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**(Re)claiming spatial justice for the native Naqab Arab Bedouin.**

*Towards a critical geography of the Israeli land and planning laws.*

Wetenschappelijke verhandeling

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## **Abstract**

This case study examines the ongoing spatial-legal conflict between the Israeli government and the native Arab Bedouin in the Naqab – southern region of Israel. This conflict is studied against the background of Israel's ethnocentric settler colonialist logic which seeks to "Judaize" Arab Bedouin space by acts of (violent) dispossession, displacement, replacement and enforced urbanization. By unfolding the Israeli legal system, its laws and policies, it becomes apparent that legal tools are used to deny the Arab Bedouin their land rights and ownership. The doctrine of "terra nullius" facilitates a conceptual "emptying" of space and is of tactical use to facilitate the enactment of various laws and regulations of land confiscation, while Israel strategically expands its territories in order to establish a Jewish state. Especially those who live in the unrecognized villages are treated as intruders or squatters who "illegally" reside on Jewish state land. The indigeneity discourse is adopted here as a counter-hegemonic political tool for resisting ongoing dispossession and displacement. To answer the research questions, the theoretical framework of critical legal geography is used to analyze the gathered data. This study field is meaningful as it looks closer to the role of law and space in the production of oppressive power structures, but also in the legitimation and persistence of hierarchical social orders. Regarding the social and political nature of law and space, critical legal geography helps to uncover and analyze legal geographies of power and violence. This case study demonstrates that the implemented laws and policies work in the interests of the Israeli government, by inter alia passing a law retroactively to legalize certain (violent) (f)acts like dispossession. Taking the actual spatial injustices as this study's entrypoint, a "spatial-legal" turn is aspired, which breaks with the status-quo of "lawfare" so that spatial justice becomes achievable.

## Abstract

Deze casusstudie onderzoekt het aanhoudende ruimtelijk-juridisch conflict tussen de Israëliëse regering en de inheemse Arabische bedoeïenen in de Naqab – zuidelijke regio van Israël. Dit conflict wordt bestudeerd tegen de achtergrond van Israëls etnocratisch kolonialistische logica dat streeft naar het "Judaïseren" van de Arabische bedoeïenen ruimte door (gewelddadige) onteigening, verplaatsing, vervanging en gedwongen verstedelijking. Door het ontrafelen van het Israëliësch juridisch systeem, wetten en beleid, wordt het duidelijk dat juridische instrumenten gebruikt worden om de Arabische bedoeïenen hun landrechten en eigendom te ontkennen. De doctrine van "terra nullius" faciliteert het conceptueel "ledigen" van de ruimte en wordt tactisch gebruikt om de diverse wetten en regels van landconfiscatie te bekrachtigen, terwijl Israël strategisch haar grondgebied uitbreidt om een Joodse staat te vestigen. Degenen die in de niet-erkende dorpen wonen, worden behandeld als indringers of krakers die "illegaal" op Joods staatsland wonen. Het inheemse discours is hier gekozen als een contra-hegemonisch politiek instrument voor het tegengaan van aanhoudende onteigening en verplaatsing. Om de onderzoeksvragen te beantwoorden, wordt het theoretisch kader van de kritische juridische geografie gebruikt om de verzamelde gegevens te analyseren. Dit studieveld is betekenisvol omdat het kijkt naar de rol van de wet en ruimte in de constructie van onderdrukkende machtsstructuren, maar ook in de legitimatie en persistentie van hiërarchische sociale ordeningen. Rekening houdende met de sociale en politieke aard van wet en ruimte, helpt de kritische juridische geografie juridische geografieën van macht en geweld te ontdekken en analyseren. Deze casusstudie toont aan dat de uitvoering van wetten en het beleid in het belang zijn van de Israëliëse regering, onder meer door het retroactief doorvoeren van een wet om bepaalde (gewelddadige) daden zoals onteigening te legaliseren. Door de feitelijke ruimtelijke onrechtvaardigheden als vertrekpunt te nemen, wordt een "ruimtelijk-legale" omslag nagestreefd, die breekt met de status-quo van "lawfare", zodat ruimtelijke rechtvaardigheid haalbaar wordt.

## **Preface and Acknowledgements**

The choice for this case study's topic was part of a process in which I (re)-wrote my research focal point. The fact that I chose this particular spatial-legal conflict in the southern region of Israel had to do with my decision to join the ten-day study trip to Israel and Palestine, that was part of my master's program. The study trip, led by Dr. Prof. Christopher Parker and Dr. Siggie Vertommen, was very meaningful to get a clearer picture of the broader Israeli-Palestinian conflict. Besides the ongoing conflicts in the Occupied Palestinian Territories, my curiosity led me to take a look at "the other side" – the so-called democratic side. There, under the starry sky of the southern desert, is an overshadowed spatial-legal conflict taking place between the Israeli government and the native Arab Bedouin. A seemingly forgotten, nonetheless important internal conflict which I hope to bring more into the public eye by writing about it. This is also one of the reasons why I have chosen to write my master thesis in a global language. Due to my earlier academic social work program, I am particularly interested in minority groups. In this case my attention goes to the most deprived citizens of Israel – the Arab Bedouin, a Palestinian minority who are caught in a spatial-legal "limbo". Along the course of this study I wondered, what makes them "lawbreaking citizens"? What is behind this discourse of "making the desert bloom"? My suspicion led me to question the implemented laws and policies as such and the interests behind certain legal conceptualizations. With this case study I hope to clarify that the Israeli-Palestinian conflict is not limited to the conflicts occurring in Gaza or the West Bank. This particular internal conflict, albeit more hidden on the international stage, deserves academic attention due to the actual injustices taking place on the ground. The fieldwork period made me realize how important it is "to get lost in the field". Being in the field not only makes the conflict more tangible, it also provides a researcher with meaningful data that enriches one's own research.

My most sincere gratitude goes towards all the respondents who made time for an interview. I am very grateful for their openness and participation which was very meaningful to this case study. Regarding my fieldwork period, I want to express my gratitude towards Fadi and Muna with whom I stayed. I also want to thank Jalal for driving me to his village Wadi Al-Na'am and inviting me to his home. This case study was made possible in particular because of the assistance of Dr. Prof. Christopher Parker who guided and supported me through my process of (re)-writing the focal point of this master thesis. I want to thank him in particular for sharing some interesting insights and for his constructive feedback. Furthermore, I would like to thank Dr. Siggie Vertommen, who read my thesis and who gave me some directed advice on the structural aspects. Likewise, I would like to thank both Jan Delaeter and Jasper Thys for reading and correcting my master thesis grammatically. Finally, I would like to thank my parents and friends, who were always there to support me and gave me the courage to keep going.

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## 1. Introduction and Research problem

Starting with displacement and mass land confiscations in the 1950s, accompanied with zoning and planning practices causing serious limitations on development and housing since the 1960s, lead to unbearable conditions of living. This is so particularly in areas where the basic needs of the Palestinian citizens of Israel are being marginalized, as it is the case in the unrecognized Palestinian villages in the Naqab (Alqasis, Al Azza & Makhoul, 2014, p.25).

This master thesis will explore the legal arguments used by the Israeli government to dispossess, displace, replace and concentrate the native Arab Bedouin in the Naqab (or Negev in Hebrew) – Israel’s southern region. The spatial injustices experienced by the native Arab Bedouin will be taken here as an entrypoint to reveal the underlying aims of the Israeli legal system, its laws and policies. Like the quote above demonstrates, the spatial injustices are indeed the most visible in the unrecognized villages. The Arab Bedouin – the most disadvantaged citizens of Israel – are treated as “intruders” or “squatters” who “illegally” reside on Jewish state land (David, n.d.; Noach, 2009). The unrecognized villages are subjected to crop destruction and are denied public services such as water, electricity, paved roads, schools, clinics, garbage collection etc.– all provided to any Israeli urban concentration (Abu-Saad, 2008; David, n.d.; Amara, 2013).

During my fieldwork study I spoke with Jalal (personal communication, April, 2016), a young Arab Bedouin activist who lives in the unrecognized village of Wadi-Al Na’am. He, his brother, father and uncle all work in the construction sector in Be’er Sheva because their farming income is not sufficient. It was very difficult to get to the village because of the rough and unfinished roads. The neighborhood gave an impoverished impression and there was garbage everywhere. From the outside, the houses – varying from tents to mud and stone houses – looked rather shabby. Yet, they try to make the best of it with the little they have. Nevertheless, it does not matter if it is “just” a tent, a mud or stone house; they all represent a home for the ones who live there. However, due to its “illegal” status, they are not allowed to build decent houses. Every single house has a demolition order, so every day they go to work with the possibility of coming back to a demolished house. Besides the caused material (and economic) damage, the psychological impact of returning to a heap of dust goes beyond imagination.

The issues which presented themselves along this study’s journey are the lack of recognition of both land ownership rights as well as of the unrecognized villages (Noach, 2009). In Shmueli and Khamaisi (2015) it is stated that even after a village has been recognized, the government, represented by the Israeli Land Administration (ILA), can still issue a building permit when there is a legal dispute over a land ownership claim. Besides the fact that it is almost impossible to obtain a

building permit, it is also a financial burden as they are expensive and no governmental funds are available to rely on. The spatial-legal conflict involves a “prolonged dispute over land rights and a history of expulsion, displacement, land dispossession, forced urbanization, replacement and a housing crisis of tens of Bedouin villages deemed ‘illegal’ by the State of Israel” (Amara, Abu-Saad & Yiftachel, 2012, p.2). By using land expropriation, nationalization and reallocation, Israel had gained control over 93.5% of the land by 2013 (Amara & Yiftachel, 2014). Whereas Israeli Arabs hold only 3.5% of the land in private ownership and whereby 2.5% of that land is held under the jurisdiction of Arab local authorities (Abu-Ras, 2006). The Naqab region in particular accounts for almost 60% of the country’s total territory (Abu-Saad, 2008). In Mihlar (2011), Thabet Abu Rass explains that the Arab Bedouin comprise 30% of the Naqab’s population and live on 2% of the region’s total territory – of which 1.4% accounts for the unrecognized villages. The total land area as described in the submitted land claims made by the Arab Bedouin is about 5.4% of the Naqab’s total territory. Currently there are about 220.000 Arab Bedouin residing in the Naqab, of which more than half reside in the seven state-planned townships (Kedar, 2016). Looking at the poor living conditions of these townships, the state has made no attempt to integrate them into the national infrastructure in a meaningful sense (Abu-Saad, 2008). The remainder 40% live in the 46 villages of which 35 are unrecognized and 11 are newly-recognized since 2000 (Noach, 2009).

The Israeli planning and zoning policies of Arab Bedouin relocation and concentration have created geographical enclaves in which the Arab Bedouins are surrounded by Jewish settlements and thus reinforce spatial segregation (Kedar & Yiftachel, 2006). Israel’s ideological and geopolitical considerations affect its spatial policies in which the Arab Bedouin are seen as a burden and barrier to the region’s development (Shmueli & Khamaisi, 2015). These policies ignore the unrecognized villages when developing their plans and zone these lands instead for military, industrial, recreational or environmental purposes (Abu-Saad, 2008). The controversial Praver Plan was frozen but the ongoing house demolitions demonstrate that it is actually still at work (Alqasis et al., 2014). The frequently conducted house demolitions bring the Arab Bedouin land issues into the public eye (Amara et al., 2012). Between 2013-2014 some 859 houses were demolished: 22% by the authorities and 78% by the owners themselves. About 46% were demolished in unrecognized villages and 54% in planned towns and recognized villages (Tarabulus & Rotem, 2014). The latter demonstrates that the threat of getting their house demolished is thus unavoidable.

This case study will demonstrate that the Israeli legal system, its implemented laws and policies play a central role in this ongoing spatial-legal conflict. The house demolitions, expulsion, displacement, dispossession, urban concentration and denial of land rights are all based upon governmental ‘legal argumentations and judicial and administrative orders’ (Amara & Yiftachel, 2014). The implemented land laws “do not recognize Bedouin custom as a source of private land

rights” (Yaar, 2011, quoted in Kedar, 2016, p.14). This case study will unveil the problematic legal interpretations and manipulations which allow the Israeli government to frame the Arab Bedouin as “illegal claimants” who lack “modern” evidence of ownership, while most of them have lived, possessed and cultivated these lands for generations (Negev Coexistence Forum for Civil Equality, 2012). Following Yiftachel’s (original draft for this case study’s use only, 2016) argument: “planning, land and law are strongly intertwined, and this nexus should be brought to the center of our conceptual and empirical writing” (p.3).

By detecting the persisting legal and spatial planning flaws, this case study will try to co-contribute to the connections being made "between critical legal studies and critical geography scholarship - a field that Nicholas Blomley and David Delaney have characterized as critical legal geography” (Butler, 2009, p.2). To encode the hegemonic meanings of law and space, the spatio-legal relations between the Israeli government and the Naqab Arab Bedouin will be analyzed by using critical legal geography as this case study’s theoretical framework (Blomley, 2003a). Taking politics of space and law further into consideration, an interlinkage will be made between space, law and violence. Furthermore, property will be treated here as “a central locus where such a power-space-law nexus is established and maintained” (Braverman, Blomley, Delaney & Kedar (Eds.), 2014, p. 102). An emphasis will therefore also be placed on the legalized colonial violences of dispossession (Blomley, 2003b).

By using indigeneity as a political tool, the Naqab Arab Bedouin have found a “new” entrance to challenge the Israeli legal system, its laws and policies (Yiftachel, draft, 2016). Critical questions on the used legal arguments of a settler colonial society have led to the recognition of the land rights of similar indigenous groups elsewhere (Elsana, 2015). Inspiring cases on the international stage (like Australia) regarding the recognition of indigenous land rights, contribute to an increased affinity with indigenous peoples’ disadvantaged situation. This particular attention though, poses a threat to the government as they fear that the ongoing demands for recognition of the Arab Bedouin land rights will lead to an intensification of activism for the Arab Bedouin cause, which will eventually endanger their ultimate goal of “conquering the Naqab” in order to establish a fully Jewish state. This translates itself into an excessively tightened grip of control on the Arab Bedouin on many levels (Nasasra, 2012).

Given the Israeli state’s persisting policies of dispossession and forced Arab Bedouin removal, Yiftachel (2009) states that one could speak of an ongoing Nakbah –referring to the Palestinian exodus or catastrophe of 1948 – in the southern region, considering that for the Naqab Arab Bedouin it “is not just a distant memory, but a living reality” (p.251). Consequently, this case study supports the Arab Bedouin’s embracement of the indigenous narrative, since one of “the fundamental rights

of indigenous groups is protection against arbitrary displacement from their historical lands” (Yiftachel & Roded, 2016, p.4).

In addition, it will be indicated here that the presented laws and policies prevent the Arab Bedouin from reaching “spatial justice”. Therefore, a fuller exploration of the relationship between space and justice will create an opportunity for “counter-moves to fight spatial injustice and also begin to answer the question of ‘how can we create spaces that promote equity, access, health, and justice?’” (Bailey, Lobenstine & Nage, 2012, p.2).

## **2. Research questions**

This case study will try to formulate an answer to the following questions. The 1<sup>st</sup> questions are specifically about the Israeli laws – and their implications on the native Naqab Arab Bedouin – and the interlinkage with space, indigeneity and spatial justice. The 2<sup>nd</sup> questions are more general:

- 1) How do the Israeli land and planning laws intervene in the Naqab Arab Bedouin space? And how do these laws manage to conceal the underlying context of denying the Naqab Arab Bedouin spatial justice?
- 2) How do notions of indigeneity allow the Naqab Arab Bedouin to challenge the Israeli land and planning laws? How is indigeneity articulated here in relation to spatial justice?

More general questions:

- 3) What would this research mean for the way we look at the Israeli legal system, its laws and policies?
- 4) What role does the notion of indigeneity play in the struggle for land for minority groups?

### **3. Contextualizing the spatial-legal conflict**

#### **3.1. The native Naqab Arab Bedouin**

The Arab Bedouin –a semi-nomadic/sedentary community – are a minority within a larger Arab Palestinian minority who live in the Naqab, Israel’s southern peripheral geographical area (Mihlar, 2011; Negev Coexistence Forum for Civil Equality, 2012). Prior to 1948, around 65.000-90.000 Arab Bedouin lived in the Naqab and were engaged in (seasonal) agriculture. The 1948 war led to the exodus of the majority of the Naqab Arab Bedouin to the Gaza strip, West bank, Jordan and Egypt (Abu-Rabia, 2008). Ever since, Israel barred the return of the Arab Bedouin who fled the war (Kedar, 2016). After 1948, three main Arab Bedouin tribes (Azazmah, Tarabin, and Tiaha) remained in the Naqab– altogether about 11.000 Arab Bedouin. They were resettled in a concentrated region called the “Syag” (fence in Arabic), covering about 10% of their former territory. They were being placed under military governance until 1966, which also counted for the Palestinian citizens of Israel (Shmueli & Khamaisi, 2015). They were being told by the Israeli authority that they could return to their ancestral lands within six months (David, n.d.). During this period the Arab Bedouin Sheiks were granted with substantial authorities and local privileges and took over the role of “gate keeper” (Sa’dj, 2011).

