ *Id.* at 302, 304.

¹⁰⁰ See HCJ 6671/03 Abu Ghanem v. Ministry of Ed. Nt (5) PD 577 [2003] (Isr.).

¹⁰¹ *Id.*

¹⁰² The existence of the Tribal Court Regulation of 5715, 1937, KT 483, 123 (Isr.).

¹⁰³ The British distinguished the Bedouins, politically and legally, on many occasions. Therefore, it is reasonable to recognize tribal law. GRANOTT, *supra* note 38 at 89.

the State ignored the Ottoman and British attitude that preserved the Bedouin's historic land rights that are defined by Bedouin laws and customs.¹⁰⁴

Courts also ignores Bedouin customs regarding land rights.¹⁰⁵ They dismissed the fact that the Bedouin have different interpretations of the elements that would prove land rights. They ignored the fact that ideas such as “*revival*,” “*settlement*,” and “*use of the land*” are defined differently by the Bedouin.¹⁰⁶ Courts do not consider the Negev Bedouins' land features when interpreting legal concepts such as revival of lands, mainly the fact that their lands are desert, and thus by definition does not “change totally by seasonal cultivation”, as the courts demanded. Finally, courts deny Bedouin pastoralism as a legitimate land use for the sake of *Mawat* land revival.¹⁰⁷ Moreover, courts refuse to recognize Bedouin's traditional settlements (village, *dirab*) as settlements for the purpose of land recognition and land revival. As Rangwala states, the State refuses to “recognize tents as settlements and denied that pastoralism as practiced by the Bedouin constituted “working” the land.”¹⁰⁸

Proving Land Rights in Israeli Court

Overall, the system made it impossible for Bedouin to prove their land rights in courts. For example, typically in property cases to prove land ownership in court, a plaintiff introduces a title deed or other equivalent documents that proves his land ownership. However, because Bedouin do not have title deeds, they cannot prove their ownership in this way. Instead, they must provide evidence that proves their land rights through an alternative method. In fact, in a case of “unsettled” land like Bedouin lands, title deeds

¹⁰⁴ See ORLYALMI, NO MAN'S LAND: HEALTH IN THE UNRECOGNIZED VILLAGES IN THE NEGEV 11 (July 2003), available at http://www.phr.org.il/uploaded/articlefile_1163421247181.pdf.

¹⁰⁵CA (BS) 7161/06 Suleiman Aluqbi v. State of Israel (unpublished) [2012] (Isr.) (on file with author).

¹⁰⁶Bisharat, *supra* note 73; Tawfiq S. Rangwala, *Inadequate Housing, Israel, and the Bedouin of the Negev*, 42 OSGOOD HALL L.J. 415 (2004) (refusing to recognize the Bedouin settlement as a village).

¹⁰⁷ Ham. (BS) El-Riati v. Batcha, PM 1983(1) 329, 332 (1993).

¹⁰⁸ Rangwala, *supra* note 108; Bisharat, *supra* note 73 at 482 Rangwala, *supra*; see also Professional Opinion submitted by Ruth Kark to District Court regarding CC 7161/06 Suleiman Aluqbi v. State of Israel.

do not exist at all since the lands are not “settled,” zoned, or registered, and for this kind of land the State has never issued title deeds. Therefore, the only available option to the Bedouin is litigation, in which they must introduce detailed evidence to satisfy many elements, including the source of their right (i.e. by purchase, inheritance, land revival, or long-time possession); the type of land (*Miri*, *Mulke*, *Waqf*, *Matruka*, or *Mawat*); and location, including the exact borders of the land and its neighbors, to prove their land rights. In *Mawat* land cases, claimants must prove another two elements: revival of the *Mawat* land, which means continuous land cultivation, and authorization or consent to revive the land, i.e. They have to prove that they had received consent from state authorities (Ottoman or British Mandate) to revive that land prior to 1921. Further, the fact that the State does not recognize Bedouin oral culture eliminates the possibility to prove their land rights in any other way.¹⁰⁹

