

# By All Means Possible

A report on:

Destruction by the State of Crops of Bedouin Citizens  
in the *Naqab* (Negev) by Aerial Spraying with Chemicals

July 2004



Arab Association for Human Rights

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Cover photograph of crops destroyed after spraying operation, Abda, 4.3.2003

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## Introduction

During the period 2002-2004, approximately 7,425 acres of agricultural areas in the *Naqab* (Negev) were destroyed by the Israel Lands Administration (“**ILA**”).<sup>1</sup> These agricultural areas had been sown with wheat and barley by the Bedouin citizens of the *Naqab* who live in the unrecognized villages, and for whom the crops constitute their sole source of income.

The destruction of agricultural areas took place on seven separate occasions, by means of aerial spraying from airplanes hired by the ILA, and using a chemical substance known as Roundup. Along with inspectors from the Green Patrol<sup>2</sup>, and accompanied by a large police presence, the airplanes circled above the agricultural areas – and, as shall become apparent below, in some cases even above Bedouin population centers situated close to the agricultural areas – and sprayed the chemical substance.

From the testimonies collected by the Arab Association for Human Rights (“**HRA**”) from Bedouin citizens whose lands were sprayed, it emerges that the spraying operations took place:

- (1) Suddenly and without any prior warning to the Bedouin citizens;
- (2) without giving the Bedouin citizens a fair opportunity to present their arguments before undertaking the spraying operations;
- (3) without granting the Bedouin citizens the possibility to address the court in advance in order to prevent the spraying operations, or at least to examine the legality thereof;

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<sup>1</sup> The ILA is an official body that was created by the Israel Lands Administration Law (1960) to administer the lands of the state.

<sup>2</sup> In 1976, the “Green Patrol” was created to fight so-called Bedouin infiltration into national Jewish land. The Green Patrol is not made up of police officers, but rather a paramilitary unit established by Ariel Sharon with extensive powers, and employees of the Ministry of the Environment. It mobilizes for special operations to pull down Bedouin tents, seize flocks, and destroy crops planted without the appropriate permit. See the joint report from May 2003 by the HRA and the Regional Council for the Palestinian Bedouin of the Unrecognized Villages (hereinafter – “**the Regional Council**”) on the subject of the unrecognized villages in the *Naqab*, as submitted to the United Nations Committee on Economic, Social and Cultural Rights: <http://www.arabhra.org/HRA-RCUV%20CESCR%20Report.pdf>.

- (4) without consideration of the fact that, for many years, there has been a protracted conflict between the Bedouin citizens and the ILA regarding the ownership of the agricultural areas that were sprayed, and that this conflict has yet to be resolved;
- (5) without consideration of the fact that, in some cases, spraying took place while Bedouin citizens were present in the agricultural areas, with the result that some of them came into contact with the chemical substance, inhaled it, and consequently suffered respiratory difficulties, headaches, blurred vision and general weakness, causing some of them to require medical treatment;
- (6) without consideration of the fact that, in some cases, the spraying operations led to the death of livestock; and
- (7) without consideration of the fact that although this chemical substance has been used for many years as a herbicide and insecticide, studies have suggested that the use of this substance may pose various threats to human health, to animals and to the environment – and, in any case, the warning label on the substance itself states that it must not be used by means of aerial spraying, and certainly not in the vicinity of civilian population centers.

The ILA argues that Roundup, the chemical used in spraying, has been approved by the Plant Protection Division of the Ministry of Agriculture, is not toxic and is not harmful to humans or animals. However, the HRA is in possession of two professional opinions, one from an expert chemist and the other from a medical expert, that refute this claim, or at the very least raise doubts as to its veracity. In any case, both these opinions and the instructions for use of the chemical prohibit its dispersal from the air, let alone in the vicinity of populated areas.

The background to the destruction of crops is the dispute between the State of Israel, represented by the ILA, and the Bedouin citizens relating to the ownership of land in the *Naqab*. This dispute has been going on since the establishment of the State of Israel, and continues to this day. The ILA argues that the areas farmed by the Bedouin citizens are state land that the Bedouin citizens have invaded and farmed unlawfully and without permission. Accordingly, the spraying operations are lawful actions intended to evict them and prevent their renewed invasion of these areas. For their part, the Bedouin citizens argue that they have held and farmed these areas since the time when Palestine formed part of the Ottoman Empire and, in any case, since before the establishment of Israel. Accordingly, they are the owners of the land and are entitled to continue to farm it.