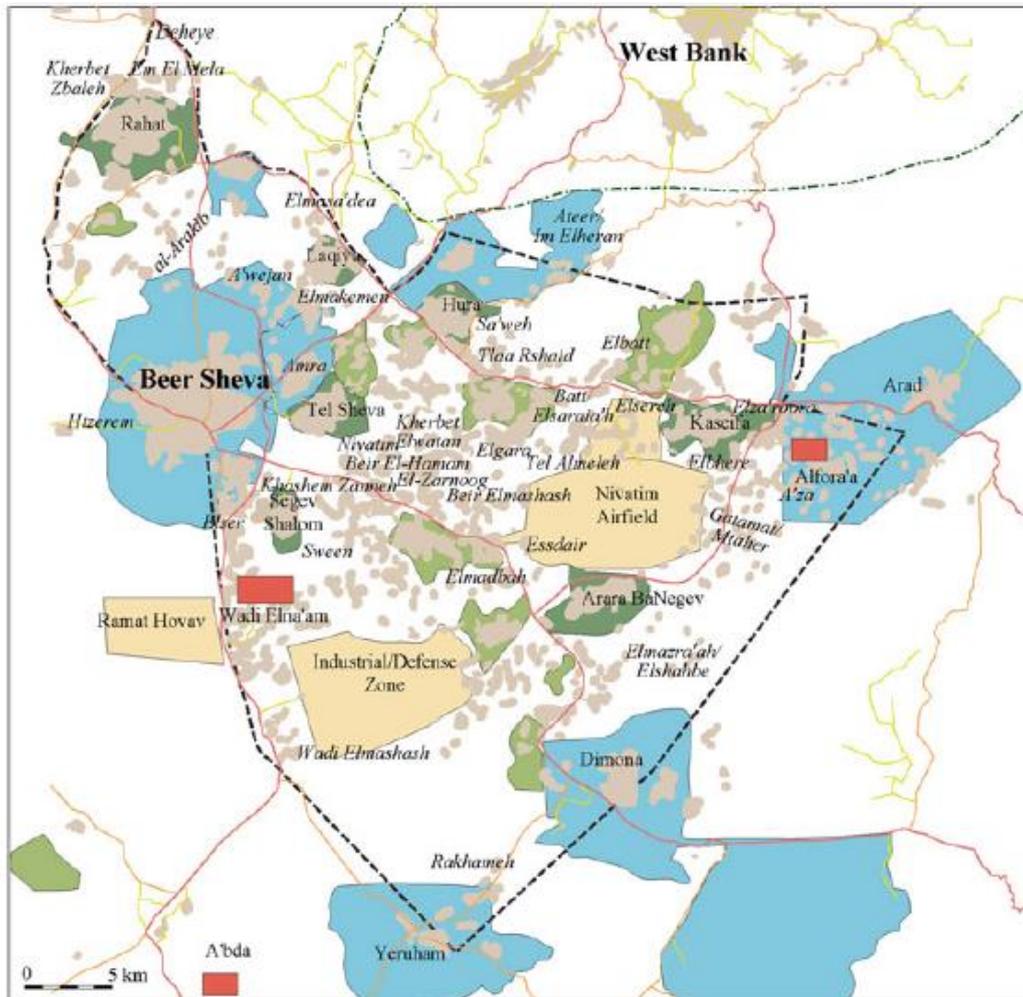
Referred to as a “local-urban concentration”, the government furthermore wanted to limit the Arab Bedouin territory within the Syag region (Shmueli & Khamaisi, 2015). They had planned seven urban townships to move the Arab Bedouin to (Amara, 2013). This began with the planning of Tel Sheva (mid-1960s) and Rahat (beginning of 1970s), which were based on the Arab Bedouin’s social structure (tribal affiliation) and hierarchy (traditional social stratifications) but ignored the required expanded plots needed to maintain the cattle and considering the rapid population growth. A slightly improved “local-urban concentration” model was followed by the next five state-planned Arab Bedouin townships by the end of the 1960s, namely Segev Shalom, Arara BaNegev, Kaseifa, Hura, and Laqiya (Shmueli & Khamaisi, 2015). Although the living conditions in those townships cannot be generalized, most of them do face common problems such as poverty, unemployment and low education levels (Mihlar, 2011). These conditions discourage other Arab Bedouin from moving there (Shmueli & Khamaisi, 2015).

The process of urban concentration led to a higher level of governance for the state as well as to the loss of control over resources for the Arab Bedouin (Abu-Saad, 2008). The tribal system still strongly exists among the Arab Bedouin. At the same time it is also a sort of cast system as they are not equally positioned (Yiftachel, personal communication, April, 2016). The Arab Bedouin have their

own spatial logic; they have a different idea of development and urbanization and therefore want a selective type of urbanization and modernization, one that merely deviates from a Western urbanization type: “the goals of the Bedouin include preserving their land and rural existence; safeguarding their traditions, culture, and social structures; gaining services and living conditions equal to those of other Israelis; and using their demands as leverage for future Negev development” (Shmueli & Khamaisi, 2015, p.54). This contradicts with the enforced urbanization by the Israeli government. According to Yiftachel (2008), those urbanized townships in the Naqab are spaces of “urban informality”, which he refers to as “gray spaces”—“positioned between the ‘whiteness’ of legality/approval/safety and the ‘blackness’ of eviction/destruction/death” (p. 9-10). The Arab Bedouin are located between these two poles, in gray spaces of “permanent temporariness”. In this sense the Arab Bedouin are being denied access to a “just city” (Yiftachel et al., 2009).

The Arab Bedouin are legally Israeli citizens, but “this citizenship status did not prevent their long-term dispossession, discrimination, and exposure to major government efforts to Judaize the Negev” (Kedar, 2016, p. 14). Additionally, “Bedouin citizenship remains only formal — a method of registration, organization and surveillance, offering negligible political clout. It has never allowed for genuine participation in state or regional affairs, or as a platform for receiving a fair share of public resources” (Yiftachel, 2008, p.7). The Arab Bedouin continue to respond actively to the long history of governmental discrimination and the ignoring of their land rights and needs (Shmueli & Khamaisi, 2015). Morphy (1995) notes in Abu-Rabia (2008) that the Arab Bedouin regard themselves as the direct owners of their land by referring to the blood ties they have with their ancestral lands.

This figure shows the resettlement planning of 1948–present (Shmueli & Khamaisi, 2015, p. 64).



- Built-up areas
- Jurisdiction of predominantly Jewish cities/towns
- National infrastructure
- Bedouin towns
- Recognized localities in Al Kasum and Nave Midbar regional councils
- Localities recognized but awaiting official affiliation
- Unrecognized villages*
- Syag region
- Green Line
- Main roads

**3.2. “Judaizing” Arab Bedouin space**

The presented spatial-legal conflict will be studied here against the background of Israel’s settler colonialist logic. Primarily, a “settler” is defined here as those who adopt and legitimize a “way of thinking with an imperialist’s mind” (Alfred, 2009, quoted in Snelgrove, Dhmoon & Cortassel, 2014, p.2) and “to settle involves both subject-formation and governance” (p.5). Additionally, “settlers have to be made and power relations between and among settlers and indigenous peoples have to be reproduced in order for settler colonialism to extend temporally and spatially” (p.5).

According to Weizman (cited in Lloyd & Wolfe, 2016) one can discern the country's production of a "differential segmentation of space and population within which the freedom of movement of the settler is protected at the expense of the indigenous Palestinian population, increasingly confined and immobilized by a system of apartheid justified by 'security'" (p.116). According to Lloyd & Wolfe (2016), the spatial confinement of unwanted populations recapitulates the territorial characteristics of settler colonialism and makes it an ongoing process. Macoun and Strakosch (2013) in particular note in Snelgrove et al. (2014) that when settler colonialism is institutionalized as a structure, it appears that indigenous peoples only have two options: 1) to be coopted into the system or 2) to hold on onto a position of resistance.

Expulsion, spatial concentration, displacement, land confiscation and house demolitions are all part of Israel's settler colonial Zionist project (Amara, 2013); "the Judaization project is driven by the dominant Zionist premise that Israel is a territory and a state that 'belongs' to the Jewish people" (Kedar & Yiftachel, 2006, p.133). To reach its geopolitical and ideological project, the Israeli state is striving for "maximum land, minimum Arabs" or "maximum Arabs on minimum land" while exercising "maximum control and minimum responsibility" (Li, 2006). Since the establishment of the Israeli state in 1948, there has been a planned population movement going on in reaching this project. The "Judaizing" of Arab Bedouin space "is applied to the Negev through a matrix of control which includes three components — land ownership, spatial planning, and land management and spatial regime-dividing by municipal jurisdiction (Shmueli & Khamaisi, 2015, p. 35).

The Naqab region furthermore consists of good irrigation soil and was therefore of particular value to the Zionist project as David Ben-Gurion wrote (in a letter to his son, Amos, 1937, quoted in UN Committee on Economic, Social and Cultural Rights, 2003, p.5):

Negev land is reserved for Jewish citizens, whenever and wherever they want... We must expel Arabs and take their places ... and if we have to use force, then we have force at our disposal, not in order to dispossess the Arabs of Al Naqab, and transfer them, but in order to guarantee our own right to settle in those places.

Both Kedar & Yiftachel (2006) view the Israeli state as an "ethnocracy – a society shaped by coterminous processes of ethno-national expansion and internal ethno-class stratification" (p.129). Typical for settling ethnocratic societies is to create legal structures and public norms that facilitate the land control and societal power of an expanding ethnic nation. More specifically, they present Israel as an "internal settler society – formed by ethno-national and ethno-class-based population redistribution within the sovereign territory controlled by the state" (p.130). They distinguish three primary ethno-classes: 1) founders – referring to the privileged position of the Ashkenazi (Western)

Jews; 2) Immigrants – referring to the Mizrahi (Eastern) and Russian-speaking Jews who occupy a rather subordinated position and 3) Indigenous or local or foreign people – in this case the native Naqab Arab Bedouin who are subjected to long-term marginalization and occupy a rather isolated position. The Israeli land regime thereby contributes to the endurance of ethnic spatial control by relying more on ethnicity than citizenship to distribute power and resources.

The spatial key factor at stake here is land, and the associated legal and political practices that determine “its ownership, allocation, use and control among Israel’s ethno-classes” (Kedar & Yiftachel, 2006, p.130). In Israel’s ethnic settlement and land policies space has been divided unevenly and has “contributed to the development and maintenance of ethno-class disparities in Israeli society” (Kedar & Yiftachel, 2006, p.135). The Israeli government leases its state land for a period of 49 years to its (mostly Jewish) citizens (Abu-Ras, 2006). Most of the individual Jewish farms located in the Naqab are designed for either tourist purposes or to maintain state land from “illegal” occupation by the Arab Bedouin (Shmueli & Khamaisi, 2015). The doctrine of “terra nullius” (TN) – “land declared by the authorities as empty of ownership, rights or sovereignty” (Yiftachel, draft, 2016, p.4) – furthermore facilitates a conceptual “emptying” of native space (Blomley, 2003b). It will be demonstrated here that it is a tactical tool to facilitate the enactment of various laws and regulations of land appropriation (Abu-Saad, 2008).

### **3.3. Unfolding the Israeli legal system, its laws and policies**

The most dangerous aspect of the land expropriation following the initial wave of expulsion is that it was (and continues to be) done through legal channels and is therefore an “acceptable” and “modern” way of cleansing the space in Al Naqab (Abu-Saad, 2008, p.6).

The quote above demonstrates what this case study is about. In Amara (2013), it is stated that most research on the Arab Bedouin focused on their sedentarization, modernization and development, and less on the legal aspects and historical origins of land ownership and the role of Israeli discriminatory policies. Therefore, this case study will take the latter as its focal point. This can be particularly useful for bringing exclusions into the public eye. Of particular importance to this study, is the “growth in new legal approaches and a critical focus on the rule and coercive power of the law” (Nasasra et al., 2014, p.7-8). This case study therefore encourages more academic attention to “the role of legislation in the dispossession of displaced ethnic and national groups” (Forman & Kedar, 2004, p.810).

By critically unfolding the Israeli legal system, problematic legal interpretations and manipulations of historical legal laws and policies will be exposed. Although Israel's legal system is

part of the Western legal culture, it has its own peculiarities; “the state’s ideology is governed by the Rule of Law; the basic approach is secular, liberal, and rational (...) the individual has rights as well as obligations” (Barak, 2002, chapter 2, Characteristics, para. 1). Nevertheless, the Israeli laws play an important role in the shaping of geographical dynamics such as immigration, settlement, dispossession, concentration, residential relocation, urban and regional planning etc. Therefore, “law and courts occupy a special place in the institutionalization and legitimization of these socio-spatial power structures” (Kedar & Yiftachel, 2006, p.132).

Hence, I will shed light on the legal Israeli institutions which will turn out to be very political, given “the conditions under which and the practices through which authority is constituted and legitimated, and what these constitutions and legitimations enable and disable” (Shaw, 2008, p.4). Legislation, being a source of law and product of legal agents who are often bound to party politics, is thus highly political (Feldman (Ed.), 2013). The key aspiration of the native Naqab Arab Bedouin – and of this case study – is therefore “not only to gain access to or representation in political institutions, but to forward a deeper challenge to the character and constitution of these institutions themselves” (Shaw, 2008, p. 1).

The relevance of this case study’s topic is further demonstrated by the academic contribution of two Israeli scholars, namely Professor Oren Yiftachel – specialized in political geography, and Professor in law Alexandre Kedar who focuses on legal geography and history, law and society and land regimes in settler societies. Yiftachel (draft, 2016) recently stated that the legal system itself has remained in the background. It is exactly this point that I want to address here.

In addition, the Journal of Spatial Justice is of significant value here: it treats the concept of spatial justice as a useful concept for social science as “both justice and injustice become visible in space” (Spatial Justice, n.d., chapter 3, para.1). When dealing with spatial distribution, the degree by which one has access to land, public services, (im)material goods etc., indicates if the situation is fair or not (Spatial Justice, n.d.). In 2015, this journal made an explicit call for papers on indigenous peoples and spatial justice (Collignon & Hirt, 2015). In this respect, I hope to respond to this question by presenting an ongoing spatial-legal conflict whereby the native Naqab Arab Bedouin are considered an indigenous people fighting for spatial justice. In accordance to this, Schulte-Tenkhoff (1998) (cited in Collignon & Hirt, 2015) stated that the anthropology of law is of significant value to this aspect as it has been developing “at the crossroads of land-claims and claims for justice in Indigenous contexts” (p.3).

Finally, this study aspires to overcome the historical isolation of Naqab Bedouin studies by placing this local spatial-legal conflict into the broader context of Israeli settler colonialism (Nasasra et al. (Eds), 2014).

## **4. Research Methodology**

### **4.1. Research design**

In the following section I will draw out the research design that was followed during this case study. This will clarify how I gathered my data and which theoretical framework I used to analyze them to answer the research questions. As mentioned before, the spatial-legal conflict in the Naqab is primarily an issue of land rights between the Israeli government and the native Arab Bedouin. Because of their disadvantaged situation and experienced spatial injustices, this study takes the native Naqab Arab Bedouin as its focus group. The aim of a case study is to carry out an “intensive study of a single unit for the purpose of understanding a larger class of (similar) units” (Gerring, 2004, p.342). This single unit is bound in space – being the southern region of Israel and time – where ethnographic fieldwork was conducted from the 7<sup>th</sup> of April until the 28<sup>th</sup> of April. During the course of this study, the issues at stake came to surface by both reading related literature and by collecting meaningful data “on the ground” during the conducted ethnographic fieldwork. I have chosen explicitly to do an in-depth case study of one unit and not to do a comparative study. It is furthermore an explanatory case study where “why-questions” delve deeper into the Israeli legal system, its laws and policies to unveil what is behind their used legal arguments. By doing this, I hope to shed light on some causal explanations (De Vaus, 2001).

The conducted ethnographic fieldwork was based on a micro-geographical approach. In this aspect, Natanel (2016) “considers how Jewish Israelis actively shape the spatial micro-politics of power within and along the borders of the Israeli state (p.1)”. Following his statements, the relationship between spatial micro-politics and geographies of power at the level of everyday life will be explored and analyzed throughout the lens of critical legal geography and thereby using a micro-geographical approach.

In addition, this case study uses a qualitative research approach. This choice derives from the study’s topic and its questions. Doing qualitative research means to situate the gathered data in a broader context and give meaning to them (Bryman & Burgess, 1999). In qualitative research, two main advantages and disadvantages can be observed. First of all, it makes it possible to understand the meanings the actors involved ascribe to certain processes or phenomena. In that way, a clear understanding of the context of the concerned research problem can be acquired (Maxwell, 2013). Given the exploratory and descriptive character of this case study, this is of particular importance. Secondly, the researcher enjoys a certain degree of freedom when doing qualitative research and interpreting the data, which is collected by using a range of sources. This allows a continuous assessment of the research whereby the focus and objectives are subjected to adjustments (Cambré

& Waege, 2003; Savin-Baden & Howell Major, 2013). One of the critiques of doing qualitative research is that it allows for too much subjectivity and a lack of transparency. As a consequence, bias cannot be excluded and can make it difficult to replicate the research (Bryman, 2012). To face up to these challenges and collect data in a more systematic way, semi-structured interviews were conducted partly with a set of similar questions. Furthermore, data-triangulation will be practiced to increase the research's validity. This means that a variety of methods will be used to collect data and that the data will be checked by more than two sources (Flick, 2014). Finally, it is argued that the obtained results of qualitative research are difficult to generalize to other cases as they are often limited to one specific phenomena or context (Baarda, De Goede & Teunissen, 2005).

#### **4.2. Method for collecting data**

The data for this case study was collected by using a variety of methods. Firstly, knowledge on the topic was gained throughout a literature study by collecting both primary (e.g. policy-, legal- and historical documents) and secondary sources (e.g. academic literature on the Naqab Arab Bedouin, settler colonialism, critical legal geography, indigeneity, spatial justice, geographies of violences). Secondly, explanatory ethnographic fieldwork was conducted for a rather short period of three weeks, from the 7<sup>th</sup> of April until the 28<sup>th</sup> of April. Thirdly, I conducted in-depth interviews with a variety of people who have particular knowledge on this conflict – ranging from Arab Bedouin, to academics, to a mayor of a Kibbutz, to an ex-deputy of the Southern District Attorney (Civil Matters) at the Ministry of Justice, to an ex-Knesset member and civil society actors.

During this fieldwork, a participant observer method was employed in a variety of Arab Bedouin localities in the Naqab, including both visits to recognized villages such as Rahat (one of the seven urbanized Arab Bedouin townships) and four unrecognized villages, namely Wadi Al-Na'am, El-Araqib, Alsra and Rahmei. Following Abu-Rabia (2008, p.99), "these methods allowed me to penetrate deeply into the world of the Arab Bedouins in an attempt to understand the factors that shape their lives, their connection to the past, their present lives and implications for the future."

I stayed half the time of my fieldwork period in Be'er Sheva with Fadi Masamra, the manager of the Regional Council of Unrecognized Villages (RCUV). He provided me with contextual information (rather on an informal basis) and put me further into contact with other people that have relevant knowledge of the conflict. The second half of my fieldwork period I stayed with Muna, an Arab Bedouin woman living in Rahat. She has a women's organization in Rahat and tries to get the Arab Bedouin women's issues on the (inter)national agenda. Throughout our informal talks I also gained more knowledge on the Arab Bedouin issues from a gender perspective.

Throughout participant observation and taking field notes, a clearer understanding was obtained by observing and sensing the conflict on the level of daily life. This methodological approach is foregrounded by geographers like Sharp (2004) in Natanel (2006) “who practice ethnography in a way that focuses attention on the everyday without losing sight of regional or globalizing forces” (p.4). Subaltern geopolitics in particular argue for the re-scaling of the geopolitical. Influenced by postcolonial theories, subaltern geopolitics try to narrate and represent the voices from the margin. This kind of approach “advocates grounded research, which re-focuses academic inquiry on the micro-geographical level and entails a commitment to transformation (Natanel, 2016, p. 4)”. By unfolding meanings and practices in local contexts and embracing particularities, the obtained empirical research on the micro-level will be linked here to the macro-level institutional forms of power.

In line with subaltern geopolitics, the Journal ‘Hagar Studies’ represents a valuable contribution to the knowledge of subaltern people and their resistance against an oppressing state; it focuses on issues of human rights and social justice (Motzafi-Haller & Michael(Eds), 2008). The volume that is taken up here is the first one that is devoted to the Arab Bedouin community (Yiftachel, 2008).