In order to streamline what evidence is needed to prove their rights, Bedouins usually try to prove one of two things: that they have been legally possessing *Miri* land for the prescription period, or that they have revived *Mawat* land.¹¹⁰ Under the first option, claimants have to prove that their land is *Miri* land, rather than *Mawat* land, that they have legally acquired possession of it without violence or opposition from the previous owner, and that they have been in possession of the land since that time. The main obstacle with this option is proving that the land is *Miri* land, especially since the court decided in several cases, including *Albwashleh*, *Alasad*, *Alasibi*, and *Aloqbi case*, that all Bedouin lands are *Mawat* land because at the time the Ottoman Land Code was enacted in 1858 there were no permanent settlements in the Negev.¹¹¹

¹⁰⁹ See L.A. Roness & K. McNeil, *Legalizing Oral History: Proving Aboriginal Claims in Canadian Court*, 39 J. OF THE W. 66-74 (2000) (discussing oral history generally); Safa Abu Rabia, *Between Memory and Resistance, an Identity Shaped by Space: The Case of the Naqab Arab Bedouin*, 8 HAGAR STUD. IN CULTURE, POLITY AND IDENTITIES 93, 102, (2008) (discussing oral history among Bedouin of the Negev).

¹¹⁰ Avraham Halima, *Negev lands from the Legal Perspective*, INSTITUTE FOR LAND POLICY AND LAND USE-DEPT. OF LAND POLICY 33 (1985).

¹¹¹ C.A. (BS) 7161/06 Suleiman Aluqbi et. al. v. State of Israel, (2012).

Under the second option, the *Mawat* option, claimants must prove that they have revived¹¹² *Mawat* land.¹¹³ To prove revival of *Mawat* land cases, claimants must prove three elements: 1) the type of land they are claiming according to the Ottoman law;¹¹⁴ 2) authorization to revive the land from the Ottomans or the British Mandate prior to 1921; and most importantly, 3) a persistent “use of land” (cultivation) with no interruption since before 1921. This “use of land” must show a *significant change* in the land as a result of that use.¹¹⁵ The problem is that each one of these three elements is nearly impossible to prove, let alone all three together.¹¹⁶

In several cases, the court has demanded proof of land use according to non-Bedouin traditions, meaning use of the land according to an agricultural standard rather than a Bedouin-pastoral standard.¹¹⁷ This requirement is problematic on both the practical and theoretical levels. On the practical level, it deprives the Bedouin of the right to recover land based on their pastoral culture and leads to the denial of Bedouin claims for pastoral land. On a theoretical level, pastoral land rights are the core issue of the nomadic peoples’ land rights problem. The basic Western theory of land rights rely on “effective occupation” proven by cultivation and agriculture tests.¹¹⁸ The principle of “effective occupation” of the land has been the basic rule for land use and ownership. Major Western theorists such as Locke and Hegel described the “cultivation test” or “agricultural argument” as the basic way to prove occupation of land in order to prove possession and acquire land rights. “The ‘agricultural argument’ promotes the view that

¹¹² See CA 218/74 Salim El-Huashlla v. State of Israel 38(3) PD 141, 151 [1974] (Isr.) (defining the concept “revival of *Mawat* land” according to article 1051 of the Ottoman Code where revival is improvement, i.e. preparing the land for agriculture).

¹¹³ KRETZMER, *supra* note 36 at 52.

¹¹⁴ Bisharat, *supra* note 73 (defining Miri, Mulk, Matruka, Waqf, and Mawat).

¹¹⁵ Abraham Halima, *Negev lands from the Legal Perspective*, INSTITUTE FOR LAND POLICY AND LAND USE- DEPT. OF LAND POLICY (1985).

¹¹⁶ *Id.*

¹¹⁷ Rangwala, *supra* note 108 at 450.