Media coverage and public debate regarding the spraying operations concentrated largely on the land dispute in the *Naqab* between the state and the Bedouin citizens. In other words, the spraying operations and discourse on this issue were seen as a reflection of the dispute.

By contrast, little has been written regarding the **legality** of the use of such methods, and particularly such use in the vicinity of civilian population centers, or regarding the grave injury to the basic rights of the Bedouin citizens.

This report will focus on the question of the **legality** of the aerial spraying of agricultural areas belonging to the Bedouin citizens with chemicals, with all this entails, regardless of the dispute regarding the ownership of land. The HRA believes that such means are **grossly unlawful**, and severely injure the human rights of the Bedouin citizens, including the right to health and to a healthy environment; the right to a livelihood and a minimum level of human subsistence; the right to work and to choose an occupation; and the right to property. Accordingly, the use of such means should be completely prohibited, **even assuming that the land indeed belongs to the state, and that the Bedouin have invaded and farmed this land unlawfully and without permission, as the ILA claims.**

The structure of the report is as follows: **Chapter Two** offers a brief historical review of the land dispute between the state and the Bedouin citizens from the period of Ottoman rule in Palestine through modern times. This review aims to provide a sufficient background for understanding the prevailing tensions between the state and the Bedouin citizens, which led the state to undertake the spraying operations.<sup>3</sup> **Chapter Three** provides a description of the facts relating to the implementation of spraying operations by the ILA from 2002 and through the time of writing this report, as well as an examination of the arguments used by the state to justify the use of such means. **Chapter Four** includes a summary of two professional opinions held by the HRA, one from an expert chemist and the other from a medical expert, relating to the dangers inherent in the use of Roundup by means of aerial spraying. **Chapter Five** discusses the authority of the ILA to spray the crops of Bedouin citizens with chemicals from the air as a means to evict them. **Chapter Six** covers the basic rights of Bedouin citizens that have been infringed as a result of the spraying operations. Lastly, **Chapter Seven** offers a summary of the discussion in the previous chapters, as well as conclusions and recommendations regarding the future use of the means of aerial spraying of chemicals on crops.

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<sup>3</sup> It is important to note from the outset that the land dispute has led to several additional and drastic measures by the state toward the Bedouin citizens, apart from the spraying of their crops. These measures include: the large-scale demolition of houses; the refusal to grant official recognition to Bedouin villages that have existed from before the establishment of the state (the unrecognized villages), and so on (See the joint report from May 2003 by the HRA and the Regional Council for the Palestinian Bedouin of the Unrecognized Villages on the subject of the unrecognized villages in the *Naqab*). Moreover, and as shall become apparent in Chapter **Three**, the destruction of the crops of Bedouin citizens has been undertaken in the past by the ILA, albeit by means of their uprooting with tractors rather than by means of aerial spraying. This report will confine itself solely to the destruction of crops by means of aerial spraying with chemicals.

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# The Land Dispute between the State and the Bedouin Citizens – A Historical Perspective<sup>4</sup>

### A) The Ottoman Empire (16<sup>th</sup> Century through Early 20<sup>th</sup> Century)

Research into the history of the Bedouin population in the *Naqab* shows that the Bedouin began to arrive in the area from the Arabian peninsular from the fifth century onward.

During the period of Ottoman rule in Palestine (from the sixteenth century through the early twentieth century), the Bedouin were the sole inhabitants of the *Naqab*, holding and farming land. During this period, land rights were established in accordance with Islamic religious law (*Shari'a*). The Ottoman land laws, which began to be formulated in the mid-nineteenth century, did not include any significant changes relative to Islamic religious law, although the definitions of the various types of land were elaborated.