#### **4.2.1. Interviews**

The conducted interviews were semi-structured interviews where the interviewees were taking the leading role in the conversation. I had a relatively fixed set of questions on the spatial-legal conflict and some particular questions which I prepared separately for each interviewee in advance, on the basis of the information I could find about their position and earlier writings. This knowledge helped me to gain trust with them and facilitated a good take-off of the conversations. I contacted most of the interviewees during my fieldwork period, as part of a snowball-sampling. This means that the interviewees brought me into contact with other people who could contribute to this case study. This method of recruitment is often done when research subjects are rather hard to find or approachable, but know each other due to similar interests (’t Hart & Land Lord, 2003). In the appendix, an overview of the 12 persons I interviewed is presented as well as their position. Here I am not taking into account the informal talks I had with Fadi, Muna, Jalal, the Arab Bedouin leader of El-Araqib and Salima. Nevertheless, both the formal and informal conversations are considered relevant to this case study.

### **4.3. Method for analyzing the data**

To answer this case study's research questions, I fell back on a qualitative content analysis of my literature study, the conducted interviews, participant observations, field notes and gathered information on the ground. The theoretical framework of critical legal geography formed a structural guideline through which the collected information was analyzed. In this aspect, the academic insights of Blomley and Delaney were very useful; as well as the academic contribution of the Israeli scholars Yiftachel and Kedar were helpful to answer the research questions. Additionally, also the insights of academic scholars such as Massey, Lefebvre and Smith were meaningful to understand the relational approach of space and spatial politics which both include power. On top of that, the indigenous narrative and the concept of spatial justice are taken up here because of their applicability to the situation of the native Naqab Arab Bedouin. Moreover, when analyzing the gathered data, it is important to keep the broader Israeli-Palestinian conflict in mind. The following presents a theoretical explanation of critical legal geography to demonstrate its usefulness to this particular case.

#### **4.3.1. Critical legal geography**

It was not until 1994 with Blomley's book 'Law, space and the geographies of power' that the relatively new field of legal geography began to take shape as an academic discipline, and recently addressed questions such as law, informal settlement and indigenous land (Kedar, 2003). The school of thought of critical legal geography identifies a theoretical symmetry between critical legal studies and geography studies and interrogates the specific categories of each disciplinary – namely, law and space (Blomley & Bakan, 1992). Critical legal geography transcends the binary treatment of space and law (Braverman et al.(Eds.), 2014). The spatio-legal relational approach demonstrates that law and space are socially constructed and constituted through each other (Blomley & Bakan, 1992). This study field is meaningful as it looks closer to the role of law and space in the production of oppressive power structures. Following Delaney (2010) and Yiftachel (2006) in Braverman et al.(Eds.) (2014) it also examines their role in the legitimation and persistence of hierarchical social orders. Critical legal geography also explores the position of legal agents such as judges, legal theorists and administrative officers who co-construct legal spaces, as part of "a broader process by which law and social life are interpreted" (Blomley & Bakan, 1992, p.669). Also, "critical legal geographers argue that dominant groups construct 'legal belief structures' that justify racial and spatial inequalities through a complex professional discourse, claiming to be objective and impartial" (Kedar & Yiftachel, 2006, p.132). Blomley (1994) further acknowledges that legal interpretations actively produce space.

In the scope of the field of critical legal geography, the social and political nature of space and law becomes a focal point (Blomley & Bakan, 1992).

### ***Law, space and power***

Smith (2011) gives an insight in the application of the Rule of Law, which requires that “legal rules be set, fixed, and publicly known in advance” (p. 50). It is acknowledged here that the Rule of Law cannot be value-neutral since “to make rules is to make choices about the kinds of actions that will be permitted and punished by the sanctions of that rule system” (p.82). It is also required to bear in mind that “the Rule of Law is not the same thing as the rule of a legal system: a legal system might fail to satisfy Rule of Law conditions; they impose a higher standard and measure a legal system’s virtue” (p.89). It is also acknowledged that “all law is politics” which means that “behind every legal prescription, interpretation, and adjudication is someone’s or some group’s self-interest” (Knight, 2011, p.61).

But space is also very political as it poses the fundamental social-political question of how are we going to live together (Massey, 2009). French philosopher and sociologist Henri Lefebvre offers a pioneering contribution to our understanding of the politics of space with his social theory on space. In ‘The Production of Space’ he discusses the multiplicity of dimensions of space: “space is not depicted merely as a geographical or physical location or a commodity, but as a political instrument, as part of the relations of production and property ownership, and as a means of creative and aesthetic expression” (Lefebvre 1991b: 349; Gottdiener 1985/1994b: 123 quoted in Butler, 2009, p.8).

As Doreen Massey further argues in Featherstone and Painter (eds) (2013), “space is the result of and ground for social interactions” (p.1), it is the product of interrelations among people where conflicts may arise and can be negotiated. Over time, space is constructed and re-constructed and this implies that this process takes place through power relations. In this respect, “once lawyers accept that law both constitutes and reflects social and power relations, it becomes crucial to ask questions about the various ways such relations are constituted and expressed” (Blomley & Bakan, 1992, p.687). Blomley (2003b) argues that violences serve as “a vector of colonial power (...) space, property and violence were performed simultaneously” (p.129). Giorgio Agamben (1998) quoted in Blomley (2003b, p. 124) speaks of “‘the capacity of law to maintain itself in relation to an exteriority’, pointing in particular to the violence that is imagined as beyond state sovereignty yet simultaneously captured within it.” As a consequence, “law is possible only to the extent that it has such an outside against which to define itself. That constitutive outside is at once radically set apart and deeply embedded within law” (p. 124).

Violence is thus located here in law, and more specifically in the three domains of legitimation, origin and action. Geographies of violence can appear when spatial boundaries like a frontier create an inside and outside (Blomley, 2003b). Following Agamben (1998) in Blomley (2003b, p.124) in this aspect, “inside the frontier lie secure tenure, fee-simple ownership, and state-guaranteed rights to property. Outside lie uncertain and undeveloped entitlements, communal claims, and the absence of state guarantees to property. Inside lies stability and order, outside disorder, violence, and ‘bare life’”. Massey adds to this that boundaries are never irrelevant or immaterial and urges that responsibility should be taken by whomever draws them (cited in Featherstone & Painter, (eds), 2013). It is thus important to “uncover the ways in which violence is not only encoded in our geographies, but perhaps integral to the very foundation, reproduction, and legitimation of such spaces” (Blomley, 2000, p.105).

Following Fraser (1991) in Blomley (2003b), legal violences are social violences. Moreover, according to McKinnon (1993) (quoted in Blomley, 2003b), violences of law are thus socially selective, and this poses ethical questions as “people are subjected to differentiated violences largely as a function of the ways in which they are racially and social marked” (p.133).

The aim of dominant spatial representations is “frequently to ‘space out’ certain people, by virtue of their supposed ‘geo-legal’ location, and deny them the protection accorded other citizens” (Blomley & Bakan, 1992, p.670). When law represents social constructions as natural, fixed, objective and apolitical (e.g. public/private divide), law is referred to as “frozen politics”. It is important to challenge those frozen spaces of legal discourse, as they might have been constructed for their tactical use in naturalizing relations of oppression. The task for a critical legal geography becomes thus apparent in demonstrating the non-objectivity of the frozen politics of socially constructed dominant spatial representations. Consequently, when particular geographies of law are identified as oppressive, they can be challenged by alternative constructed legal maps (Blomley & Bakan, 1992).

Clarissa Hayward, followed in Williams (2013), is also worth mentioning as she recognizes the state as an active actor in constructing social boundaries that influence political (in)equality. She argues to recognize the productive capacity of states, where states create spaces that create differences among citizens (Williams, 2013). The importance of state power is also acknowledged by Lefebvre:

The state actively intervenes in the production of space, treating it as a political instrument through which social order can be maintained. Through its roles as the provider of infrastructure and the manager of resources, alongside its subsidization policies and spatial planning regimes, the state is largely responsible for the template on which abstract space is built (Lefebvre 1978, quoted in Butler, 2009, p.16)

## ***Space, property and violence***

The following quote gives a definition on property(rights):

To have a property in land is to have a right to some use or benefit of land. Such a right is necessarily relational, being held against others. Put another way, property rights “regulate relations among people by distributing powers to control valued resources” (Singer, 2000, quoted in Blomley, 2003b, p.121) (...) Access to property, including land, is an important predictor of one’s position within a social hierarchy, affecting class, race, and gender relations (...) this affects differences in wealth, health, and well-being (Blomley, 2003b, p.122).

According to John Adams (1969, quoted in Blomley, 2003b, p. 122) “the balance of power in a society, accompanies the balance of property and land”. Property has a social dimension in the sense that it offers a set of social symbols, stories and meanings that is central to the formation of a national identity. Borrowing from Carol Rose (1994) in Blomley (2003b), property is not a static entity but refers to a continual active “doing”. This case study takes up some intriguing questions of Rose (1994, p. 11) regarding the issue of the original title:

How do things get owned? This is a fundamental puzzle for anyone who thinks about property. One buys things from other owners, to be sure, but how did those owners get those things? Back at the beginning, someone must have acquired the thing, whatever it is, without buying it from anyone else. That is, someone has to do something to anchor the very first link in the chain of ownership. The puzzle is, what was that action that anchored the chain and made an owned thing out of an unowned one?

The creation of a property system seems to entail acts of violent dispossession, whereby “native geographies and property relations were erased from the map, to be replaced by the cadastral grid that provided the template for colonial land speculation and urbanization” (Blomley, 2000, p. 100). In this aspect, property violences are beneficial for the colonial power – in this case Israel, but can also sustain inequality, affecting mostly the native people – being the Arab Bedouin. In this case, “legal presumptions made it possible to position native peoples as squatters and non-owners, and hence legitimize the mobilization of force, when needed” (p102). Uncovering and analyzing legal geographies of violence is thus a necessary task (Blomley, 2003b). The central purpose that Blomley wanted to present is:

To underscore the importance of the association between property, violence, and space. If we live in a world saturated by property, it seems to me important to think about its ethical dimensions, its simultaneously discursive and material qualities, and its geographies. A recognition of the violences at the core of property seems a necessary part of that project. (Blomley, 2003b, p. 136).

### ***Critical legal geography and the Israeli-Arab Bedouin case***

The Naqab region is a peripheral area, but nevertheless an important conflictual area that is often pushed to the background when talking about the broader Israeli-Palestinian conflict. Critical legal geography is meaningful in the sense that it draws attention to hidden, more neglected areas and boundaries (Braverman et al. (Eds.), 2014). Critical legal geography offers meaningful insights to reflect upon the interconnections between law and space in an Israeli ethnocratic settler society (Kedar, 2003). It exposes “how law is used to place and displace and to produce the spaces of racial subordination (segregated spaces, native reserves, colonies) (...) racialization is commonly effected through processes of spatialization: separation, confinement, exclusion, expulsion and forced removal” (Delaney, 2009, quoted in Braverman et al., (Eds.), 2014, p.102). In this light, this study will interrogate the Israeli court’s decisions on “how they construct a particular geography of power” (Blomley, & Bakan, 1992, p.674). Because in its decisions, an implicit construction of two classes of people can be observed, namely Jews and non-Jews. Finally, I quote Yiftachel here to further demonstrate the applicability of this framework to this spatial-legal conflict.

Legal geography is very helpful in unpacking the manner in which the law – often considered impartial and objective – is used as a tool of dispossession. A key mechanism in the process is the articulation of legal geographic categories and terms which appear universal, but often discriminate systematically against marginalized groups. Such categories in the Negev case include terms such as: 'land registration', 'state land', 'trespassing', 'illegal construction', 'settlement' (always Jewish), 'scatterings' (always Arab), or 'permitted land uses' (draft, 2016, p.18-19).

#### **4.4. Critical reflection on the position of the researcher**

To conduct ethnographic fieldwork, one may have to ask himself, what is “a field”? Doing ethnographical research in the field means “spatial embeddedness” and is about becoming “one” with a field of study, and “challenge that territorial cartography where the field is a bounded space”

(Massey, 2003, p. 84; Debruyne, 2016). We often leave with a romanticized image of a field, of space; we leave with all kinds of assumptions which will be de/re-constructed once we enter the study field (Debruyne, 2016). Doing fieldwork means that one must reflect on their relation with the field. Following Herbert (2000) and Burowoy (1991) in Debruyne (2016), our position as a researcher doing fieldwork switches between “being (an) inside(r)” and “being (an) outside(r)”, whereby the latter is necessary to stay critical and reflect. This tension is an essential part of conducting a fieldwork study. The awareness of never fully becoming “one of them” is important to be able to constantly reflect critically on one’s own actions and thoughts, as there does not exist something as absolute neutrality. This makes us reflect on our moral positionality of what it means to take sides (Debruyne, 2016).

The Journal of Spatial Justice made some relevant comments which I take up here to further reflect upon. When you look as a researcher at the problematic access to landownership, like the one presented here, there is a palpable empathy with the most deprived, excluded group (Spatial Justice, n.d.). “Could it indeed be otherwise since a researcher is also a citizen? More importantly, should it be otherwise: is the position of disengaged observer morally tenable?” (Spatial Justice, n.d., chapter 1, para.1). A relevant question to this case study is “what stance should social scientists conducting research in Indigenous contexts take, in regards to Indigenous peoples’ political struggles?” (Collignon & Hirt, 2015, p.3).

Furthermore, the choices I made regarding the used terminology (‘Arab Bedouin’, ‘Naqab’, ‘indigenous people’) in this case study are done consciously, as a means to support their resistance and to raise the voice of the community.

Additionally, I quote some inspiring words of the Indian writer Arundhati Roy, who as Yiftachel (2010) explains, “comments on the role of professional witnesses to the eviction of marginalized groups from their villages in the name of ‘planning’” (p.98). It illustrates perfectly the tensions experienced when one conducts fieldwork. It also fits my aspiration to write about this particular conflict, in which I gained more knowledge about during my fieldwork study and led me to bring these spatial injustices on paper:

The trouble is that once you see it (the state’s war against marginal groups), you cannot unsee it. And once you’ve seen it, keeping quiet, saying nothing, becomes as political an act as speaking out. There is no innocence. Either way, you’re accountable (Roy, 2001, quoted in Yiftachel, 2010, p.98).

#### **4.5. Limitations of the research**

Finally, I would like to share some limitations of this case study. During my (rather short) fieldwork study period of three weeks, I visited four unrecognized villages, namely Wadi-Al Na'am, El Araqib, Alsra and Rahmei, one urbanized village (Rahat) and the city of Be'er Sheva. Visits to other (un)recognized villages and/or urban towns within the Naqab region would inevitably have been relevant and would either have sharpen or contradict the presented findings. The shape of things to come in the Naqab/Negev will undoubtedly be decisive for the status, or even the presence of the native Naqab Arab Bedouin and therefore further grounded research is strongly suggested. Another limitation was the fact that I do not speak Arabic, so I could not enter into personal contact with the Arab Bedouin directly. This inevitably means that meaningful information went lost because of that. Regarding the unrecognized villages, I was also dependent on others to go there since I did not have a car and public transport did not go there. I am furthermore aware of the fact that most of the interviewees are "pro" the Arab Bedouin cause, since most of them belong to the Naqab's civil society that is engaged with this disadvantaged indigenous group. A longer fieldwork study period would inevitably have allowed me to have a more differentiated group of interviewees.

## 5. Presentation, analysis and interpretation of data

### 5.1. The Israeli legal system

#### 5.1.1. Israeli laws and land ownership

In David's (n.d.) analysis it is explained that the Naqab Arab Bedouin claim a right of ownership of their land; a right which has its legal basis in article 17 of the Universal Declaration of Human Rights (UDHR). The denial of this right by the Israeli government is a violation of their property rights. He notes that one of the reasons is that the land had not been registered during Ottoman and British rule. This was however not required by the customary Arab Bedouin law which was based on different criteria to determine the ownership of the land. The concept of land registry was therefore foreign to the Arab Bedouin. The following is a brief historical context of the most important laws regarding land (ownership).

#### ***Historical context***

The Israeli state argues that all of the Naqab land is state land, including those lands on which the Arab Bedouin lived prior to 1948 and the new lands which they lived upon after being relocated into the Syag region. These claims are based on legal precedents from both the Ottoman as British period, by which the Ottoman Land Code (OLC) of 1858 in particular was important (Swirski, 2008). This code includes five categories of land: 1) *Mulk* land; privately owned land; 2) *Waqf* land; land that benefits a religious group; 3) *Metruka* land; given for public benefit/uncultivated land; 4) *Miri* land; owned by the state, yet used for cultivation, under lease right system, and 5) *Mawat* land; unpossessed land, wasteland (Amara, 2013; Abu-Ras, 2006). This code stated that all Naqab land was *Mawat* land (dead land in Arabic), defined as land located beyond the reach of voice, thirty minutes' walk or approximately 1.5 miles from the closest place of residence (article 6). Article 103 of the OLC stated that "anyone who revived such lands, i.e., made it cultivable, would gain a title to it, even if he had done so without permit from the Ottoman authorities, who sought to increase land cultivation and thus collected taxes on cultivated lands" (Negev Coexistence Forum for Civil Equality, 2012, p.8). During the Ottoman period a registration initiative was initiated, although by the end of the Ottoman period, only 5% of former Palestinian land was registered, of which mostly Arab Bedouin land remained unregistered (Amara, 2013).

During the British mandate (1917-1948) the 1921 Mawat Land Ordinance was a legal tool of early land legislation used by the British military government to increase governmental control over

public land. The ordinance – which was an amendment of article 103 of the OLC– required that cultivators of *Mawat* land now needed a permit from the government (Amara, 2013; Negev Coexistence Forum for Civil Equality, 2012). Consequently, cultivators and holders of such land could register it in their names in a foreseen two-month period, if not they would lose their ownership rights over the land. The British later undertook in 1928 a land (title) settlement process to identify the landowners by using cadastral and topographical surveys (Amara, 2013; Swirski, 2008). For a variety of reasons – problems of access, traditional suspiciousness, fear of taxation etc.– most of the Arab Bedouin of the Naqab did not respond to this register call (Swirski, 2008). Nevertheless, as Yiftachel (2000) stated in (Swirski, 2008, p.29), “the British promised that there would be no infringement of the rights of those holding land in accordance with traditional Arab Law”; so there was not really much reason to worry about. Although there was an increased British administrative power, these formal legislations had limited to no application in the Naqab and were mostly implemented in other parts of former Palestine (Amara, 2013).