¹¹⁸ Jérémie Gilbert, *Nomadic Territories: A Human Rights Approach to Nomadic Peoples’ Land Rights*, 7 HUM. RTS. L. REV. 681, 685 (2007).

only cultivation of land can be regarded as a 'proper' occupation of land, and only agriculture can be regarded as a basis of a real land tenure system."¹¹⁹ According to Locke, "uncultivated land was not possessed closely enough to constitute property."¹²⁰

Therefore, according to the Western theory, pastoral culture is a problematic element for proving nomadic indigenous peoples' possession of land, including in the case of the Bedouin. As Jérémie Gilbert explains, "Nomadic peoples are not regarded as legal occupiers of any particular land as they do not have 'a fixed abode and definite territory belonging to the people by whom it is occupied.'"¹²¹ Thus, according to many scholars, Western legal theory discriminates against non-pastoral culture, like the Bedouin and their use of land on the same basis; therefore, the Western courts do not recognize Bedouin use of land as a kind of use that grants them land rights.¹²²

Not surprisingly, the requirements for revival have been impossible to meet since they simply do not fit the Bedouin culture and way of life in the desert.¹²³ Additional obstacles such as language, lack of trust, and political hostility make the process very difficult. These arguments were tested for the first time in *Alhawashelah*, which began in the District Court of Beer Sheva and made its way to the Court of Appeals in 1984.

The Alhawashelah Case

In 1969, as part of the land settlement process, members from the Alhawashelah tribe, who reside in Gaser-Asser Village in the southern part of the Negev, filed a land title settlement claim with the Land Settlement Officer asking him to approve their land claim and register their land in their name. However, the Land Settlement Officer rejected their application, so they appealed to the District Court of Beer Sheva. In July

¹¹⁹*Id.*

¹²⁰*Id.*

¹²¹*Id.*

¹²²See generally Ronen Shamir, *Suspended in Space: Bedouins under the Law of Israel*, 30 LAW & SOCIETY REVIEW 231 (1996).

¹²³*Id.*

1972, the District Court also rejected the Alhawashelah appeal thus rejecting their land ownership claims.¹²⁴

Following the District Court's decision, three members of the Alhawashelah tribe appealed the District Court's decision to the Supreme Court of Justice in 1974.¹²⁵ The Alhawashelah tribe claimed that they owned the land and appealed to register it in their name. However, since their land had never been registered in a Land Registry, they had never possessed a title deed that would prove their ownership. The State, represented by Pleah Albeck, claimed that according to Articles 6 and 103 of the Ottoman Land Code, Bedouin land was *Mawat* land.¹²⁶ Articles 6 and 103 define *Mawat* land as: remote from an inhabited place, located in a deserted place, and not allocated to or possessed by anybody. Therefore, the State argued that according to Article 155 of the property law the land should be registered in the name of the State.¹²⁷ It also claimed that the appellants had no land ownership because they did not prove they had revived the land. The State argued that the appellants had not cultivated the land and had not registered the land under their name.

In response to the *Mawat* argument, the *Alhawashelah* members claimed that they had in fact revived the *Mawat* land. They claimed that they had possessed and cultivated the land since time immemorial, long before the British Ordinance of 1921, and that should be recognized as revival.¹²⁸ As mentioned, According to the law, a claimant who seeks to prove revival of *Mawat* land has to prove three elements: 1) that he possessed the land;

¹²⁴ C.A. 218/74 Salim Alhawashelah v. State of Israel 38(3) PD 141, 143 [1974] (Isr.); SHLOMO SWIRSKI & YAEL HASSON, INVISIBLE CITIZENS: ISRAEL GOVERNMENT POLICY TOWARD THE NEGEV BEDOUIN 26 (2006).

¹²⁵ Rosen-Zvi, *supra* note 57, at 46.

¹²⁶ Rangwala, *supra* note 108 at 440–1.; *see also* The Land Rights Settlement Ordinance, *supra* note 129 (classifying all *Mawat* lands as State property, unless formal legal title could be produced).

¹²⁷ The Property Law, 5729 -1969, SH No. 575 p 259-283 (Isr.).