On April 21, 1858, the Ottoman government published the Ottoman Land Law, with the goal of ending the general state of anarchy regarding land rights that existed throughout the empire. The intention of the Ottomans was to identify the holders of land rights and register the land in their possession. On December 14, 1858, the Ottomans passed the Tabu Law, requiring all those who claimed land rights to register the land in their name in the estate books and to acquire full ownership rights. After the enacting of this law, the

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<sup>4</sup> This brief review is based on the following three works:

1: Yosef Ben-David, *Strife in the Negev – Bedouin, Jews, Land* (Center for the Study of Arab Society, 1996), pp. 31-40, 47-63, 73-75). **All Israeli sources are in Hebrew unless otherwise stated** (trans.);

2: Ghazi Falah, *The Forgotten Palestinians – The Arabs of the Negev, 1906-1986* (Center for Revival of Arab Heritage, 1989), pp. 119-121, 131-143;

3: The Minority Rights Group, *The Bedouin of the Negev* (Report No. 81), pp. 4-8.

For the sake of objectivity, the HRA have attempted to base the review on researchers from diverse backgrounds – one Israeli, one Arab and one from outside the region. The review does not include references to specific pages in these works. The authenticity and precision of the summary may be confirmed by reference to the pages stated above in each of the three works.



government confiscated all land owned by persons who did not claim ownership. The purpose of this law was to enable the Ottoman authorities to transform unclaimed land into state land.

The Bedouin residents of the *Naqab* did not follow the requirements of the Ottoman land laws of 1858 in order to secure their rights to the land they held and farmed.<sup>5</sup> Consequently, the land under their control was defined as *mawat*,<sup>6</sup> despite the fact that it was used by the Bedouin inhabitants. Under Ottoman land law, persons who used *mawat* land with the permission of the authorities were entitled to enjoy the fruit of the land, but this remained state land.

## **B) The British Mandate (1917-1948)**

After the establishment of the British Mandate in Palestine in 1917, the situation regarding land registration was found to be chaotic. The British sought to clarify the existing law and enact additional laws. Among other measures, they established a land court in 1921 with the goal of regulating land rights.

In 1928, the British authorities enacted the Land Ordinance (Regulating of Lands Rights), which aimed to introduce the modern registration of land in estate books. However, the Bedouin residents of the *Naqab* did not follow the requirements of this ordinance and did not claim their rights to the land they held and farmed<sup>7</sup>. Accordingly, their rights to the land they farmed were not recorded in the estate books.

Moreover, the Mawat Land Ordinance of 1921 negated the possibility to acquire private ownership rights of *mawat* type land by means of holding and farming the land; thus the law would not have enabled the Bedouin residents to register their rights to the land, even if they had claimed these rights in accordance with the Land Ordinance (Regulating of Lands Rights).

The failure of the Bedouin inhabitants of the *Naqab* to register the land they held and farmed during the Ottoman and British periods was due to two principal reasons. **Firstly**, there were no internal land disputes among the Bedouin population. The various tribes recognized the rights of the other tribes to the land they held, while within each tribe, the leaders divided the land among the population. **Secondly**, the Bedouin residents saw no need to prove their ownership of the land, since they acted as the owners of the land without facing any challenge from the authorities. Accordingly, they did not perceive any need to register their land rights.

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<sup>5</sup> The reason for this omission is discussed at the end of Section **B** below.

<sup>6</sup> I.e. land situated outside a settlement, at some way beyond calling distance, and which is not used, and is therefore state land.

<sup>7</sup> The reason for this omission is discussed at the end of this section.

### C) After the Establishment of the State of Israel (1948 - )

During the 1948 war, and through 1953, three-fourths of the Bedouin population of the *Naqab*, particularly those in the western *Naqab*, were evicted from their land by the Israeli authorities. Some were expelled from the state, while others were concentrated in an area situated to the east of the city of Beersheva. This area, which was known as the “Siege Area” (*sayag*), included Bedouin residents who had lived in the area prior to the establishment of Israel, as well as Bedouin forcibly transferred to the area by the Israeli authorities. The latter inhabitants were promised that they would be able to return to their land once the security situation stabilized, but these promises were never honored, and these Bedouin residents continue to live in the “Siege Area” to this day.

The Bedouin citizens lived under martial law until 1966, preventing them from leaving the “Siege Area.” Moreover, most of the areas outside the “Siege Area” that were possessed by Bedouin were declared closed military zones, thus preventing the possibility of their returning to these areas, even after the abolition of martial law.