Moreover, due to the particularities of the Naqab, tribal courts were maintained and a different system of taxes was applied; “the British adopted a special administrative mode and legal order in the Negev, which integrated the local customs and social order within state law and administration (...) land affairs were subject to both tribal customary law and the state’s law and judiciary” (Amara, 2013, p.34). The customary Arab Bedouin law, which still operates to date among the Arab Bedouin, regularizes both inter- and intra-tribal relationships (Amara, 2013). Both the Ottoman regime, as well as the British regime respected the Arab Bedouin traditional laws and customs and therefore never registered any Arab Bedouin land as state property (Yiftachel, draft, 2016). In Elsana (2015) it is said that the Ottoman empire respected and recognized the Bedouin tribal law as a local legal system and therefore it established a tribal council for Bedouin tribes in Be’er Sheva. Under British Mandate, this law was also recognized with the Tribal Court Regulation of 1937. Israel also recognizes the Arab Bedouin tribal law – albeit in theory: directly by adopting the Tribal Court Regulations (1937), and indirectly through the general legal custom principle where custom, as a source of law, is integrated in the Israeli law. Nevertheless, as Rubinstein argues in Elsana (2015, p.62), “in practice Israel has never applied the law, has never established any Bedouin tribal courts, and has never applied or recognized Bedouin tribal law. However, this law continues to be valid since Israel has never revoked it”.

The establishment of the Israeli state in 1948 represented a historical turn: “unlike previous rulers, Israel attached great value to the Negev — as an area for settling Jewish immigrants and deploying military bases, as a reservoir of natural resources and as a corridor to the strategic southern port city of Eilat” (Swirski, 2008, p.29). After the war of 1948, a committee was appointed by Ben-Gurion to provide “Hebrew names to all places, mountains, valleys, springs etc., in the Negev”

(Abu-Saad, 2008, p.5) to make clear that they do not recognize both their political and spiritual ownership. Israel maintained the British Mandate land settlement legislation but changed the interpretation: “the new interpretation borrowed selectively and manipulatively from past legislation, resulting in a set of unattainable conditions for proof of ownership by the Bedouins” (Yiftachel, draft, 2016, p.8). By applying a selective interpretation of the Ottoman and British land laws, a further land expropriation was legitimated (Amara, 2013).

A different interpretation was given in particular to *Mawat* land: “the Israeli Supreme Court interpreted the requirements for *Mawat* land in increasingly broad ways while narrowing the definition of *Miri* land, which is entitled to the possessor with prescriptive title” (Negev Coexistence Forum for Civil Equality, 2012, p.8). Firstly, the 1.5 mile distance was chosen as the formal condition by the Israeli Supreme Court; secondly, the “place of residence” was narrowed to a settlement, excluding therefore Arab Bedouin encampments; thirdly, the settlement had to have existence prior to the enactment of the 1858 OLC and fourthly, restrictions on the evidence of possession were further imposed as the Israeli court added a new condition, namely “a minimum (50%) cultivation requirement for the claimed land” (Negev Coexistence Forum for Civil Equality, 2012, p.10). Finally, the land registry of 1921 was taken by the Court as the only guarantee for establishing land rights (Negev Coexistence Forum for Civil Equality, 2012): “the Israeli judiciary concluded that the Bedouins had their last chance to register their lands in 1921 and have only themselves to blame for not having done so” (Amara, 2013, p. 37).

The Absentee Property Law (1950) and the Land Acquisition Law (1953) in particular facilitated the legalization of dispossessed Arab land, by transferring in this case the property of Arab Bedouin refugees to state land (Kedar, 2003). The legal status of “absentee” is referred to as “all Arabs who vacated their homes during the war, regardless of whether they returned” (Forman & Kedar, 2004, p.815). By classifying a person or property under the status of “absentee”, this law could easily “appropriate any property on the strength of his own judgement” (Kedar, 2003, p. 426). The drafters of the Absentee property law shifted the burden of proof – “an important tool in the dispossession of native land” (p. 426)– on to the land possessors (Kedar, 2003). The problematic aspect of the Land Acquisition Law is that it “authorized the Finance Minister to issue a certificate stating land not to be in the possession of its owners and proclaiming that the land was assigned for purposes of essential development, settlement, or security between May 1948 and April 1952” (p. 435).

The Weitz committee was established during the 1950s by the Israeli government to deal with Arab Bedouin land ownership. A testimony of Yousef Weitz, who reported to the Minister of Justice in 1952, in Nasasra (2012) noted that the ownership of the land of the relocated Arab Bedouin, whose land was expropriated from them in the aftermath of 1948, could not be denied.

Nevertheless, Weitz proposed to “avoid recognizing Bedouin rights on their land even if they prove that they have cultivated it for a long and extended time” (quoted in Nasasra, 2012, p.97). By postponing a registration office in Be’er Sheva (which opened in the 1970s) the Arab Bedouin were prevented from formalizing their land title. An important note is that during the 1950s almost all Arab Bedouin who remained in Israel paid land taxes, collected by the Israeli military governor or Arab Bedouin sheikhs (Nasasra, 2012). Nevertheless, the Arab Bedouin did not have Israeli identity cards until 1952, which made their expulsion easier regarding their “non-citizens” status (Land Research Center, 2008).

In Shamir (1996) it is stated that with the Israeli 1969 Land Rights Settlement Ordinance, the Court ruled a fixed period to appeal to a district court to challenge the Courts decision on registering land as state property. What the Court renders irrelevant is rendered relevant here, namely that the Arab Bedouin did not hold the land during registration period because they were forced to stay in another area. Because of their “absentness” the state registered the confiscated land as state property, so when they would return to their ancestral land, they would return as “newcomers” or “lawbreaking citizens”. The problematic aspect of this is that it puts law first and history later:

What once was theirs is not theirs anymore, and their refusal to enter into leasing agreements results in their criminalization as trespassers (as indeed happens in a corresponding legal proceeding), while their consent to enter into such leasing agreements serves as evidence that the land had never been theirs (Shamir, 1996, p.245).

Plia Albeck of the State Attorney’s Office, had a leading role in legalizing land expropriation and the expansion of Jewish settlements in the occupied Palestinian territories; “relying upon the 1858 Ottoman Land Code and the 1921 British Mawat Land Ordinance, the Albeck Committee confirmed the government’s position: that the lands claimed by the Bedouins are *mawat* – ‘dead’ land” (Amara, 2013, p.37). The Albeck Committee recommended compensation for the eviction of Arab Bedouin land, “on the condition that claimants give up any claim to the land and move to one of the state-planned townships” (Negev Coexistence Forum for Civil Equality, 2012, p.10).

Furthermore, the Arab Bedouin claimants of land ownership had to submit their claim to the Land Settlement Officer at the Ministry of Justice (Swirski, 2008). They submitted about 3.220 formal land claims at the beginning of the 1970s (Amara, 2013). The legal proceedings on land ownership claims made by the Arab Bedouin were frozen in 1974 in an attempt to make the land state land in exchange for some compensation (Abu-Ras, 2006). Then, in 2004 the Israeli state implemented a strategy of “counter-claiming” the previous made land claims of the Arab Bedouin before the district court (Amara, 2013). In the appendix, an overview can be found of the most important legal

instruments that enforced the process of land nationalization by dispossessing and displacing the native Naqab Arab Bedouin.

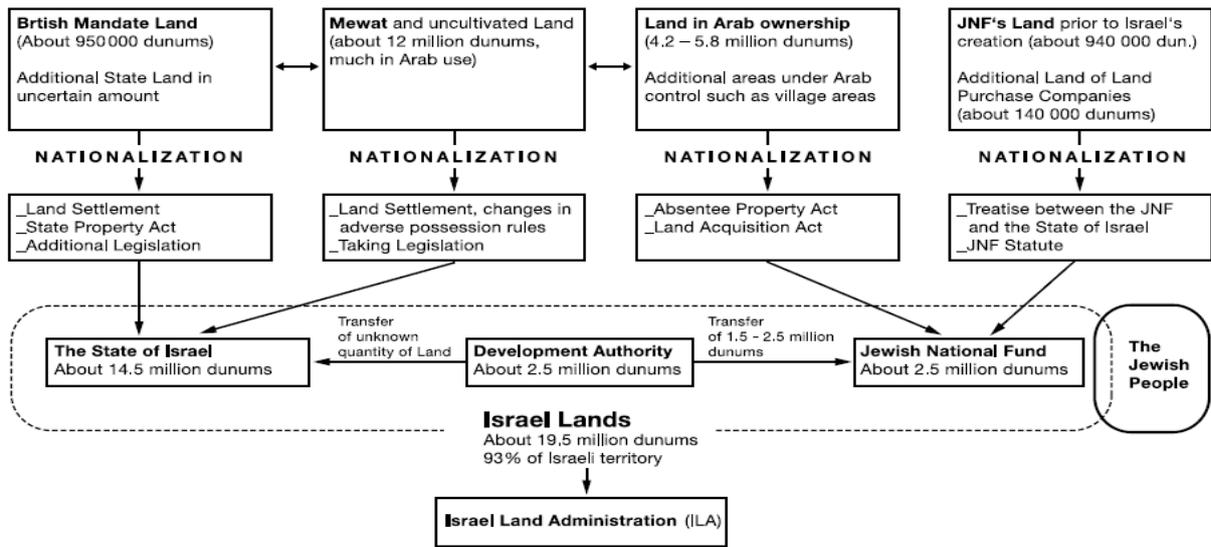
### **5.1.2. Governmental bodies**

The governmental bodies who are in charge for land acquisition are the Israeli Land Administration (ILA) who administers state lands jointly with the Jewish National Fund (JNF), an international NGO representing the interests of Jewish people only (Abu-Saad, 2008). A problematic aspect about the JNF is its principle to forbid the allocation of land rights and ownership to anyone who is not Jewish. Also because of the Draft Bill of the Israeli Land Administration Law (Amendment No. 7) 2009 that permits exchanges of land between the state and the JNF. This land exchange is problematic in the sense that it only delivers exclusive benefit for Jewish citizens and is therefore contrary to the principle of distributive justice. Furthermore, it also favors representatives of the JNF in the Land Authority Council – 6 out of the 13 members are from the JNF (Adalah, 2009).

The ILA operates out of the Ministry of Agriculture, where Minister Uri Ariel is in charge of issues like the recognition of unrecognized villages or evacuation orders (Swirski, 2008; Nili (Bimkom), personal communication, April, 2016). The ILA was established to manage state lands, lands of the JNF and the Development Authority—established in 1952 to administer the Bedouin refugees' land (Swirski, 2008). Both figures below illustrate the processes of the unilateral land transfer and allocation, and were legalized in covenants signed between the Israeli government and Jewish organizations, which overall block the accessibility of the Arab Bedouin to these lands (Kedar & Yiftachel, 2006).

The Bedouin Authority (also known as the Administration for the Coordination of Bedouin Affairs (ACBA) since 2007) was originally established in 1986 to enhance negotiations with the Arab Bedouin regarding their land ownership claims, but it soon became clear that it was a powerful government agency working for the state's interests (Swirski, 2008). In 2003, a House Demolition Unit was established to implement the house demolition orders (The Arab Center for Alternative Planning, 2009). In 2007, the Abu Basma Regional Council was established instead of the Bedouin administration. In 2012 it was split into two new regional councils, namely Neve Midbar and Al-Kasom, which are now responsible for the 11 newly-recognized villages. This brief overview demonstrates a multiplicity of authorities without a clear hierarchy and overlapping roles (Bimkom, 2014b).

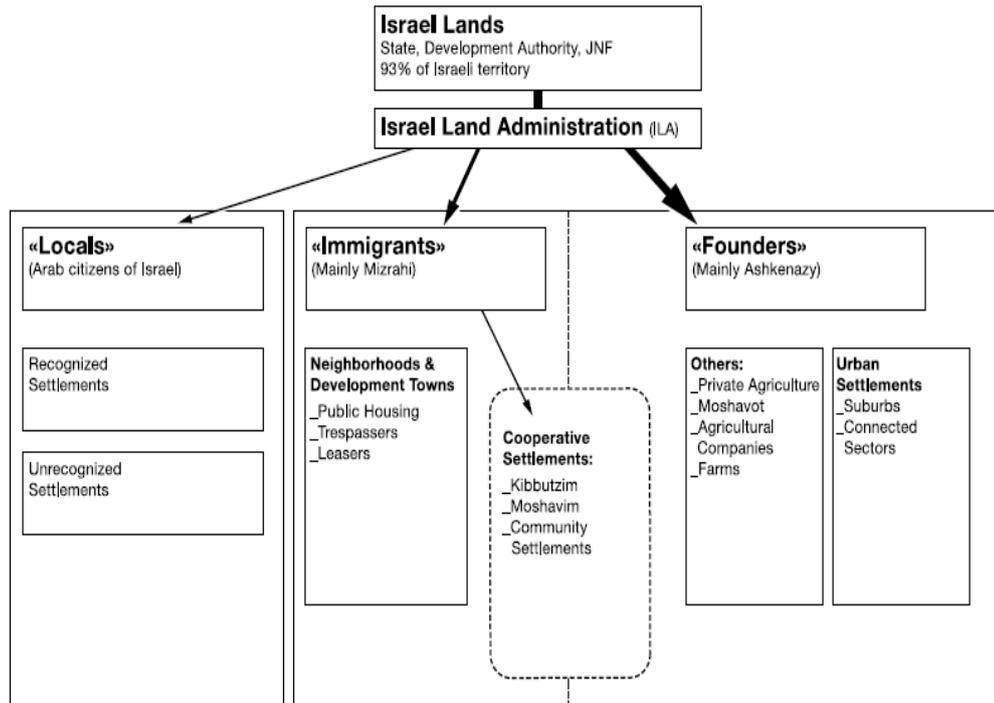
**Figure 1: Ownership Transfer and the Making of the Israeli Land System**



© Kedar & Yiftachel, 2000

(Kedar & Yiftachel, 2006, p.138)

**Figure 2: Allocation of Israel Lands**



© Kedar & Yiftachel, 2000

(Kedar & Yiftachel, 2006, p.141)

### 5.1.3. Lawfare

Yiftachel (personal communication, April, 2016) states that Israel continues to oppress the Arab Bedouin. The explored geographies of power in the Naqab reveal the underlying bigger aim of “Judaizing/nationalizing the country” as part of Israel’s settler Zionist project (Yiftachel, 2008). Following Kenneth Foote (1997) in Blomley (2003b), who argues that violence is central to the American national identity given its violent nature of colonial settlement, parallels are drawn here with the Israeli national identity regarding its settler colonialism. The same way the “manifest destiny”- doctrine formed a justification for the US expansion policies (Blomley, 2003b), so is the “terra nullius”- doctrine (land emptied of rights) of tactical use for the state as it justifies a further land dispossession of Arab Bedouin land, and while doing so expanding its own territories (Yiftachel, draft, 2016). Both law and violence were thus involved in that process, a conjunction which is termed “lawfare: the effort to conquer and control indigenous peoples by the coercive use of legal means” (Comaroff, 2001, quoted in Blomley, 2003b, p. 128). Such colonial ideologies held that native people “had been and remained primitive savages who were incapable of concepts of land title and who most certainly should not be perceived as land owners” (Tennant, 1990, quoted in Blomley, 2003b, p.129). This is similar to Israel, where Arab Bedouin are framed as “rootless nomads” without attachment to their lands (Shamir, 1996).

Emphasis is thus placed here on the legalized colonial violences of dispossession, clarified by Razack (quoted in Blomley, 2003b, p.133) as “violent expulsions and spatial containment of Aboriginal peoples”, where the remapping of colonial space has forced many native peoples to the urban margins. These margins are located beyond a symbolic frontier that separates in this case the wealthy Israeli Jews from the disadvantaged Arab Bedouin (Blomley, 2003b). After the establishment of the colonial state, “the land system itself became powerfully regulative” (Harris, 1993, quoted in Blomley, 2003b, p.129), defining where people could (not) go. Following Ellen Churchill Semple (quoted in Blomley, 2003b, p.125), who focuses on the relation between “a people and its land, where the land serves as ‘the ultimate basis’ of a people’s ‘fundamental social activities’, distinguishing and ranking societies according to the intensity and development of property relations in regards to the land”. Property is thus “a central locus where such a power-space-law nexus is established and maintained” (Braverman et al. (Eds.), 2014, p. 102).

Additionally, the survey was a powerful instrument to colonial regimes, as it served to “organize, control, and record the settlement of ‘empty’ lands, a process which in the New World often involved wresting control from indigenous peoples” (Kain & Baigent, quoted in Blomley, 2003b, p.128). Following Robert Sack (1986) in Blomley (2003b) a survey thus facilitated the conceptually

“emptying” of native space. Already in the Ottoman and British period there were state attempts to map the Arab Bedouin community by using surveys to gain knowledge about them that would eventually serve their own interests (Nasasra et al. (Eds), 2014).

In response to this lawfare, the Arab Bedouin community has, alongside with (inter)national organizations, begun launching proactive legal action as “they have been finding cracks in the Israeli legal structure that can be used to oppose the discriminatory practices driven by Judaization policies which contradict the tenets of law and governmental responsibilities to its citizens” (Yiftachel, 2006, cited in Abu-Saad, 2008, p. 16-17).

#### **5.1.4. Legal flaws**

By unfolding the Israeli legal system it became apparent that *“the system is built in a way that you can never win; law is used as a tool to register the land in the name of the government”* (Sana (ACRI), personal communication, April, 2016). The Naqab Arab Bedouin are so to speak caught in a geographical-political-legal trap set out by the Israeli government (Abu-Ras, 2006). This section will make clear that the Israeli court system is fundamentally unfit to meet the special needs of the native Arab Bedouin, as the implemented laws seem to benefit the Jewish majority only (Matari, 2010). Michal (Coexistence Forum), personal communication, April, 2016) clarifies that *“the main problem with law is that you think laws are just and justice is in court, but law is against the Bedouin community”*. Law is understood here “as a set of techniques of spatial organization and governance – a body of spatial representations – and as a framework for an ensemble of everyday spatial practices” (Butler, 2009, p.14). This study reveals that there is a problem with the spatial organization and governance that the Israeli laws determine. A problematic aspect of the Israeli law is that “the law plays a crucial role – through its distinct logic of ordering and its techniques of surveillance – in turning the Zionist vision into a taken-for-granted objective reality” (Shamir, 1996, p.236).

#### ***Legal flaws regarding land ownership***

Michal (Coexistence Forum) (personal communication, April, 2016) further reconfirmed that the Ottoman law of 1858 was *“the best law to make sure the Bedouin will not be able to prove ownership of the land.”* The Land Appropriation Law (1953) is also problematic since the former expropriated land from the Arab Bedouin refugees was *retroactively* endorsed by this law and then transferred to the Development Authority (Swirski, 2008).

The “Peace Law” (1980), together with the recommendations of the Albeck Commission, established a conditional ownership for the Arab Bedouin: “the state recognizes Bedouin ownership

only if and when the Bedouins are prepared to renounce their ownership” (Swirski, 2008, p.33). So, although the Arab Bedouin land rights are formally and legally denied by the Israeli government, a tacit recognition of those land rights *is* taking place as the Arab Bedouin claimants are offered (alternative land and monetary) compensation, which in turn they perceive as insufficient and unjust (Amara, 2013).