¹²⁸ C.A. 218/74 Salim Alhawashelah v. State of Israel 38(3) PD 141 [1974] (Isr.).

2) cultivated the land for a substantial amount of time;¹²⁹ and 3) that he or she has received authorization from the relevant authorities according to either the Ottoman Land Code of 1858 or the British Mandate Ordinance of 1921. This 1921 Ordinance was the last chance to get consent to revive *Mawat* land, because the British Mawat Land Ordinance of 1921 put an end to *Mawat* land acquisition through revival. Accordingly, in order to prevail, the Alhawashelah members had to prove that they had possessed the land, revived it, and acquired rights in the period preceding the Ordinance of 1921 or during the Ottoman rule, between 1858 and 1915, 60 years before their case had reached the court in Israel. In addition, the claimants also had to prove that they had obtained Ottoman or British Mandate authorization.¹³⁰

Needless to say, the claimants could not meet this very heavy burden.¹³¹ As a result, the Supreme Court dismissed the appeal, affirmed the State's position, and ordered the Alhawashelah members' land to be registered as State land. Justice Avraham Halima who delivered the decision stated that the claimed land was *Mawat* land. The Court rejected the Alhawashelah tribe's argument that they had "revived" the land and acquired ownership rights.¹³² The Court adopted the State's policy and it became the legal precedent and the governing rule for all Bedouin land cases.

The *Alhawashelah* decision is considered a landmark decision for Bedouin land rights. It was the first Bedouin land case to reach the Supreme Court, producing a detailed decision on the merits. The decision defines Bedouin land as *Mawat* land and creates legal precedent for the dispossession of all Bedouin land in the Negev.¹³³ The decision sealed the fate of all Bedouin land claims, creating a situation where Bedouin land rights

¹²⁹For 15 years in settled land, and 25 in unsettled land. KRETZMER, *supra* note 36 at 53. (describing the legal status of the Arabs in Israel).

¹³⁰Alexandre (Sandy) Kedar, *Minority Time, Majority Time: Land, Nation, and the Law of Adverse Possession in Israel*, 21 TEL AVIV UNIVERSITY LAW REVIEW 665–746, 686 (1998).

¹³¹Halima, *supra* note 118 at 15.

¹³²CA 218/74 Salim Alhawashelah v. State of Israel 38(3) PD 141 [1974] (Isr.).

¹³³KRETZMER, *supra* note 36 at 49–50, 60.

cannot be legally disputed. In practice today, the State simply introduces *Alhawashelah* as precedent in response to Bedouin claims. It argues that Bedouin land is *Mawat* land, and thus claims should be dismissed under the same reasoning as *Alhawashelah*. The court in turn, relying on *Alhawashelah*, denies every Bedouin land claim without exception.¹³⁴ Not one Bedouin tribe or individual has ever succeeded in winning a land claim case.¹³⁵

In a series of cases from 2004, the process of adjudicating Bedouin land cases introduced the simplicity of dismissing Bedouin land claims.¹³⁶ The court, the Bedouin, and the State know the result in advance of court rulings. Courts have been accepting the argument that Bedouin land is *Mawat* land as a fact, rather than a legal claim requiring proof. Therefore, in recent cases, courts have been using the same “decision form” for each individual decision, changing only the technical information, such as names, the size of the land claim, and the date.¹³⁷ By substituting its policy, the State has been ignoring centuries of Bedouin traditional land ownership, its characteristics, and their unique use of land.¹³⁸ Courts refuse to acknowledge that Bedouins have a different set of characteristics that require different approaches of investigation to determine ownership.¹³⁹

¹³⁴Havatzelet Yahel, *Land Disputes between the Negev Bedouin and Israel*, 11 ISRAEL STUDIES 1–22, 13 (2006).

¹³⁵Kelley, *supra* note 221.

¹³⁶*See* CC (BS) 3347/04 Jadoa’ Alasad v. State of Israel, PM (2004) (Isr.) [Civil Case (BS) 3347/04 Jadoa’ Alasad v. State of Israel, (decision delivered Oct. 19, 2009). Tak-Mehozi 2009(4), 1232].

