

# Viewpoint

## Moving Towards Full-Scale Judicial Boycott in the Naqab

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“We play the legal game. We are not equal to nor do we have the power of the state. I know we will lose, but we play anyway. We know the court’s decision before we even file.”

So answered a resident of al-Sirra, an unrecognized village in the Naqab, when asked why he endorses taking the al-Sirra case to the Israeli court despite its bias. This “Viewpoint” tackles the same question, exploring the implications of legitimization and the dynamics of the engagement of the Israeli judiciary by Naqab Palestinians claiming their rights to land ownership.

In 1974, when Salim al-Hawashli brought claims of land ownership before the Beersheba district court, he saw no point in hiring a lawyer to register his land. It was obvious to him that he owned this land, given that he and his forefathers had possessed and lived off the same piece of land in the Naqab for centuries, long before any utopian, nationalist, colonialist, or adventurist Zionist ideas had emerged or gained credibility in Europe. The Israeli judiciary and government (State Attorney Office litigating the case) did not accept al-Hawashli’s claim and the court ordered that the land be registered under the state’s name. His case and numerous others show that the Israeli government and judiciary refuse to recognize that Bedouins can hold “legal” land ownership.

Employing heavily manipulated legalistic discourse inherited from Ottoman and British legislation, the courts consider the Naqab lands as *mawat* (dead land), which automatically falls under the authority of the state. One may list quite a few contradictory elements inherent in any such conclusion: Naqab Arabs have lived in the Naqab for centuries and at times have cultivated up to three million dunams therein; both the Ottoman and British governments granted Naqab inhabitants almost full autonomy; in 1899 the Ottomans purchased 2000 dunams from al-Azazme tribe to establish Beersheba; the 1946 *Survey of Palestine* stated that Bedouins may have rights to over 2 million dunams; disputes over unregistered lands in the Naqab were adjudicated before the Palestine Supreme Court; and the Jewish National Fund (JNF) purchased 60,000 dunams from Bedouins in the Naqab

before 1948.<sup>1</sup> Consequently, one would wonder, why do Arab claimants continue to resort to Israeli legal processes to assert their claims? Wouldn't such engagement serve to further legitimate the Israeli government policies of land dispossession by providing a cloak of legality?

Processes of legitimization in the Weberian sense are widely discussed. Governments attempt to establish their practiced authority as legitimate in the eyes of their subjects. For self-proclaimed "democratic" governments, law is a key platform and tool for legitimation, since the rubric of "the rule of law," such governments argue, is impartial. Israel's decidedly legalistic approach to carry out political strategies has played a primary role in legitimating Israeli policies. In broad terms, most Israelis conform to the government's Zionist policies, and most Palestinians view Israeli law as a political tool to advance Zionist goals, particularly regarding land. To date, the nationalization and Judaization of 93% of Israeli land has been accomplished through "legal" means. Thus, the Naqab land case ought to be discussed within a framework of a continuous process of Palestinian land dispossession. The existing political polarization renders the subject of legitimization to be relevant not to the subjects of Israeli authority, Israelis and Palestinians, but rather to the international community.

To international audiences, the Israeli government utilizes a legalistic discourse to justify its policies, including those concerning the Naqab. Additionally, it convolutes the claim by presenting the Naqab case as a mere encounter between a modern state and an anachronistic nomadic society. It is thus able to normalize its policies by comparing them to other states' policies of modernization. Between such discourse of dis-ordered nomadism and the aforementioned *mawat* claims, the Naqab Arabs are portrayed as people with no tangible connection to the land, and their centuries of cultivation and possession are rendered, in the legal sense, meaningless. Thus, in the state's view, monetary compensation can account for the "incidental" connection to the land that Naqab Arabs have—after all, the land is "wasted" until it is "redeemed and developed" by the state.

Judicial processes diffuse the public outrage against racist policies and channel it toward a "controlled" site operating under pre-determined rules. Similarly, the NGO's role in mitigating the results of the state's failure or those of discriminatory policies contributes to this diffusion, creating a smoke screen of a healthy society that enjoys sufficient checks and balances. Thus, the argument of legitimization applies in various degrees to other forms of engagement within the Israeli constructed civic order. Within this complexity, I seek to stress one major point as apparent in the statement of the al-Sirra resident.

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<sup>1</sup> For references to these claims and for further discussion on the Israeli legal position and its contradictions, see Yiftachel, O., Kedar, A., and Amara, A. (2012) Re-Examining the 'Dead Negev Doctrine': Property Rights in the Bedouin-Arab Space. *Mishpat Umimshal*. (Hebrew).

The quote complicates our understanding of power as it is practiced over subaltern subjects. While many scholars view power as absolute over passive subjects, the al-Sirra resident presents an alternate narrative of conscious engagement of the judiciary, including of the resulting ramifications. Lacking the power to influence the system as a whole, subaltern groups have taken the strategy of utilizing the legal apparatus as it stands. Similar to Governments, subaltern groups use courts for political ends and as a political stage for mobilization and publicity, particularly when mass popular resistance is absent, as it is nowadays in Israel/Palestine. Some other possible considerations in such engagement are: short-term maximization of benefits; management (rather than resolution) of the dispute; resistance of the system; and making sure government policies do not go unchallenged. The Naqab Arabs are aware that the courts cannot and will not bring justice (“The master’s tools will never dismantle the master’s house”).<sup>2</sup> However, and without romanticizing Naqab Arabs’ resistance, the Israeli government is also aware that it cannot solve this case in courts alone. Until today, there were dozens of extra-judicial governmental committees established to “solve” these cases, but to no avail. Israeli Supreme-Court justices have stated the need for extra-judicial solutions, which indicates that state power is fragmented and that formal law has revealed its shortcomings.

In addition to judicial engagement, Naqab Arabs resist state policies through protest and domestic and international lobbying. However, the noblest form of resistance is the commitment by most Naqab residents to continue to live in many of the lands they claim, despite the miserable conditions to which they are subjected (besides the fact that they have no alternative housing). Furthermore, some claimants refuse to participate in the judicial process, resulting in dozens of court decisions against them, exhibiting an active means of delegitimizing the judiciary.

One final question one might raise is: why not undertake a full-scale boycott of the judiciary? Since Naqab Arabs pay the highest price for the injustices in question and have the best understanding of the power in play, they are the authority on strategies of engagement. Others ought to respect their decisions and work with them to execute them. Surely, a collective decision in favor of boycott or another form of engagement is the key to success. Before I read the court-decision of al-Uqbi case,<sup>3</sup> I was in support of litigating one major case and accompanying it with attempts at popular mobilization, given the increasing political and scholarly attention paid to the Naqab cases and new historical evidence for legal Arab ownership. I thought such actions would push courts closer to a precipice at which they would have to either make a flagrant political decision endorsing land dispossession or recognize the land rights of the Naqab Arabs. This, I thought, would be the last serious judicial attempt and opportunity for resolution before a boycott

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<sup>2</sup> Lorde, A. (1984) *Sister Outsider: Essays and Speeches by Audre Lorde*. Berkeley, CA. Crossing Point.

<sup>3</sup> C.A. 7161/06. al-Uqbi, S. et al. v. State of Israel. March 15, 2012. Beersheba District Court. Full text available in Hebrew at <http://www.lawpubshop.co.il/?CategoryID=266&ArticleID=6662>

strategy would become inevitable. The al-Uqbi case convinced me that boycott is now a better decision and that efforts towards international advocacy and local mobilization can offer results not possible through Israel's courts.

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