An important case which appears in many documents to illustrate this governmental denial of Arab Bedouin land claims is the one of the Al-Uqbi family. The Supreme Court did not recognize the land ownership of the family because they did not possess the required documents (Shmueli & Khamaisi, 2015). The ex-Minister of Justice (personal communication, April, 2016) adds to this that *“according to Ottoman and British legislation, the fact they have documents does not mean they have ownership. For being the owner of the land you have to have specific kind of documentation, documents of tax payment, contracts of selling and buying.”* At this point, the legal flaws come to the surface: *“you have to look if the one that sold you the land had ownership over it, if it did not had ownership then he sold you something that is not enough, in the US lawyers pay a lot of insurance policies because it is their responsibility that the seller is really the owner. According to law, in order to be the owner you have to go to the authority to find out if you are the owner or not, you have to register and pay tax to validate the deal and the Bedouin did not do that so the court decided they do not have ownership over the land. If the Jews would buy land from the Bedouin and were not registered they have nothing in my opinion.”* Nevertheless, the courts’ decision reveals a major contradiction: *“while Bedouin property rights are not recognized, the Zionist purchase of land from Bedouin before the state was established is. If the court recognizes land deals made with the Bedouin, it necessarily implies that it recognizes their ownership”* (Zonszein, 2015, para. 5). Hana (ACAP) (personal communication, April, 2016) calls it a *“cynical situation, because Jews who bought the land from the Bedouin, their ownership is recognized, while the ownership of the Bedouin who sold them the land is not recognized”*.

Furthermore, it is worth mentioning that Arab Bedouin ownership was also recognized by Zionist organizations as the former head of the Jewish National Fund (JNF), Avraham Granovski (1949, quoted in Yiftachel, draft, 2016, p.15) stated: *“In the Negev there exist 1.7 million dunam possessed by Bedouins tribes. Their rights were honored by the Ottoman and the British governments... there is no doubt that the Jewish state as well will safeguard these rights”*. In spite of that, according to Hana (ACAP) (personal communication, April, 2016) the JNF ideology nowadays is one of *“when acquiring land from Arabs, you save the land, you took the land out of the hands of evil people, you reclaim the land for Jewish people. It should be remained in the hands of the state because of biblical reasons.”*

The ex-Minister of Justice further argued that *“land rights, land ownership is different than land planning, the problem is that it became mixed. The question for justice has not only have to be full ownership, why can it not be less than ownership right, like long term lease right?”* (personal communication, April, 2016). Falling back on the collected data, I do not think it is a problem that it became mixed, because the two things do go hand in hand. The Israeli planning policies, as already mentioned before, aim to concentrate the Arab Bedouin in order to make more space available for Jewish settlements. The state denies Arab Bedouin prior-1948 existence, and further denies their private landownership. As a consequence, by confiscating their land, they make it state land. Both cases favor Israel’s bigger aim of Judaizing the country and are therefore not treated or seen separately here. Both the land rights issues as well as the land planning demonstrate that there is a problem with the Israeli legal system itself which provides legal tools that work in favor to reach its goals.

The used “Dead Negev Doctrine” by the Israeli state for example had emptied the land *retroactively*, “by using formalistic points in history in which Bedouins putatively lose their rights, over the well documented geography of possession, habitation and cultivation” (Yiftachel, draft, 2016, p.13). In this respect, it is also worth mentioning that “it was only after the creation of the state that the old Ottoman land categories became a powerful and effective means of expropriating land”, and which resulted in declaring the Arab Bedouins as “trespassers” on their own ancestor’s land (Abu-Saad, 2008, p.6).

In accordance, Yiftachel (draft, 2016) discusses the special report of the Palestine Development Company – a Zionist organization that mapped the Naqab in 1919 – in which details about patterns of Arab Bedouin widespread cultivation and tribal ownership are exposed. This recently discovered report backs indigenous claims by mapping the Arab Bedouin customary land system and shows that these land were not “dead” or “empty” as the state claims. The importance of presenting this report to the Israeli court goes without saying.

### ***Encroaching privatization***

Furthermore, Yiftachel (personal communication, April, 2016) shared some valuable insights on the recent encroachment of privatization in the Naqab. He argues that *“the state appropriates the land from the Bedouin and then privatizes it for the Jews. They have the land as lease hold but it is private, you can sell it, subdivide it, usually to Jews only.”* With privatization coming in, the Arab Bedouin face a new layer of exclusion as the gaps get wider under the conditions of a supposedly free market. The privatizing of public resources will drive the Bedouin further away from getting access to them (Yiftachel, personal communication, April, 2016). Besides land(management), water is

already privatized in the region (Nili (Bimkom), personal communication, April, 2016). Yiftachel (personal communication, April, 2016) also states that the *“single family farms are also a way of privatizing the land in the national interests; some said the farms are illegal, high court said to legalize them, so they passed a law to legalize these farms backwards. They show that it is not racist, because one farm is not Jewish.”* This is another example of a legal flaw of the Israeli legal system whereby the law is passed *retroactively* to legalize certain (f)acts.

Yiftachel (personal communication, April, 2016) further states that companies come into the region for developing inter alia tourism: *“they want to make profit, they are not interested in the Bedouin. Economic development is good. Some of these people are very innocent, they are not here to control the Bedouin but in the end that is what they do, they help colonizing the Negev. There are three new industrial areas, many have the Bedouin as partners. By nature of a market logic they will always be in the periphery. That is the logic of capitalism: the poor have no choice than to join the system that oppresses them”*.

This is for example the case in the region of Bnei Shimon, where they work together with Arab Bedouin partners from Rahat. Hereby Sigal Moran (personal communication, April, 2016) refers to the growing industrial areas with new coming companies like Sodastream. She sees this as a positive progress, whereby the Arab Bedouin get the opportunity to work and earn their own living. Nevertheless, following Yiftachel’s critical analysis, one has to be aware of the fact that remaining unemployed is not an option, but that the working conditions need to be taken into consideration. Hereby I suggest that one must look at the position the Arab Bedouin have in such companies. Looking at their wage – do they earn as much as the Jewish workers? Are they being treated in the same way as Jewish workers? Like Thabet Abu Rass (personal communication, April, 2016) also says, *“investing more in the economy (because of the growing demographic rate among Arab Bedouin) is necessary to not hit the Israeli economy, but economy is not going to bring equality as long as there is increasing racism. We are part of Israel, we are citizens, we want equality, basic human rights.”*

### ***Israel’s counter-claim strategy***

Sana (ACRI) (personal communication, April, 2016) further states that Arab Bedouin are discouraged to make their case in court as no Arab Bedouin case has ever been won. All the land claims that were made by the Arab Bedouin were denied by the Israeli judicial system *“for lack of sufficient documentation in accordance with Israeli land law”* (Matari, 2010, p. 1111). Sana (ACRI) (personal communication, April, 2016) explains that this comes forth out of a *“difficulty and shortage in evidence, claims were made back in the 1970s, till this day you had a lot of people that passed away, papers were lost etc.”* In accordance,

The law speaks in terms of dates, signed and dated documents, approved and established enactments, and time-honored written precedents. History in law is a fixed succession of pre-established points in time, not a continuous and fuzzy process in flux. And it is the policing of time that the Bedouins confront as an insurmountable barrier in their legal struggles (Shamir, 1996, p.242).

The counterclaim-strategy of the Israeli state was a conscious move as they perceive the property right claims as a threat. The claimed land is not only economically beneficial but it is also land that in the state's eyes awaits to be nationalized as part of their Zionist project (Castree, 2004). When eviction orders are issued, the responsibility for proof shifts from the Israel Land Administration (ILA) to the Arab Bedouin land owners, "this shift contravenes the basic rule of civil law, which places the burden of proof on the plaintiff" (Noach, 2009, p.15). Regarding the counterclaim policies the following legal flaws can be derived in Negev Coexistence Forum for Civil Equality (2012): 1) the more than 30 year frozen Arab Bedouin land claims represent a violation of section 11 of Israel's Interpretation Law of 1981 for not respecting a reasonable timeframe. This time delay had a negative impact on the already diminished quality of evidence for the Arab Bedouin claimants. The fact that they were trapped in a "limbo" situation for more than 30 years represents a tremendous injustice; 2) The Israeli court asks for formal registration proof in Ottoman or British land registry and disregards other documents that were used according their traditional land arrangements like land sale contracts, mortgage contracts and land/crops' tax payments but also oral testimonies; 3) the Arab Bedouin are denied equity and equitable land rights. Article 44 of the Land Settlement Ordinance of 1969 furthermore "requires the court to act differently and gives room to provide for a different legal practice" (Negev Coexistence Forum for Civil Equality, 2012, p.16). This all indicates that the Israeli legal system works in the interests of the government.

### ***Suspension Law and institutional underrepresentation***

Hana (ACAP) (personal communication, April, 2016) confirmed the currently debated and contested Suspension Law, which means that the Knesset (Israeli Parliament) would have the power to suspend members of it. This damages the democratic right because normally representatives who serve in the Knesset are elected by the people. This law is problematic because it will be used against the Arab members, and that is why the Arabs went to the court. It is an unconstitutional law, but it already passed its first reading. There is a majority in favour of the law but also a huge opposition and thus lots of uncertainty about its passing. He further states that it is not strange that this law

comes now, regarding the present right-wing government under Prime Minister Netanyahu. This law demonstrates an institutional obstacle that confronts the Arab Bedouin community with an already general underrepresentation of Arabs in the governmental bodies and planning system.

The planning system is highly centralized and excludes the Arabs from decision-making processes and Master Plans for zoning, construction and development (Alqasis et al., 2014). There is one Arab Bedouin member in the Knesset, Thaleb Abu Arar, who is part of the Muslim movement of the Joint List (Michal (CoexistenceForum), personal communication, April, 2016). The National Planning and Building Council only counts 2 Arabs out of the 32 members. The northern district in the Galilee region has (limited) Arab representation, whereas the southern district has none; *“the district planning committee in the north consists of 17 members, only 1 or 2 are Arabs. The situation in the south is worse because there is no representation at all. If you are not present in the planning committees, your interests are not on the table. You are not there to defend your cause and explain your needs and to struggle to achieve resolution which supports your plans”* (Hana (ACAP), personal communication, April, 2016). Also, local councils in the state-planned townships were provided, albeit run initially by Israeli Jews (Nasasra et al. (Eds), 2014).

The ex-Minister of Justice (personal communication, April, 2016) furthermore stated that in the Land Department there were no Bedouin lawyers, as in contrast to the Ministry of Justice where there reside some Arabs and Bedouin. The ex-minister recognized the general underrepresentation of Arab Bedouin but wished that more would participate. In the Ministry of Justice there is a special quota for recruiting non-Jews. Notwithstanding, *“the Bedouin that work in the Department prefer not to be confronted with Bedouin in court, it puts them in an unpleasant position because the people say ‘you are part of the authority that takes our land, that arrests us’. One Bedouin was part of the Administrative Bedouin Authority, he quitted because his family could not bear it that he was working for the government”*.

Despite the fact that underrepresentation remains a big issue, there have been some improvements lately. In the appointed Arab Bedouin localities, elections were established and there has been a growth in votes for anti-Zionist Arab parties in Knesset elections (Nasasra et al. (Eds), 2014). The proposed Suspension Law can therefore be seen as a response to this, resulting out of the fear for growing Arab representation.

### **Admission Committee Law**

There are about 126 Jewish settlements in the entire region and 115 of them operate through admission and acceptance committees which hold different criteria to decide whether or not somebody can purchase land in the settlement. The conditions to refuse admittance are set out (and

approved in 2011) in the amendment nr.8 of the Cooperative Associations Order. The acceptance committees in the Kibbutz even work with a “probationary period” for people who want to join. A new trend is also observed whereby the shortage of plots, lack of public services and infrastructure and population density make the Arab Bedouin move to the Jewish local councils and towns where there are no admission committees. It is stated here that both types are tools that work in favor of preserving spatial segregation (Negev Coexistence Forum for Civil Equality, 2016).

In accordance with Hana (ACAP) (personal communication, April, 2016) the Admission Committee Law is problematized here as *“it was enacted for long time just to filter out Arabs from entering to live in communal settlements, it was done previously without legal bases because there was a tradition of establishing a committee with the citizens of the settlements who decided who gets in or may live in the settlement. This committee was not based on the law, it was a practical need, then came the law, which legalized these admission committees”*. These communal settlements are established on confiscated land. This is a problematic situation where Arab land is taken and where the Arabs are not allowed to buy a home or live in those Jewish settlements which were established upon their lands (Hana (ACAP), personal communication, April, 2016).

### ***Planning and Building Law and the house demolition issue***

Tarabulus & Rotem (2014) discuss the continual policy of house demolition in the Naqab, which is against a number of international conventions that protect the human right to housing like the International Covenant on Economic, Social and Cultural Rights (ratified by Israel in 1991) as well as Israel’s Human Liberty and Dignity Law of 1992. The Planning and Building Law (1965) initiated the demolition of Arab Bedouin houses in the Naqab. The land of all the unrecognized villages was said to be for agricultural and not for residential use, and thus all of them were – *retroactively*– declared to be “illegal” and came under a demolition threat. However, the difference between the 11 newly-recognized villages and unrecognized villages is negligible. Those newly recognized villages still lack detailed outline plans. A problematic factor is that the “houses that existed prior to official recognition are still deemed illegal. Indeed, only a small number of construction permits have thus far been issued in these villages” (p.8).

The demolition of the houses is an inter-agency affair between the ILA (Israeli Land Administration), Green Patrol (Ministry Agriculture’s Unit that supervises open spaces), civil police and private demolition contractors. Mostly, they arrive all together (unannounced), early in the morning or during the working hours. As mentioned before, the threat of getting their house demolished is thus unavoidable. The Coordination Directorate of Land Law Enforcement in the Negev was established in 2012 and is now systematically also targeting families that are reluctant to

negotiate with the authority about their relocation. Even in governmental planned towns and recognized villages, houses can get demolished because of this or in response to other building “violations”. Recently, there has also been a growing trend of independent demolition, to limit the material, psychological and economical damage. In that way they can also save some important construction material to rebuild their homes (Tarabulus, O. & Rotem, 2014).



Left: prohibition sign of house demolition in the unrecognized village of Alsra.

Right: house demolition taking place (source: Sadaka).

### 5.1.5. Spatial planning policies

After confiscation of Arab land, “the legal focus shifted from expropriation of ownership and possession to land-use limitations. This was achieved primarily through planning and zoning laws” (Kedar & Yiftachel, p.139). In this case, zoning is understood as “both a codification of dominant representations of space, and a technical mechanism for reproducing that dominance, by inscribing them in physical uses of land” (Butler, 2009, p.17). As part of the present-day development of the neoliberal world order, the Israeli spatial planning policies are a key for managing surplus populations, which is foremost the native population. Those policies cover “a range of techniques of elimination – from outright homicide to various forms of removal and/or confinement (...) to Natives’ assimilation into settler society” (Lloyd & Wolfe, 2016, p. 111).

Since 1948, there has been a gradual spatial concentration and resettlement of the native Arab Bedouin going on in the Naqab. The Israeli spatial planning policies aim at rapid urbanization and modernization by concentrating the Arab Bedouin in urban ghetto’s, with limited spatial and

functional mobility and lack of land for rural development. The establishment of Jewish settlements, national infrastructure, military bases etc. are all part of Israel's regional planning goals (Shmueli & Khamaisi, 2015). Nevertheless, "Bedouin Arab representation in urban and regional planning affairs has ranged between non-existent and negligible" (Yiftachel, Goldhaber & Nuriel, 2009, p. 136). Important to note is that the relocated Arab Bedouin are forced to live on land that belong to other Arab Bedouin tribes, which contravenes with the well-respected traditional landownership system (Mihlar, 2011).

The planning policies mainly promote a specific spatial strategy which Yiftachel (2010) calls SEEC: the 'S' refers to the Jewish Settlements and the need to provide Security for the Jewish space; the 'EE' refers to territorial Expansion and to the Ethnicization of space in Jewish hands by driving in this case the Arab Bedouin into segregated Enclaves, and the 'C' refers to Control space. The SEEC logic serves as a key for the shaping of space that has created deep imprints of segregation, minority ghettoization, securitization and social inequality.

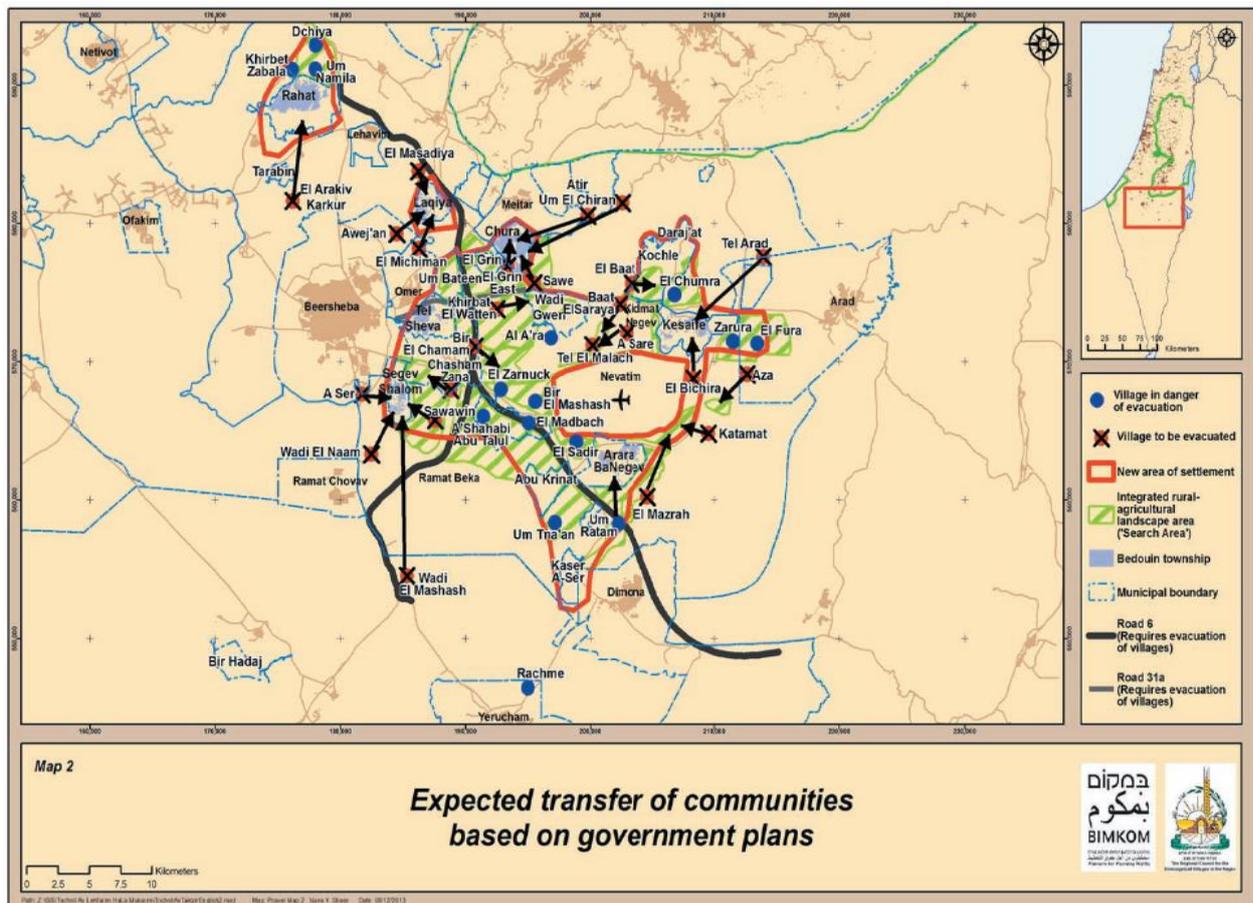
The Israeli spatial planning policies are thus a powerful tool for strengthening Jewish presence in the region as well as for oppressing the native Naqab Arab Bedouin localities by violating their basic civil and political rights (Bimkom, 2014a).