¹³⁷*See id.* *See also* CC 3316/04EsaFarhoodAlasibi v. State of Israel PM (unpublished) (2009) (Isr.) (on file with author).

¹³⁸Ignoring traditional law land characteristics and unique land use considerations was inconsistent with State policy and court attitudes which on some occasions acknowledged these unique characteristics of Bedouin culture, including their tribal law. *See e.g.*, Tribal Court Regulation of 5715, 1937, KT 483, 123 (Isr.).

¹³⁹CA (BS) 7161/06 Suleiman Aluqbi et. al. v. State of Israel (unpublished) (2012) (Isr.).

The Albeck Committee, the Mawat Land Doctrine, and the Halt on Bedouin Land Settlement

In 1975, while the *Alhawashelah* case was pending in the Supreme Court, the Government appointed a special committee from the Ministry of Justice, headed by Pleah Albeck, the State's attorney in the *Alhawashelah* case, to inquire into the legal status of Bedouin land rights. The committee became known as the Albeck Committee. In October 1975, still before the Supreme Court had issued its ruling in the *Alhawashelah* appeal, the Committee issued its report that stated three points: first, all lands of the Negev are *Mawat* lands because when the Ottoman Lands Code 1858 was published, there was no permanent settlement in the Negev; second, no Bedouin can acquire any land rights, even under possession and continuous cultivation; and third, all Bedouin land is State land.¹⁴⁰ The Committee also stated that it was unacceptable to evacuate the Bedouin without compensation after so many years of living in the area simply because there was no rural or urban settlement in 1858. Therefore, the Committee devised an arrangement “beyond the letter of the law” under which the State would compensate Bedouins in return for relinquishing the lands in their possession or that were in their possession in the past and to which they claim rights.¹⁴¹ The Supreme Court's ruling in the *Alhawashelah* case, finally issued in 1984, was, perhaps unsurprisingly, in line with the points laid out by the State's attorney in that case, Albeck, in the findings of the committee she chaired while the Court deliberated.

According to Shlomo Swirski and Yael Hasson, the Albeck report summed up the three principles of the policy applicable to Bedouin land that the State follows to this day: first, non-recognition of ownership rights of the Bedouin to the lands based on the Ottoman and British land laws; second, compensation is “beyond the letter of the law;” and third, the evacuation principle, which makes compensation conditional upon leaving their land

¹⁴⁰SWIRSKI AND HASSON, *supra* note 129 at 20–21 (quoting the Albeck Report of 1975).

¹⁴¹*Id.* at 20–21.

and moving to one of the government-planned townships.¹⁴² In accordance with the Committee's recommendations, the State brought very few additional Bedouin land claims to court.¹⁴³ The few cases that were adjudicated during this period only reached the court for a purpose other than the general process of land title settlement. For example, the State may have wished to put pressure on specific tribes to force them to settle their land or consent to the development of State projects on their land.¹⁴⁴

Instead, it began a phase of bargaining. The State started to push the Bedouin to relinquish their lands by offering them compensation and convincing them to settle their land claims through different methods of pressure and negotiations outside of the court.¹⁴⁵

Compensation

The State offers compensation for Bedouin land that comes in the form of monetary compensation, land compensation, or a combination of the two.¹⁴⁶ The problem, however, is that the compensation offered by the State is extremely low and inadequate.¹⁴⁷ As a result, most Bedouin have rejected compensation offers for more than four decades.¹⁴⁸

The land component of the compensation is limited and restricted to a small number of claimants based on the size of the claimant's land: only claimants with land claims over

¹⁴²*Id.* at 21.

¹⁴³Thabet Abu Ras, *Land Disputes in Israel: The Case of the Bedouin of the Naqab*, 24 ADALAH'S NEWSLETTER, 5–6.