### ***Contested plans***

The most contested spatial plan was the Praver-Begin Bill or the Praver Plan. In 2007, a new committee headed by Eliezer Goldberg was appointed to recommend solutions to solve the dispute. The committee seemed to work in a democratic and open manner, as its draft made recommendations for more recognition of the Arab Bedouin villages and to increase the level of compensation. These recommendations were not taken up by the following Praver report that retreated itself from this particular point (Amara, 2013). The Praver plan was adopted in 2013 by the Knesset with 43/40 votes and provided a legal basis for the forced displacement of the Arab Bedouins residing in the unrecognized villages. This plan received a lot of resistance and critique, coming from both the Arab Bedouin community and civil society as well as the international community. The committee on the Elimination of Racial Discrimination – established by the UN Convention in 1966 on the Elimination of All Forms of Racial Discrimination, and which binds Israel since 1979 – expressed its concerns towards this proposed law and suggested its withdrawal (David, n.d.). The plan is received by the Arab Bedouin as a great "threat to their rights, entailing displacement, land expropriation, and a government policy of continuous exclusion and discrimination" (Amara, 2013, p.40). As a result, the Praver plan was "temporarily shelved" or

“frozen” by previous Minister Yair Shamir after (inter)national waves of protest and resistance (Yiftachel & Roded, 2016).

The Association for Civil Rights in Israel (ACRI), the Regional Council for the Unrecognized Villages in the Negev (RCUV) and the Negev Coexistence Forum for Civil Equality (NCF) submitted a petition to the Supreme Court in 2000 against the district Plan for Be’er Sheva Metropolis (Noach, 2009, p.17). This plan –legally approved in 2012 and in implementation now – wants to evict 14 localities out of the 35 unrecognized villages (Amara & Yiftachel, 2014). Another currently contested plan is the Yatir Forest Plan, which would require to resettle the villagers of the unrecognized village Atir to make space for a recreational area and future forest park (Negev Coexistence Forum for Civil Equality, n.d.).



(Yiftachel et al., 2012, p.38).

### 5.1.6. Spatial planning flaws

The designation of the native Naqab Arab Bedouin to the state-planned urban townships is far from an innocent act. Dr. Amer Al-Huzaiel, former adviser to the Regional Council for Unrecognized Villages (RCUV) adds to this:

It is no secret that the purpose of Israeli planning on the national and regional level is the Judaization of the planning space by concentrating the maximum number of Arabs in the minimum amount of land and dispersing the minimum number of Jews over the maximum amount of land (2004, quoted in Swirski, 2008, p. 36).

Planning in this case study is seen as a “socio-political action that determines the allocation of resources” (Alqasis et al., 2014, p.9). Particularly interesting for this case is that “zoning and planning policies are directly related to human rights, and especially to indigenous communities and forcible displacement” (p.9-10). The general idea of the Israeli planning policies is that “*everyone moves to the towns*” (Yiftachel, personal communication, April, 2016). A problematic aspect of this replacement is that “*the government offers a piece of land that is already claimed by somebody else. The Arab Bedouin publish ads in the local newspapers to say that the government is planning to confiscate their land at this location, to inform the others that this is illegal.*” It is a form saying “*be aware not to enter my land. Arab Bedouin are willing to confront the government but not to confront other tribes because it can be bloody, people therefore respect the traditional system*” (Thabet Abu Rass, personal communication, April, 2016). Sana (ACRI) (personal communication, April, 2016) adds that “*the use of land planning has become a tool to fight the Arab Bedouin communities commands, they are meant to limit the expansion of the villages or to expel other from their place*”. She hereby also refers to the forest projects of the JNF which take land from the Arab Bedouin to plant trees, similar to the way this was done by the Israeli army after 1948 to erase any memory of the former villages. Nevertheless, throughout a successful campaign they succeeded to stop the further tree planting in El-Araqib (Michal (Coexistence Forum), personal communication, April, 2016).

During my visit to El-Araqib the forest project of the JNF became very clear. They were literally surrounded by only trees. This village has been demolished and rebuilt for more than 90 times. The leader of the village showed me his documents of his land under Ottoman and British rule that hung up on the wall of his tent. He showed me videos of the occurring house demolitions that take place once and a while. Big troops of policemen come (sometimes announced) early in the morning to take every house down. They take everything with them (even mattresses). If they show resistance, this is responded with violent police force. He also told me they once took his car with them for which he had to pay to get it back (Muna & Arab Bedouin leader, personal communication, April, 2016). Another problematic given which confronts the Arab Bedouin is the confiscating of cattle (Abu-Ras, 2006). During our study trip we were told that their sheep got arrested and that they had to pay to get them back. Sometimes they are also subjected to violent actions of neighboring Jewish settlers who throw stones at them.



JNF forest project in El-Araqib



Arab Bedouin leader of El-Araqib showing his ownership documents.

A plan is developed throughout a Master Plan. The Planning and Construction Law (1965) distinguishes four types of Master Plans: 1) National Plan; 2) District Plan; 3) Local Plan and 4) Detailed Plan. Consequently, “each citizen has the right to object to District Plans and Local Master Plans within 60 days of the Plan’s publication in the National Planning newsletters (...) only the District Planning Committees can object to National Plans” (The Arab Center for Alternative Planning, 2009, p.60). A problematic aspect to this is that citizens can only object a plan after it has been published (The Arab Center for Alternative Planning, 2009). Furthermore, “to approve a local outline plan, the plan should fit in the National and District Master Plans” (Alqasis et al., 2014, p.21). Yet, those plans mainly prevent the expansion or development of Arab localities by systematically planning forests, industrial parks, high roads, military bases etc. (Alqasis et al., 2014). The roads are also constructed in a way that force the Arab Bedouin to move. Route 6 is a planned highway in the Naqab which will go through the unrecognized villages. These areas are another way of saying: “*you*

*cannot live here*". To conclude, *"planning does not take the Bedouin into consideration"* (Michal (Coexistence Forum), personal communication, April, 2016).

Sana (ACRI) (personal communication, April, 2016) said *"the government is promoting a new plan to build 5 new settlements in the south. Part of them on top of existing Arab Bedouin villages"*. This is illustrated with the case of Um-El-Hiran, where the government wants to build a new Jewish locality, namely Hiran, on top of it. The idea is to bring an orthodox religious group from the Westbank to Hiran. Bimkom presented a report that argues for alternatives like including Um-el-Hiran in Hiran. They have also planned a fosfor mine on top of three villages. Bimkom also submitted a petition because of the health problems this mine will bring to the surrounding villages. Also, *"this is not only on top of houses but also on top of land claims"* (Nili (Bimkom), personal communication, April, 2016). By conducting fieldtrips and organizing community workshops in the Naqab, Bimkom offers the villagers information about the planning policies of the Israeli authorities. They then try to represent the voice of the community by writings report to the authorities.

Nili (Bimkom) (personal communication, April, 2016) made an interesting point by saying that recognition can also be against the women's needs. By recognizing the village as it is, the power structure of the Bedouin community is reflected in which men enjoy more power. In their planning, they thus consider how recognition will affect the Arab Bedouin women and look how they can improve their accessibility.

### ***Spatial segregation***

The Jewish settlements facilitate moreover the state's claim over Israeli land ownership over the Naqab (Swirski, 2008). They play an important role in Israel's discourse of *"making the desert bloom"* (Nasasra, 2012). In 2005, the Israeli government also adopted the 2015 Negev development Plan or the Sharon-Livni Plan, which enforces the expansion of Jewish settlements in the region - increasing its population from 535,000 to 900,000 by 2015 (Amara, 2013). Michal (Coexistence Forum) (personal communication, April, 2016) stated that *"the Arab Bedouin cannot expand, they are surrounded in order to prevent them from expanding"*. Nevertheless, she said that the governmental plan to bring more Jews into the area does not work that well; *"people do not want to come and live here because it is considered periphery. Education achievements are lower compared to the center of Israel, also the infrastructure, services and unemployment rates are very high."* The government is also building a new high tech park and they will improve the train routes so it will take people from Tel Aviv only 15 minutes to get to the Naqab; *"they will have no reason to move if it is so easy to get here."*

In the Jewish settlements there are dozens of individual Jewish farms, all connected to water and electricity. One can observe here a “clear-cut ethnic discrimination between the Jewish and Bedouin-Arab populations in providing basic services” (Noach, 2009, p.27). This is for example clearly the case in the unrecognized village of Wadi Al- Na’am where a national power station is placed in the center of the village but the houses surrounding it are not connected to the electricity it provides (Noach, 2009). It is actually very ironic that the government encourages Jewish farming while restricting many Arab Bedouin to engage in farming, which historically, traditionally and culturally has been a crucial part of their lifestyle (Mihlar, 2011). This restriction is however in line with the government’s conceptualizing of the Arab Bedouin as “primitive” and “backward” who need to be civilized and urbanized according to a Western modern lifestyle (Abu-Rabia, 2008).

The Negev Coexistence Forum for Civil Equality (Michal (Coexistence Forum), personal communication, April, 2016) recently published a report, namely ‘Segregated Spaces: The Spatial Discrimination Policies among Jewish and Arab Citizens in the Negev-Naqab’ to demonstrate how the Israeli planning policies favor spatial segregation. Arab Bedouins are not allowed in those Jewish settlements, but this is also the case the other way around. Hereby she refers to a case where a police officer wanted to buy a plot in Segev Shalom but was not allowed to do so by the Israeli government. So rather than promoting coexistence, they try to maintain this spatial segregation.

Regarding the aforementioned, it can be said that the Israeli planning policies represent a crime of apartheid, by which the UN convention of 1973 criminalizes:

(c) Any legislative measures and other measures calculated to [...] the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group [...] basic human rights and freedoms, including [...] the right to freedom of movement and residence [...] d) Any measures including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, [...] the expropriation of landed property belonging to a racial group or groups or to members thereof (David, E., n.d., chapter 13, para.1).

#### **5.1.7. Legal consequences of imposing a certain conceptual ordering**

Shamir (1996) demonstrates the legal consequences of imposing a certain conceptual ordering, which creates binary oppositions between "us" (progressive Westerners) and "them" (chaotic Oriental nomads); “society versus nature; order versus chaos; progress versus backwardness; bounded time versus unbounded time; individual rights versus collective trajectories;

and a specially adapted version of formal versus substantive law” (p.253). Nomadism is constituted here by the Israeli government as a “rational foundation for appropriating land on the one hand and for concentrating the Bedouins in designated planned townships on the other hand” (p. 236). By framing the native Arab Bedouin community as “mobile”, “rootless nomads” and “traditional” people the Israeli state justifies their interventions in the name of (Western) development and progress (Shamir, 1996). The discourses of urbanization and modernization contributed to viewing the Arab Bedouin as wanderers, waiting for the state to come and rescue them and lead them to civilization (Abu-Rabia, 2008). Imposing an exotic nomadic image on the Arab Bedouin community not only nurtures an orientalist perspective (Sa’dj, 2011), it also hides the reality of “Bedouins’ semi-nomadic form of settlement, which included tilling plots of land in particular areas associated with each tribe” (Pessah, 2014, para.3). In a colonial geography, sources of disorder – in which the “savage” plays a central role – must exist outside the law. Taking a colonial geography into consideration, “for many classical European writers on property, the space of the savage was one of the absence of law and property and the concomitant presence of violence” (Blomley, 2003b, p. 124). Finally, Shamir also explains the law’s “conceptualist” mode of operation:

Thus the law works by imposing a conceptual grid on space - expecting space to be divided, parceled, registered, and bounded. It imposes a conceptual grid on time - treating time as a series of distinct moments and refusing any notions of unbounded continuity. And it imposes a conceptual grid on populations - treating them as clusters of autonomous individuals who should be readily identified and located in time and space (1996, p.234).

## **5.2. Using ‘indigeneity’ to resist dispossession and displacement**

The lack of recognition of dozens of villages, commonly living on their ancestors’ land, stems from state denial of the indigenous land regime existing in the Negev prior to the establishment of Israel, as well as the Bedouins’ indigeneity (Kedar, 2016, p.14).

This quote explains why indigeneity will be taken up in this case study. The notion of indigenous people is rather recent and finds its origins in the Americas’ First Nations (1970s) efforts to raise (inter)national awareness of their disadvantaged situation, referring to their subjection to political, cultural oppression, social discrimination that resulted from their land being taken as part of their colonialization (Collignon & Hirt, 2015). By supporting the indigenous resurgence, indigenous dispossession in a colonial present is disapproved (Snelgrove et al., 2014). Ian Brownlie (1988) identifies three indigenous peoples’ claims in Nasasra (2012): 1) “the claim for positive action to

maintain cultural and linguistic identity of communities; 2) the claim to have adequate protection of land rights in traditional territories; and 3) the claim to political and legal self-determination” (p.83). In this study, the focus will mainly be on the second claim.

Indigenous people build coalitions with (inter)national NGOs to pursue their land claims (Susskind & Anguelovski, 2008). Therefore, Cohen and Rai (2000) focus in Shaw (2008) on indigenism as a “global social movement: indigenous peoples provide a microcosm in which one can see elements of struggles faced by a large percentage of the world’s population, struggles that tend to appear very marginally in discourses and practices of contemporary political theory” (p.5). Hence, according to Castree (2004), claiming the title of indigenous is about the “roots” – particular local territorial attachment – as well as about the “wings” – building translocal solidarity. Indigenous people around the world further use various universals “to advance their geographically differentiated cause” (p.136); “local agendas are, in this case, being pursued by global means” (p. 152).

Considering the present circumstances, the Naqab Arab Bedouin embrace indigeneity by drawing on an international human rights discourse for the recognition of their (land) rights (Yiftachel & Roded, 2016). Successful cases abroad of recognition of indigenous land rights “inform the Bedouin about the potential of such methods, and encourages them to continue their struggle in a similar way” (Elsana, 2015, p.51). Especially the recognition of Aboriginal land rights in Australia forms an inspiring case for indigenous peoples on community-, political- and legal level (Elsana, 2015). It is further important to note that the Arab Bedouin indigenous struggle is part of a broader Palestinian indigenous struggle (Yiftachel, 2008).

The Naqab Arab Bedouin recently joined the United Nations branch of Indigenous People which supports their struggle for recognizing their land rights (Nasasra, 2012). In 2007, the United Nations General Assembly (UNGA) adopted a Declaration on the Rights of Indigenous peoples by 143 votes – Israel was absent for the vote (David, n.d.). Israel does not recognize the Arab Bedouin’s indigeneity (Mihlar, 2011). Nevertheless, this declaration is of significant value to the needs of the native Arab Bedouin, as it provides four basic rules:

- 1) prohibition to deprive indigenous peoples of their lands or territories (Article 10);
- 2) the right of indigenous peoples to own and use these lands or territories (Article 26);
- 3) the right of indigenous peoples to gain respect for their land tenure systems (Article 26/3; Article 27);
- 4) the right of indigenous peoples to obtain reparation (restitution or compensation) for any deprivation of their land and territories (Article 10 and 28) (David, n.d., chapter 9, para.2).

Gina Stuart-Richard talks in *Spaces of Indigenous Justice* (2015) about the indigenous notions of space, which is based on the indigenous peoples' traditional customary system of kinship, oral tradition and traditional ecological knowledge. Furthermore, "as an intensely political act, this indigenous cartography is an important tool that groups can use to assert sovereignty in a bottom-up approach to land claims" (para.2). Indigenous cartography refers to indigenous people who develop geo-spatial technology and actively use it to confront colonial powers. This kind of cartography brings hope in the sense that "tide is turning; in much the same way that colonial practices of the past worked to achieve hegemony through the making of political and cultural boundaries, indigenous cartography can work to dismantle these same colonial boundaries" (para.2). Indigeneity thus serves here as a counter-hegemonic tool which confronts the "existing forms of organization and control of space through alternative uses of space – effectively the production of counter-spaces" (Lefebvre cited in Butler, 2009, p. 13). Additionally, in challenging the discourses of sovereignty new political spaces open up (Shaw, 2008). Blomley and Pratt (2001) discuss that rights are geographic when they are *inter alia* about access to space. In this sense, people have the right to stay and therefore resist enforced mobility (Blomley & Pratt, 2001). Hence, Yiftachel and Roded (2016) suggest to see "indigeneity" as "both a reflection of collective history and sentiment, as well as a strategic tool for resisting persisting marginalization and dispossession" (p.3).

Yiftachel & Roded (2016) argue as well that they do not claim for an essentialized indigenous identity. By drawing on Gramsci, Spivak, Young, Mouffe and Hall, their approach assumes that collective identities are dynamic and formed in a context of political struggle. Yiftachel (personal communication, April, 2016) refers to Gramsci and Mouffe when he states that "*the issue of identity and politics are intertwined*". He confirms that the indigenous label is a political identity, "*which you mobilize support behind to get rights*". So in adopting the indigenous narrative as a political tool, the Arab Bedouin also adopt a political identity.

There is no widespread accepted formal definition of indigenous people, and that is why the term remains controversial. The applicability of the notion "indigenous" on the Naqab Arab Bedouin is far most agreed upon by a list of Arab Bedouin activists, academics (like Kedar, Yiftachel, Amara), lawyers and NGOs (Arab and Jewish ones) (Nasasra, 2012). Notwithstanding, the usage of "indigenous" has also been contested by a number of Israeli scholars like Frantzman, Yahel and Kark – whom Yiftachel refers to as the "deniers" (Yiftachel & Roded, 2016). According to them the notion of indigenous is inapplicable to the Naqab Bedouin (Nasasra, 2012). Yiftachel (personal communication, April, 2016) states that this is because the Israeli state is nervous about the indigenous agenda, "*therefore they have experts to prove the Bedouin are not indigenous. The state says 'look they wear modern clothes, they are not indigenous anymore'. You cannot demand that the*

*indigenous stay as in the 18<sup>th</sup> century and we are allowed to change, they change too. They urbanize, that has to be part of the new indigeneity as well. The right to the city, it is more complex than recognizing their indigenous lifestyle, they have the right to change too."*

The denial of the Arab Bedouin's indigeneity is furthermore based on the denial of their past existence (Yiftachel & Roded, 2016). This is ironic, because "in its Law of Return, Israel has granted a pseudo-indigenous status to immigrant Jews who have never lived in its territory, while the native Palestinian Arabs are not recognized as such" (Yiftachel & Roded, 2016, p. 11).