¹⁴⁴ See CC (BS) 1470/05 State of Israel v. Mohamad Abu Zayed PM (2008) (Isr.) (63) Dinim Shalom 1280 (addressing the issues of preventing State encroachment on Bedouin land and discussing Bedouin land ownership and designating Bedouin land as State land).

¹⁴⁵ See *id.* at 9–10.

¹⁴⁶ *Id.* at 11–12.

¹⁴⁷ HUMAN RIGHTS WATCH, *supra* note 23 at 19.

¹⁴⁸ SWIRSKI AND HASSON, *supra* note 129 at 44–45; HUMAN RIGHTS WATCH, *supra* note 23 at 66; THE NEGEV COEXISTENCE FORUM FOR CIVIL EQUALITY, *supra* note 85 at 25 (comparing Bedouin compensation with compensation paid to Jewish settlers in Sinai and Gaza).

99 acres (400 dunam) are eligible for 20% compensation in land. However, in many cases where the State has agreed to alternative land as part of the compensation, the State has failed to fulfill the agreements equitably. In several of these cases, the State promised to compensate Bedouins with land but never delivered the compensation.¹⁴⁹ In several other cases, the State agreed to offer Bedouin agricultural land as part of the compensation, but when they received the land, the State refused to provide a title deed and refused to register the land in the Bedouins' names.¹⁵⁰ In other instances, the State offered Bedouin land in deserted places that had a lower value than their original land and that was unsuitable for their needs. In other examples, the State simply claimed that it could not find land to offer to the Bedouin. In one particular case, members of the Alamor and Azabarga tribes agreed to leave their land in Tal Almalah in 1983. In exchange, the State promised to provide each father of the tribe 1.2 acres (5 dunams) of agriculture land, but for 18 years the State claimed that it could not find land to fit their needs. In 2001, they appealed to the Supreme Court but did not receive their promised land.¹⁵¹

The second component of the compensation is monetary compensation. The Land Acquisition Law in the Negev (Peace Treaty with Egypt) 1980 and ILA decisions define the eligibility and the amounts of the compensation.¹⁵² Generally, the State pays Bedouin between 1100 to 3000 NIS (approximately \$300-800)¹⁵³ for each dunam of land.¹⁵⁴ Then, the State sells the same land for about \$80,000-\$150,000 for each dunam.¹⁵⁵ Bedouin

¹⁴⁹ S.C. 3341/01 Suliman Hasan Alamor et.al v. Implementation Admin., (2001) HCJ. 4441/01 (Isr.) *dismissed* Feb 6, 2002. (unpublished) (copy on file with author).

¹⁵⁰ For example the Tal Almaleh people and Nassasrah and Alamour tribes.

¹⁵¹ S.C. 3341/01 Suliman Hasan Alamor et.al v. Implementation Admin., [2001] (Isr.).

¹⁵² *See* Israel Land Administration Council Decision 858 of May 3, 1999, *available at* <http://www.mmi.gov.il/MoatzaWeb/InterHachById.aspx?hachid=858>; Israel Land Administration Council Decision 1028 of May 2, 2005, *available at* <http://www.mmi.gov.il/MoatzaWeb/interHACHResults.aspx?all=true>.

¹⁵³ As of February 2013, one New Israeli Shekel (NIS) equals approximately US \$0.246.

¹⁵⁴ HUMAN RIGHTS WATCH, *supra* note 23 at 13.

¹⁵⁵ For example, Tarabin land near Omer.

relocation compensation compared to Jewish relocation compensation illustrates the gross disparity. A Jewish family evicted from the Gush-Katif settlement in Gaza received more than 1 million Shekels in compensation.¹⁵⁶ By comparison, a Bedouin family evicted from the Bedouin village of Tarabin received approximately 70,000-150,000 shekels, about 5 to 10 percent of the compensation received by a Jewish family.¹⁵⁷