One of the arguments of the "deniers" is that "the Bedouins have private land claims, while indigenous land is typically collective" (Yiftachel & Roded, 2016, p.27). The ex-Minister of Justice (personal communication, April, 2016) defends this argument as follows: *"If you would like to become private owner, not collective owner, then you are stopping from being under the wings of your traditional tribe. If you need individual recognition, then you are saying I am putting myself under the wings of the state, because my relation is one with the state and not a group relation. (Semi)-nomads can maybe ask for group recognition, like in Ottoman time, it was shared land for all the groups. If you are talking about tribal, than it should be shared for members of the tribe."* Falling back on Yiftachel & Roded (2016), this is to be problematized as the private land ownership claimed by the Naqab Arab Bedouins does not invalidate their indigeneity for the following reasons: 1) "this aspect is not included in the definition of indigenous groups, and can thus be regarded as a secondary characteristic at best" (p.27) and 2) the indigenous land rights and title arrangements are defined by the indigenous peoples themselves, prior to their subjugation to a colonial society.

Looking furthermore at similar cases in Africa and Nicaragua is useful, because it demonstrates that indigenous land ownership can be privatized. Indigeneity is therefore not fixed but dynamic in the sense that land arrangements can vary over time. Additionally, "the term 'common ownership' often ignores the private title to many tribal lands, which is often inherited across the generations and is delimited and demarcated on a family basis" (p.28). Also, the Arab Bedouin established a land trading system that was based on written title deeds (or *Sanad* in Arabic) which documented land sales. It was primarily used to document sales to foreigners but later also among the Arab Bedouin to record sales or inheritances (Yiftachel & Roded, 2016).

Therefore, the claim that indigenous people have only collective forms of land ownership is empirically inaccurate and betrays an orientalist approach, one that seeks to freeze the concept of indigeneity and preserve it as a museum piece, while ignoring the dynamism of autonomous living and functional societies. The demand to "freeze" Bedouin culture into collective arrangements is problematic also historically. As cultivation expanded in the Negev, the *dira* (tribal territory) was increasingly divided among the families in pasture lands

turned into farming plots, particularly in drainage basins of desert riverbeds. In these areas, dryland farming could be sustained as part of the modernization undergone by the Negev tribes. This form of cultivation and ownership does not detract in any way from their tribalism, distinct culture and territorial administration which kept following the applicable indigenous law (Yiftachel & Roded, 2016, p.28).

Despite the absence of a formal-legal definition of “indigeneity”, these characteristics are broadly agreed upon in research literature. Following Yiftachel & Roded (2016), I will address their applicability on the Arab Bedouin case to prove and support their indigeneity:

1) History of self-rule prior to being subjugated by the current regime: around the 7<sup>th</sup> century, the time of the Islam conquests, Arab Bedouin began to emigrate from the Arabian Peninsula to the areas of Sinai, Hijaz and Palestine. Around the 13<sup>th</sup> century they settled in the Naqab. Under Ottoman rule in the 16<sup>th</sup> century, Arab Bedouin agriculture was reported. During Ottoman-British period, most Arab Bedouin enjoyed self-rule under their traditional legal system, which proves the existence of a mainly autonomous Arab Bedouin society prior to the establishment of Israel.

2) Continuous self-determination as an indigenous group/ 3) Desire to maintain a unique identity: their shared local history shapes their identity for which they claim political self-determination. Most Arab Bedouin residing in the villages wish to remain their traditional farming lifestyle that relies on their customary law. The “indigenous Bedouin identity is firmly founded on historical, ethnical, geographical and cultural grounds” (p.21).

4) Continuous and consecutive relation with a given territory: Arab Bedouin have been semi-nomadic for centuries and have a strong tribal affiliation with their ancestral lands.

5) History of discrimination and dispossession by the modern state: since 1948, the Arab Bedouin have been subjected to dispossession, displacement, urban concentration and state oppression and discrimination.

6) International recognition: the Arab Bedouins have been admitted into the United Nations Permanent Forum on Indigenous Issues (UNPFII) and participated in six global indigenous group conferences since 2005. The Naqab Arab Bedouin’s indigeneity was reconfirmed in 2011 by Special Rapporteur Anaya in his annual report.

Moreover, like most indigenous populations, the Arab Bedouin are seen here as active agents whose political resistance is part of a struggle called “Sumood”- an Arabic term for hanging on. In this case, “sumood” refers to “holding on to their ancestral land and rebuilding their communities after numerous rounds of evictions and dispossessions” (Yiftachel, 2008, p.11). The relocated Arab

Bedouin maintain a strong connection to their former native space as a means of resistance and to keep the memory alive. At the same time they also use their new allocated space as an arena for resistance, and therefore expressing their disapproval of an imposed (urban) lifestyle. In order to keep that memory alive, the Arab Bedouin organize visits to their former land, especially on special occasions like Israel's independence day, which represents the day of their displacement (Abu-Rabia, 2008). In Rahat for example, I attended a meeting with Fadi, where the ADRID (Association for the Defense of the Rights of the Internally Displaced) organized its third meeting in preparation of the annual march that took place on the 12<sup>th</sup> of May in memory of their villages from which they had fled in 1948. The attendees were all representatives of an internally displaced village.

The Arab Bedouin community is characterized by multiple interviewees for their general non-violent resistance. A successful (unarmed) resistance act was "the day of rage" against the Praver Plan; it was successful because the plan got frozen afterwards. The Arab Bedouin community organized a big demonstration which took place at the roundabout of Hura on the 30<sup>th</sup> November in 2013. To suppress the protest the Israeli authorities used warning talks, lengthy detentions, collective indictments and devices for crowd dispersal (like water cannons, shock grenades and tear gas). Although the demonstration got legal approval by the police, during the demonstration civilian policemen were replaced by a special police unit and the paramilitary Border Police (Rotem, 2014).

### **5.3. Towards spatial justice**

The future of the Naqab is subject to much political debate. But who's included/excluded from that debate? By recognizing the excluded, spatial justice comes in. Israel's Judaization/nationalization of the Naqab in order to achieve a Jewish state is to be problematized in many ways, as such a future space is being "fixed" in the hands of a Jewish majority. This leaves the Arab Bedouin localities within the Naqab without a grant of spatial justice and with a lot of uncertainty about their presence in the region. By bringing the concept of spatial justice in the ongoing debate, spatial differentiation comes in and makes a broader range of political options possible (Massey, 2011).

Spatial justice, a concept gaining ground in urban planning and geography, is pushed forward by geographer Edward Soja in Williams (2013). Soja's conception (in Williams, 2013) on spatial justice is the following: "spatial relationships produce social relationships, and hence justice relationships" (p.5). Taking Massey's idea on space as an area of simultaneity and multiplicity also further into consideration, one can find within it the possibility of political alternatives (Massey, 2005). The dynamic view on space was first developed by Henri Lefebvre and was later shared by other geographers like Massey and Harvey (Williams, 2013). By using the concept of spatial justice, an

explicit link between space and justice is being made and can therefore be useful to analyze complex socio-spatial-legal conflicts. Important to this case is that displacement captures what spatial justice helps to make more visible; “it treats space as a constituent element of justice relations” (p. 19).

The notion of spatial justice leads to some interesting questions in Collignon and Hirt (2015) such as: “what does ‘spatial justice’ mean in this context? Moreover, how does ‘spatial justice’ determine what is ‘acceptable’ and/or ‘legitimate’ in terms of land claims?” (p.2). What if spatial justice for indigenous people means an exclusion for other inhabitants who also might be long-established in the area? What form of living arrangements does spatial justice entail? Taking these questions into consideration, they state that spatial justice can also be considered separately from claims over traditional lands, as other forms of living arrangements (like urban) become optional.

Regarding spatial justice, people's need for attachment should be recognized, but nevertheless this can lead to conflicts, varying from “reactionary nationalisms, to competitive localisms, to introverted obsessions with 'heritage'” (Massey, 1994, p. 151). When dealing with those kind of political struggles, Massey (1994) argues that “the question is how to hold on to that notion of geographical difference, of uniqueness, even of rootedness if people want that, without it being reactionary (p. 152)”. One place can have multiple meanings held by different social groups, but when that place is the subject of political struggle between those different social groups, a reduction of that multiplicity into a single meaning could be aspired in order to assign the place to one particular group.

Concerning spatial justice for indigenous peoples, this study looks at the inspiring case of the indigenous Aboriginals in Australia, who got their customary land rights recognized through the native title doctrine. Peter Russell states in Elsana (2015, p.46) that the native title “is not a concept of law in the settler's Common Law, nor is it title to land ownership, but it is only a bridge, a legal connector, through which the law recognizes the traditional connection of indigenous peoples to their land”. Spatial justice for indigenous people can entail various claims: return of the (stolen) land, administrative authority over the land, political autonomy, self-determination, equal spatial distribution regarding land-use, planning and natural resources etc. (Collignon & Hirt, 2015).

Furthermore, “the notion of ‘indigeneity’ is intimately linked with that of justice since it is born from acts of destructive injustice” (Collignon, & Hirt, 2015, p.1). Practices of domination, subjugation, land dispossession, forced resettlement, forced movement through economic deprivation etc. can all be defined as practices of injustice which hold a spatial dimension (Bailey et al., 2012). Several United Nations Human Rights bodies criticize the ongoing violation of the Arab Bedouin’s indigenous rights and argue that international legal protections should be transformed into a reality and seek justice in order to correct historical injustices (Amara et al., 2012).

Yiftachel (personal communication, April, 2016) further defines indigenous justice as a combination of social justice and indigenous rights. It is about a *“very basic notion of justice, proportional division of the resources, recognition of the rights, representation. It is a good agenda because it is difficult to object to.* It can be seen as a *“new strategy”* that *“comes out of frustration of unequal citizenship”,* as *“Israel continues to colonize Bedouin space”*. Yiftachel supports the indigenous narrative because it *“allows for mutual recognition, it is about parallel co-existence, parallel sovereignty”*.

According to Yiftachel et al. (2009), *“recognition, or lack thereof, may enhance or harm social and spatial justice”* (p. 121). Recognition in general, should be seen as a multifaceted socio-political process, *“ranging between positive affirmation, marginalizing indifference and exclusive hostility, with a multitude of possibilities in between these poles”* (p.120). Following the aforementioned different forms of recognition, they ascribe affirmative recognition to the Russian-speaking Jewish immigrants; marginalizing indifference to the Mizrahi Jews and hostile recognition to the Arabs in the region. According to Yiftachel (personal communication, April, 2016) recognition should be furthermore affirmative and not hostile; *“it has to come with economic resources and governmental structures.”*

Nancy Fraser brought some relevant arguments in the debate on justice and recognition in Yiftachel et al. (2009). She argues that *“claims for justice can be organized on two major structural axes — distribution and recognition — that constantly interact, but are not reducible to one another. Within each axis, she added, approaches to justice range between ‘affirmative’ and ‘transformative’ measures”* (p. 123). Whereas *‘affirmative’* measures involve a rather temporary effect on injustices, *‘transformative’* measures have a more profound effect by challenging the system as a whole that produce those injustices. Yiftachel et al. (2009) conclude that *“recognition claims interact in complex ways with the well-established call for fair distribution of material and political resources and fairness in decision-making processes”* (p.138). It is furthermore important to keep in mind that recognition might lead to a process of *“othering”* by institutionally and legally *“tagging”* a group as distinct, and may thus work for or against a particular group.

Since 2000 there have been some slight improvements regarding recognition as 11 villages got recognized (Mihlar, 2011). Nonetheless, the process of recognition and the following steps of implementing public services (such as water, electricity access, schools, clinics etc.) that go along with it, goes very slow. Furthermore, recognizing a village does not solve all problems. The Arab Bedouin residing in those villages are still subjected to poor quality of life, regarding the low standard of infrastructure, public services and economic development and high unemployment rates (Swirski, 2008). More important to keep in mind is that *“government recognition of a village does not extend*

to recognition of residents' land or housing rights, but it does accord some level of protection from demolitions" (Mihlar, 2011, p.4).

A positive achievement regarding recognition is demonstrated by Sigal Moran (personal communication, April, 2016), mayor of Bnei Shimon. She gave some of her municipal land to Rahat (14.000 dunam) – town of about 70.000 people. On this land were three unrecognized villages which are now part of Rahat and in the process of getting recognition. She believes it is very important to achieve the same quality of life for both the Jews and the Arab Bedouin: *"it is also in our interests that they will have the same quality of life. We cannot live peacefully if the people in Rahat cannot live like human being. If people see there is quality of life in Rahat, I believe that they will come in the end."*

To achieve spatial justice for the Naqab Arab Bedouin, Abu-Ras (2006) suggests that the Israeli legal system should coopt the alternative knowledge, practices and spatial geographies in its system to deliver fair planning policies and laws. To reach more "just" planning and zoning policies, Alqasis et al. (2014) present the following six principles that I think are important to be taken into account: 1) legality: planning is subjected to the law, which determines what needs to be taken into consideration when making decisions. Therefore a "just" legal system is acquired; 2) proportionality: principles of administrative law must be proportional with property rights; "rightful owners cannot suffer disproportionate damage because of public interest" (p.11); 3) rationality: "the logic of, and reasons for, the choices made are important to an assessment by others of 'essential fairness' of the decision" (p.11); 4) fairness/equality: fair process of decision-making, procedural fairness; 5) participation: "every planning decision must take into account the rights and interests of the indigenous communities that are going to be affected, and that these communities must be consulted" (p.12) and 6) sustainable development: a better quality of life for the present and future generations and also appropriate solutions which fit the needs of the communities.

As a consequence, a suggestion is made here whereby the previous mentioned SEEC-logic of the Israeli spatial planning strategies should reappear as SEEP: space that is Shared, Equalitarian, Equitable and Permeable (Yiftachel, 2010).

The report of the 'Negev Coexistence Forum for Civil Equality' (Noach, 2009) furthermore made some very interesting recommendations involving the spatial-legal conflict. These are taken up here, as they are considered as possible steps towards reaching spatial justice: 1) recognize all unrecognized villages; 2) increase the area of jurisdiction of already recognized townships so they become less crowded and have more development area; 3) variety of settlements options (agricultural, urban etc.); 4) recognize the claims of traditional land ownership of Arab Bedouin land (which counts for about 5% of the whole area). These recommendations are extended with the ones

that Milhar (2011) suggests: 5) halt proceedings with proposed legislation based on the Praver report; 6) taking into consideration of any proposed alternative plan which meets the needs of the Arab Bedouin community; 7) halt all the house demolitions and desist the charging of Arab Bedouin for the cost of demolishing their house; 8) when relocation is inevitable, fair alternative housing and compensation should be provided; 9) building a constructive dialogue with the Arab Bedouin community; 10) solution is obtained throughout mediation (Abu-Ras, 2006); 11) include the local principles of spatial layout in the planning policies; 12) active participation during planning process (Bimkom, 2014b) and 13) integrate the Arab Bedouin villages in the Be'er Sheva Metropolitan area (Yiftachel et al., 2012). Additionally, for ACRI spatial justice is about *"1) equal distribution; 2) planning that comes according their agriculture way of life, and planning for a diverse community in which every community has its own needs and specialties."*

A comparative case study between the Bedouins residing in Israel and Jordan in Berman-Kishony (2008) is also worth mentioning. It shows that decisions are made bilaterally between the Jordanian government and the Bedouin people, which increases the rate of recognition of indigenous rights. This study therefore takes up their suggestion of a consensus-building approach, which could be more effective than implementing legal penalties like house demolitions which prevent constructive dialogue and create big distrust. The establishment of the NGO 'Consensus Building Institute' is considered to be a step in the good direction (Susskind & Anguelovski, 2008).

This institute proposes a mediation approach between the Israeli government and the Naqab Arab Bedouin to resolve the ongoing land dispute. Mediation is to be understood as – "a short-term, structured, task-oriented, and participatory alternative dispute resolution (ADR) process in which parties and a neutral third-party mediator work toward the resolution of a conflict" (Matari, 2010, p. 1092). However, when an imbalance of power between the two parties concerned is observed, this approach may be discouraged when the most powerful group controls the mediation process and whereby the conversation is modelled towards its own interests. In this way, a fair resolution is out of reach. Given the existing imbalance of power demonstrated in this case study, mediators should "safeguard the weaker party's rights and employ pre-mediation screening and safe mediation techniques throughout the process" (p. 1093). Therefore, given the position of power of the Israeli state, it is more able to initiate action to pursue a just mediation process that makes room for a bilateral decision-making process and constructive dialogue with the Arab Bedouin instead of a unilateral one (Matari, 2010). The situation of the Arab Bedouin shows that litigation can end up being very costly and it can take several years, without the guarantee of a positive outcome (Susskind & Anguelovski, 2008; Matari, 2010). Nonetheless, regardless of whether mediation or litigation is selected as a way of dealing with the Naqab land issues, given the existing turbulent relationship full of distrust, they should undertake efforts towards building trust relationships, as

both parties will continue to reside in the region. However, “mediation would better serve this interest, as court decisions emphasize past facts and not the ways in which parties may move forward in the aftermath of a controversy” (Matari, 2010, p. 1089).

### **5.3.1. Role of the Naqab’s civil society**

The Naqab civil society can have an important role in facilitating peaceful dialogue and enhancing spatial justice for the Arab Bedouin. The organizations that work in the (un)recognized villages have a close affinity with this group (Noach, 2009). Yiftachel (2008) observes a rise of the civil society in the Naqab, and more specifically of Arab-Jewish organizations who construct “a common Arab–Jewish space and struggle, in which the democratization of a colonial settler society can be imagined, debated and planned” (p.8). The growing of the Naqab civil society is illustrated by a “NGO-ificating” that takes place in the region since the 1990s (Nasasra et al. (Eds), 2014). Since 2010 there has been an increase in political advocacy NGOs who make the concerned issues more visible by reporting and lobbying with organizations such as the European Union and United Nations (NGO monitor, 2010-2013). NGO activists who have become political professionals, have politicized the biased ideas about the Arab Bedouin. Starting from four Bedouin NGOs in 1994, more than eighty are currently registered who work together in order to put weight on their lobbying for collective budgets or group claims at court (Nasasra et al. (Eds), 2014). There have been some successful cases regarding service provision due to court petitions as well as advocacy undertaken by residents, activists and NGOs (Abu-Ras, 2006).