During this phase of land dispossession, the Bedouin continued to demand recognition of their land rights, but the State continued to refuse. Bedouin, who became aware of the consequences of the legal process, increasingly refused to bring their land claims to court. They appeared in courts only as a last resort to defend their land rights. Mainly, they sought judicial protection of their land against the State, hoping to prevent State acts of dispossession or expropriation, only to find that courts did not recognize their rights. In some cases, when Bedouins appealed to the court to protect their land, they were surprised to find out that not only did the courts fail to offer any protection but that in similar cases, the court had ruled against Bedouins and dispossessed their land.¹⁵⁸

The State's refusal to proceed with adjudication of Bedouin counterclaims relieved the pressure on the Bedouin to try to settle their land claims in court.¹⁵⁹ However, unlike the State's expectation, only a small number of Bedouin agreed to settle their land claims in exchange for the monetary compensation offered.¹⁶⁰ Neither option—a dead-end court challenge or an unfair financial offer—held appeal for the Bedouin, and neither offered a solution to the ongoing problem.

¹⁵⁶ This comparison should be taken in light of its context. The main difference between the situations arises from the international law perspective: while settlers in Gaza Strip violated international law, traditional Bedouin land rights are protected by international law.

¹⁵⁷ HUMAN RIGHTS WATCH, *supra* note 23 at 13.

¹⁵⁸ *Id.*

¹⁵⁹ Halima, *supra* note 118 at 1.

¹⁶⁰ *Id.* at 24.

Counterclaims

In 2004, as part of the Negev Plan—in a step designed to put additional pressure on Bedouin to coerce them to settle—the State renewed the adjudication of Bedouin land claims and started to submit counterclaims against Bedouin claims. The State vowed to adjudicate all Bedouin land claims and to quickly put an end to the Bedouin land problems. To make the plan more effective and assertive, it allocated special budgets and hired a special team of lawyers and experts to complete the task as soon as possible.¹⁶¹

These counterclaims compel the Bedouin to either settle their land claims or appear in court for adjudication. If claimants do not appear in court to adjudicate their claims, the court dismisses their claim.¹⁶² The government also raised the compensation offer, for a limited time of three years, in order to speed up the process, and also increased the land component compensation from 20 percent to 30 percent.¹⁶³ At the same time, it warned that those who refused to settle their land claims would be deprived of both their land and compensation.

The results have been devastating for Bedouin land rights. Shortly after 2004, the State brought more than 130 claims and won 40 rulings relating to about 6177 acres (25,000 dunams) that were registered in the name of the State.¹⁶⁴ As of April 2016, Bedouin have lost every land case brought and tried in court. Bedouin claimants continue to be summoned to the Land Settlement Office one by one, or tribe by tribe, to settle their land claims—or being brought to court via counterclaims, only to lose their land.

¹⁶¹ ADALAH, NOMADS AGAINST THEIR WILL 10, <https://www.adalah.org/uploads/oldfiles/eng/publications/Nomads%20Against%20their%20Will%20English%20pdf%20final.pdf> (last visited Sep 24, 2016).

¹⁶² See generally THE NEGEV COEXISTENCE FORUM FOR CIVIL EQUALITY, *supra* note 85 at 11–12.

¹⁶³ *Decisions of the Council at its Meeting on 04/03/04*, ISRAEL LANDS ADMINISTRATION, http://www.mmi.gov.il/hodaotmmiint/show_h.asp?key=525&CodeMaarecet=1 (last visited Feb. 5, 2013) (outlining compensation land prices and construction fields regarding the Negev Bedouin).

¹⁶⁴ Yahel, *supra* note 147 at 13.

The Litigation Option, the Final Option

The option of litigation remains a second formal option for Bedouin who chose not to accept the inequitable compensation offered by the State for their land. In such cases, the State forwards Bedouin land claims to the court, where the Bedouin have two options: They may either appear in court to present their arguments and evidence in order to adjudicate their land claim, or they may choose not to appear in court. All Bedouin who have appeared in court have lost their land claims. Recently, some Bedouin started to boycott the legal process and not appear in court in protest against the injustice of the legal process. This latter option results in an “absence ruling,” a decision that accepts the State’s claim and declares their land as State land.¹⁶⁵ The results are devastating and regarded as a “total loss” of the Bedouin land claim. In such cases, the State deprives the Bedouin of their land but also any compensation they could have received if they would have agreed to settle the land with the State.

Nevertheless, the results of both options appear to be the same. Claimants who choose to appear in court lose their land claim and, as a consequence, lose their land rights; claimants who do not appear in court receive an “absence decision” and lose their land rights as well. Therefore, many Bedouins are forced to “choose” to settle their land claims only to avoid losing absolutely everything. In effect, “the State submits counterclaims and the Bedouin settle their land claims.”¹⁶⁶ At the same time, according to Bedouin activist Dr. Amer Alhuzayel, many other Bedouin continue to resist the State’s plan to dispossess them of their land. They do not attend court, as they prefer to lose “in absence” than to appear before a court they do not trust, believing that appearing in court could give legitimacy to the State's action.¹⁶⁷

¹⁶⁵ SWIRSKI AND HASSON, *supra* note 129 at 30.

¹⁶⁶ Noam Sharvit, *Hamdenab tovaat habedouim metpasbrim [The State Sues Bedouin Compromise]*, GLOBES (Jan. 21, 2007), <http://www.globes.co.il/news/article.aspx?did=1000174638>.

¹⁶⁷ SWIRSKI AND HASSON, *supra* note 129 at 13.

In the case of *Aluqbi*, (2012)¹⁶⁸ where serious efforts of research and legal advocacy were applied trying to convince the court to recognize Bedouin land rights, the case ended up with yet another decision similar to the *Alhawashelah* decision, another decision that denied Bedouin land rights. The decision further proves that courts are so wed to the legal precedent of the *Mawat* doctrine that the Bedouin have no chance in local courts.

III. CONCLUSION

The case of Bedouin land dispossession is no different than the many typical stories of indigenous peoples' land dispossession around the world, in which colonial states dispossess indigenous peoples' lands through invasion, occupation, removal, concentration, enacting special legislation, and adjudication of their land cases in courts. In the past, these countries also enjoyed the approval of international law that facilitated their land dispossession.

Like many indigenous groups, the Bedouin have been stripped of their land rights by methods on both national and international levels. On the national level, Bedouin have endured colonial invasion, settlement, occupation, eviction, and concentration. The State has employed many typical methods to dispossess the Bedouin of their land, including administrative, legislative, and judicial methods.

While the other methods are considered out of date, the judiciary route has been proved the most effective and maneuverable one. It follows the state's traditional goal of land dispossession, but also legitimizes the state's acts of dispossession under the cover of "courts of justice". As part of the judiciary technique, many colonizing courts have relied on notorious legal doctrines, such as the Doctrine of *Terra Nullius* and the Doctrine of Discovery to justify the dispossession of indigenous peoples' lands. These courts disregard indigenous peoples' customary laws and turned a blind eye to the many

¹⁶⁸ File No. 12-21-306 Civil Appeals, Suleiman Aluqbi v. State of Israel (Mar. 15, 2012), Pador Legal Database (by subscription) (Isr.).

impediments that prevent fair adjudication, thus undermining their ability to defend their land rights.

The article also shows that the Israeli judicial system not only fails to properly defend and recognize Bedouin traditional land rights, but instead plays a major role in supporting the State policy of land dispossession. Likewise, this article shows that the judiciary in Israel has been the most effective in expropriating the rest of Bedouin land. It follows the State's ideological and political goals to possess and control all the land in the State. It also adds its stamp of legitimacy on the acts of the State. Like many colonizing states, Israel has adopted the doctrine of *Mawat* land to declare Bedouin land as State-owned land. Most importantly, as part of these methods, the State actively disregards Bedouin customary law, oral culture, pastoral economy, customary rights of ownership. In doing so, the State, with the judiciary providing its final stamp of approval, has effectively foreclosed any option for the Bedouin to legally defend their traditional lands.