During my fieldwork study I came into contact with the following organizations that advocate for the Arab Bedouin cause: 1) Regional Council for the Unrecognized Villages of the Negev (RCUV); 2) NGO Bimkom- Planners for Planning Rights; 3) Negev Coexistence Forum for Civil Equality; 4) Adalah; 5) Association for Civil Rights in Israel (ACRI); 6) Arab-Jewish Center for Equality, Empowerment and Cooperation and Negev Institute for Strategies of Peace and Development (AJEEC) and 7) Arab Center for Alternative Planning (ACAP). The Negev Coexistence Forum for Civil Equality was established in 1997 to solve the problems among the Arab Bedouin community. They have two main projects: 1) documentation project (e.g. villagers can document injustices with a camera) and 2) human rights campaign (personal communication, April, 2016). Bimkom – established in 1999- gives alternatives to the States planning policies: “1) we show what the problem is according to the Bedouin community; 2) we give alternatives, for example the Wadi-Al-Na’am struggle against the plan to move them to Segev Shalom” (Nili (Bimkom), personal communication, April, 2016). She points out that they have made progress as the unrecognized village of Wadi-Al-Na’am is currently

under the process of recognition. The only thing that is left is a governmental approval of Uri Ariel, the Minister of Agriculture.

Most of the NGOs mentioned above are funded by the New Israel Fund (NIF), the European Union and European governments (NGO monitor, 2010-2013). It is worth mentioning that this funding is under attack by the government who makes it difficult for these organizations to receive foreign funding. Fadi (personal communication, April, 2016) confirmed this since the government is monitoring the money they get. Every NGO with which I conducted interviews does not (want to) receive governmental funding (Sana (ACRI), personal communication, April, 2016). She states that collaborations with the states are difficult whenever the subject is more sensitive in a political way and are often blocked.

What follows is an example of such an aforementioned common Arab–Jewish space and struggle. Salima lives in one of the 14 unrecognized villages of Rahmei, which is next to Yeruham. The Planning Committee decided to recognize these villages, which are now awaiting governmental approval (Michal (CoexistenceForum), personal communication, April, 2016). Recognition in this case means moving the people residing in those unrecognized villages to a place where they will be provided with governmental services. Yael Agmon (personal communication, April, 2016) is part of the Jewish group ‘Merkam Azore’ who have been engaged with the Arab Bedouin of Rahmei for about 10 years. Their focus is on education and they succeeded to make the government built two kindergartens there. The construction of the schools required an application from the three involved municipalities, namely Yeruham, Ramat Negev and the Bedouin municipality (of which the representative is Jewish): *“this is really difficult because most of them will not fight for the Bedouins. Because of the risk of being fired they do nothing. They will only sign and send it, no mayor will call and ask why they do not answer, they do not care.”* They also organize little projects like robotic training, sewing courses for the Arab women, writing courses (because of the illiteracy). A problematic fact is that a *“lot of Bedouin women do not have ID, so we help them to reach it. Men have citizenship because they served the army. If women are married to one with citizenship they will receive it too, but if she is married to a man who did not serve the army and she does not know Hebrew, she will have no citizenship”*. When Yael and I visited Salima, she told us they have been moved here since 1948. She told me that among the tribe members they have their own land arrangements and still have to ask permission to the members about important things. Salima agreed to move to the new village where they will be offered governmental services, but says that this stays her land no matter what (Salima, personal communication, April, 2016).

The Alternative Masterplan can furthermore be considered as a counter-move of the Naqab civil society. The plan was developed in 2012 by the RCUV, BIMKOM and Sidreh, for a more appropriate solution – based on the principles of recognition, equality and justice – which suits the

Arab Bedouin lifestyle, but the government did not pay a lot of significance to it (Yiftachel, Baruch, Abu Sammur, Sheer & Ben Arie, 2012). In the appendix an overview is presented of the plan's program goals and objectives, as it is regarded here as a useful tool in how to reach spatial justice. The plan urges for an alternative solution, "*it tried to show how it is feasible to recognize the villages according to the law*" Sana (ACRI) (personal communication, April, 2016). The Arab Bedouin communities were involved in the decision-making processes of its "professional outline for the recognition, planning and development of all villages" (Alqasis et al., 2014, p. 20).

## 6. Conclusion

The Israeli state has promoted longstanding goals of “conquering the wasteland”, “making the desert bloom” and “Judaizing the periphery” (Yiftachel, 2008, p.6). To reach these goals they have implemented “discriminatory laws, while simultaneously maintaining a neutral facade that helped preserve the ethnocratic hegemony” (Kedar & Yiftachel, p.143). The “spacing out” of the native Naqab Arab Bedouin is an ongoing process which started with the establishment of the Israeli state in 1948. Since then, by using various legal instruments and specific legal conceptualizations, the Arab Bedouin are confronted with non-stop land confiscation, expulsion, displacement, replacement, urban concentration as part of Israel’s settler Zionist project (Blomley & Bakan, 1992; Swirski, 2008). This demonstrates that the Arab Bedouin are caught in a geographical-political-legal trap, set out by the Israeli government and courts (Abu-Ras, 2006).

The Rule of Law is expected to foresee justice. Nevertheless, and of special relevance regarding the Israeli legal system, “keeping up the façade by maintenance of Rule of Law conditions helps to disguise the substantive injustice underneath, leading people to suppose that this is a just system, worthy of their submission” (Smith, 2011, p.76). The anthropology of law furthermore emphasizes that “law may function to bring about a more equitable distribution of resources or alternatively it may function to maintain an unequal distribution of power” (Nader, 1965, p.20). As this case study demonstrated, the latter is the case here. Therefore, the observed injustices were taken as this case study’s entrypoint.

The theoretical framework of critical legal geography was used here to analyze the Israeli legal system, its laws and policies, and to get a clearer picture of the interlinkages between law, space, planning and violence. This framework was meaningful as it looked closer to both the role of law and space in the production of oppressive power structures, as well as in the legitimation and persistence of hierarchical social orders (Braverman et al.(Eds.), 2014).

The key factor at stake here was land, and the associated legal and political practices that determine “its ownership, allocation, use and control among Israel’s ethno-classes” (Kedar & Yiftachel, 2006, p.130). The legal aspects and historical origins of land ownership and the role of Israeli discriminatory policies were therefore this case study’s focal point. The analysis made clear how the government constructs certain legal belief structures that justify racial and spatial inequalities (Kedar & Yiftachel, 2006). The doctrine of “terra nullius” can be seen as such a legal belief structure that facilitates a conceptual “emptying” of space and that is of tactical use to facilitate the enactment of various laws and regulations of land confiscation (Abu-Saad, 2008). As a consequence, this case study tried to deconstruct the legal conceptualizations that frame the Arab Bedouin as “rootless nomads”, as “lawbreaking citizens” that have no historical attachment to the

land, by emphasizing their strong sense of ownership and belonging (Shamir, 1996; Nasasra, 2012). By doing that, the importance of challenging those frozen spaces of legal discourse, that might have been constructed for their tactical use in naturalizing relations of oppression, was highlighted (Blomley & Bakan, 1992).

The findings demonstrated the problematic legal interpretations and manipulations which allow the government to frame the Arab Bedouin as “illegal claimants” who lack “modern” evidence of ownership, while most of them have lived, possessed and cultivated these lands for generations (Negev Coexistence Forum for Civil Equality, 2012). The problematic interpretation of the Ottoman Land Code (OLC) of 1858 was demonstrated in particular. Other problematic flaws were to be found in the following laws and policies: Absentee Property Law, Land Appropriation Law, counter-claim policies, Suspension Law, Admission Committee Law and house demolition policies. This made clear that the Israeli laws and policies are used as a tools of dispossession and/or racial subordination (Yiftachel, draft, 2016; Braverman et al., (Eds.), 2014). The observed legal and spatial planning flaws revealed that the implemented laws and policies work in the interests of the government, by inter alia passing a law retroactively to legalize certain (violent) (f)acts like dispossession. That is why an emphasis was placed here on legalized colonial violences of dispossession, a process which was referred to here as “lawfare”(Blomley, 2003b).

It was further demonstrated that, although the Arab Bedouin land rights are formally and legally denied by the Israeli government, a tacit recognition of those land rights is taking place when the Bedouins agree to sell the land to the state or when looking at the Zionist purchase of land from the Arab Bedouin before 1948 (Zonszein, 2015; Abu-Saad, 2008).

Regarding the land issues, Yiftachel (personal communication, April, 2016) shared some valuable insights on the recent encroachment of privatization in the Naqab. He also made an interesting interlinkage with the logic of capitalism when talking about the new industrial companies that take the Arab Bedouin as partners.

After the land confiscation the legal focus shifted towards planning and zoning laws (Kedar & Yiftachel). The planning policies aim at rapid urbanization and modernization by concentrating the Arab Bedouin in urban ghetto’s (Shmueli & Khamaisi, 2015). One of the most contested plans was the Praver plan. As stated above, the planning laws and policies mainly prevent the expansion or development of Arab localities by systematically planning forests, industrial parks, high roads, military bases and establishing Jewish settlements through legal channels (Alqasis et al., 2014; Shmueli & Khamaisi, 2015). These planning laws and policies thus embody and maintain a clear spatial segregation (Shmueli & Khamaisi, 2015).

By adopting the indigenous narrative and appealing to the provided international legal instruments that recognize their rights, the Naqab Arab Bedouin aspire to break with their ongoing

dispossession and displacement. Moreover, “the persistence of these injustices and the efforts of indigenous advocates have prompted the emergence of legal instruments that specifically address the rights of indigenous peoples” (Amara et al., 2012, p.158). Consequently, “the Bedouin today work at the political and juridical level for recognition of their land ownership according to traditional tribal laws” (Nasasra, 2012, p.87). This would mean that “the ruling forces must shift their paradigm and transform their treatment of indigenous Bedouins from oppression and denials to recognition and rights – the sooner, the better” (Yiftachel & Roded, 2016, p.31). The indigenous politics were taken up in this case study to challenge the sovereignty discourses and to open up new political spaces (Shaw, 2008). Despite the absence of a formal-legal definition of “indigeneity”, the applicability was proven by applying the most broadly agreed upon characteristics on their situation.

This case study furthermore aspired to seek justice for the isolated and disadvantaged Naqab Arab Bedouin in relation to their land ownership (Spaces of indigenous justice, 2015). Therefore, the concept of spatial justice was chosen here because of its applicability to their situation. It was argued here that spatial justice for indigenous people like the Naqab Arab Bedouin is intricately interwoven with their land claims and rights (Brown et al., 2007). This study also suggested to see recognition as a multifaceted socio-political process in which affirmative and not hostile recognition is prioritized to obtain spatial justice. In addition, it was also demonstrated that the Naqab civil society plays an important role in facilitating peaceful dialogue and enhancing spatial justice.

By centering the indigenous discourse as a political tool and the concept of spatial justice, this case study aspired to break with the colonial status-quo, defined by an ongoing land dispossession and displacement. Following the presented recommendations above – made by the Naqab’s civil society – I also urge for more just and ethical solutions to the ongoing spatial-legal conflict “which recognize the right of the Bedouin to live on their own land in dignity and respect their basic human rights to adequate housing, water, and the services offered to other citizens of the state” (Negev Coexistence Forum for Civil Equality, 2012, p.2).

I prefer concluding with a positive note and believe that a mutual recognized solution is achievable as Abu Saad (2003, quoted in Abu-Ras, 2006, p.2) says: “the Naqab is expansive enough to accommodate all the needs – present and future – of the Israeli population. There is also enough room to answer the needs of the Bedouin population”. Finally, I would like to end my master thesis with a quote of Smith, which captures exactly what I wanted to unveil in this case study, namely the interest behind the Israeli legal system, its implemented laws and policies:

“The goodness of a legal system’s efficacy—goodness that would constitute that system’s being an *ideal*—is completely dependent upon the ends that it advances” (Smith, 2011, p.94).

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## Appendix

### 1.

An overview of the 12 persons I interviewed and their position. Here I am not taking into account the informal talks I had with Fadi, Muna, Jalal, the Arab Bedouin leader of El-Araqib and Salima (Arab Bedouin woman living in Rahmei).

- **Michal Rotem:** works at the Negev Coexistence Forum for Civil Equality.
- **Ilan Amit:** PhD researcher and Israeli Jewish ex-activist for the Arab Bedouin community for 10 years but now works for the Arab-Jewish Center for Equality, Empowerment and Cooperation and Negev Institute for Strategies of Peace and Development (AJECC).
- **Sana:** Arab Bedouin attorney who is specialized in Bedouin rights, she joined the Association for Civil Rights in Israel (ACRI) Arab Minority Rights Unit in 2014, and is responsible for the rights of the Negev Bedouin in the Unit. ACRI - legal point of view- works close together with BIMKOM - planning point of view- to combine the work in the field of planning and law.
- **Nili:** Israeli Jewish woman who works at the NGO Bimkom- Planners for planning rights.
- **Tovi Fenster:** Israeli Jewish woman who achieved a PhD in Urban Planning and Social Administration, she is Professor of Geography at the Department of Geography and Human Environment, at the Tel Aviv University. She did research on the Bedouin community during the '90s.
- **Hana Sweid:** Israeli Arab man who served the Knesset from 2006-2015 for Hadash (a left-wing political coalition and part of the Joint List). He was the general director of the ACAP (Arab Center For Alternative Planning) till 2006 and now works there again.
- **Yael Agmon:** Israeli Jewish activist woman for the Arab Bedouin in Yeruham, she is part of a Jewish team which is called Merkam Azore who are engaged with the unrecognized villages of Rahmei.
- **Thaleb Abu Arass:** Israeli Arab and co-executive director of the Abraham Fund in Israel, also ex-Adalah worker and a political geographer. He is also the co-chairman of 'Hand in Hand', researcher and activist.
- **Oren Yiftachel:** Israeli Jewish professor specialized in political geography and teaches at Ben Gurion University in Be'er Sheva.
- **Sigal Moran:** mayor of Bnei Schimon Regional Council, which is a Kibbutz next to the Bedouin Urban town of Rahat.

- **Israeli Jewish ex-deputy** to the Southern District Attorney (Civil Matters) at the Ministry of Justice in Israel, also the former founder and director of the Land Department and advisor to the Goldberg Commission and currently a full time researcher.
- **Rassem Khamaisi**: Israeli Arab professor of the Geography and Environmental Studies Department at the University of Haifa. One of the authors of the book "Israel's invisible Negev Bedouin: Issues of land and spatial planning" which is taken up in this case study.

## 2.

An overview of the most important legal instruments that enforced the process of land nationalization by dispossessing the native Naqab Arab Bedouin.

- 1948: Law and Administration Ordinance: proclaimed that all previous laws would remain in force but are subject to further legal modifications (Sa'di, 2011; Amara, 2013).
- 1950 (March) Absentee Property Law: land from Arab Bedouin who fled the war in 1948 - and thus were 'absent' - was expropriated (Amara; 2013).
- 1950 (July) Development Authority Act or Transfer of Property law: property of "absentee owners" – referring to the Arab Bedouin in this case, became state's property (Abu-Saad, 2008).
- 1951: State Property Law: heritage of the land and property of the British Mandate government (Amara, 2013).
- 1953: Land Appropriation Law/ Land Acquisition (Confirmation of Deeds and Compensations) Law: the former expropriated land from the Arab Bedouin refugees was retroactively endorsed by this law and transferred to the Development Authority. It involves land that was not in the possession of its owner in April 1952. This was easily done, as the Arab Bedouin were expelled from their land and relocated into the Syag region (Abu-Ras, 2006). This land was then made available to the state for purposes of development, settlement and security (Zonszein, 2015).
- 1965: Planning and Building Law: Arab Bedouin land in the unrecognized villages was categorized as agricultural land, declaring all the buildings "illegal" (Noach, 2009). "All land within the Siyag became zoned exclusively for industrial, military, or Jewish agricultural purposes"(T'ruah, n.d., p.1). As a consequence, every existing Bedouin structure disappeared from governmental planning maps. This law furthermore established a hierarchy of planning bodies responsible for creating master plans at the national-, district-, and local level (T'ruah, n.d.).
- 1969: Land Rights Settlement Ordinance.
- 1980: Law of Requisitions of Land: confiscation of the land in order to build military bases and new airfields. This law is also known as the "peace law" as it acknowledged the government's willingness to pay compensation for the land it wanted to expropriate (Swirski, 2008).
- 1981: Public Land Law: permits eviction, house demolition and crop destruction (Noach, 2009).

- 1984: The Supreme Court ruled that the state is owner of all '*Mawat*' land in the Naqab, "as defined in the 1858 Ottoman lands ordinance and the 1921 British lands ordinance, unless the Bedouins have legal title deeds" (Israel High Court of Appeals, May 15, 1984, Civic Appeal 218/74, cited in Swirski, 2008, p.33).
- 2005: the Israeli Parliament (Knesset) passed an amendment to the Public Land Law of 1981 whereby the Israel Land Administration was afforded to enforce ownership rights over legally disputed lands (Noach, 2009).

### 3.

Program goals and objectives of the Alternative Masterplan, developed by Bimkom, RCUV and Sidreh in 2012.

#### **Program Goals and Objectives**

##### **Over Arching Aim:**

To provide a planning solution for the recognition of all of the existing Bedouin villages, their proper integration into the Beersheba metropolitan area, and provision of infrastructure that will enable sustainable development of the area, as well as implementation of the principles of equality, recognition and justice.

##### **Goals:**

- ◆ Establishing village and community infrastructure for a multicultural metropolitan area, based on recognition of all the existing Bedouin villages;
- ◆ Planning of the Bedouin villages, according to their traditional land system, and not conditioned on imposed legal land settlements.
- ◆ Recognition of the Bedouin village and its spatial logic, as a distinct type, based on historical, and social considerations;

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- ◆ Establishment of a database and comprehensive analysis of the processes affecting the villages;
- ◆ Advancing regional resource allocation along principles of distributive justice;

##### **Objectives:**

- ◆ Designing infrastructure for diverse types of Bedouin localities – rural, agricultural and suburban – in order to ensure a range of spatial options for long- and short-term development;
- ◆ Advancement of plans for recognition and development for all villages, as amendments to existing District and Metropolitan plans for the northern Negev;
- ◆ Provision of full civil and municipal services to the various populations, based on their needs and traditions;
- ◆ Provision of infrastructure to connect villages to roads and transportation networks, to enable suitable access to resource centers in the metropolitan area;
- ◆ Provision of equitable services and opportunities for women in the villages;
- ◆ Striking a proper balance between the goals of the Bedouin villages for development and recognition, and environmental conservation and sustainability;
- ◆ Preservation of open, natural and cultivated land for agriculture, leisure, development of

tourism and conservation of the local flora and fauna;

- ◆ Consolidation of mechanisms to repair the long years of neglect and damage to the Bedouin population, through affirmative action in a range of fields;

- ◆ Provision of proper planning and governing mechanisms for villages that gain recognition.

(Yiftachel, Baruch, Abu Sammur, Sheer & Ben Arie, R., 2012, p.9-10).