The government exploited this situation, employing various means to confiscate most of the land outside the “Siege Area,” with the goal of using this land for Jewish settlement. **One** method was by means of the Land Seizure Law of 1950, which permitted the confiscation of land for the purposes of “defending the state, public security, maintaining vital supplies, vital public services, the absorption of immigrants, the rehabilitation of released soldiers or disabled IDF veterans.” A **second** method was by means of the Absentee Assets Law of 1953, which defined the assets of Bedouin citizens who were “absent” from their land but present within the borders of the State of Israel<sup>8</sup> as absentee assets. A **third** way was by means of the Land Acquisition Law (Authorization of Actions and Compensation) of 1953, which determined that it was permissible to confiscate land for vital needs, provided three conditions are met: (1) The land was not held by its owner as of April 1, 1952; (2) The land was zoned for settlement or for security needs between the dates May 15, 1948 and May 1, 1952; (3) The land itself is required for one of the needs stipulated above in item 2. The Israeli authorities exploited the fact that the Bedouin citizens from the western *Naqab* were concentrated in the “Siege Area” and confiscated their land, arguing that they were absent citizens – ignoring the fact that they were transferred to this area forcibly by the Israeli authorities and were not permitted to return to their land, even after the abolition of martial law.

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<sup>8</sup> Such persons thus came to be referred to as “present absentees.”

In 1969, the Land Law was enacted, defining the scope and manner of acquisition of land rights. The state used this law in order to avoid recognizing the land rights of Bedouin citizens, even within the “Siege Area,” since the law explicitly established<sup>9</sup> that land included in the *mawat* category prior to the enacting of the law would be registered in the name of the state.

Moreover, under this law it was difficult for Bedouin citizens to prove their ownership of the land they held, for two mainly reasons. **Firstly**, most of the Bedouin citizens were accustomed to transferring land rights by word of mouth, without the use of documents, a method that is not recognized by the law. **Secondly**, the Ottoman and British authorities did not regulate the ownership of land in the *Naqab*, and accordingly the rights of the Bedouin citizens were not recorded in the estate books.

After the establishment of the State of Israel, the Bedouin citizens attempted to demand the registration of the land they held. The **first** way in which this was done was by reference to the rights that accrue from possession, inheritance and gift. However, the courts were not convinced by these arguments, and in every single case argued that the fact that Bedouin citizens had been present on the land for a protracted period did not grant them ownership rights. The **second** way was the claim of “revival;”<sup>10</sup> however, although the State of Israel adopted the Ottoman land law, it did not recognize the claim of “revival” in the case of the Bedouin citizens, and this line of argument was also rejected. The **third** way was based on proving payment of taxes on account of the land they held. However, this claim was also rejected on the basis of the condition in the Land Ordinance (Regulation of Land Rights) that the records in the tax ledgers were not proof of ownership, and at best could prove possession during the years of payment.

After 1966, a process of land regulation began in the *Naqab*. As a result, during the 1970s, the Bedouin citizens filed claims to the regulation clerk requesting registration of their rights to the land they held and owned.<sup>11</sup> However, since the submission of the claims by the Bedouin citizens, the regulation process has been deliberately frozen by the State, and the claims for the registration of their rights are not discussed by the arrangement clerk.<sup>12</sup> This situation has continued to the present day, so that the land ownership claimed by the Bedouin has still not been determined.

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<sup>9</sup> Article 155.

<sup>10</sup> That is, the “revival” of the *mawat* lands (the term literally means “moribund”) by means of their use for farming over a period of decades.

<sup>11</sup> The total area of land is between 200,000 and 250,000 acres.

<sup>12</sup> Discussion dated January 27, 2004 between Attorney Tarek N. Ibrahim of the HRA and Attorney Rami Yuval, the owner of a law firm in Tel Aviv that has many clients among the Bedouin citizens of the *Naqab*.

During the period 1975-1976, the government offered a compromise settlement to the Bedouin citizens in order to resolve the conflict over land ownership. According to the proposal, the Bedouin would be able to keep twenty percent of any land to which they could prove ownership. In addition, they would receive sixty-five percent of the value of an additional thirty percent of such land. The remaining fifty percent of their land would be confiscated by the state without compensation.

This proposal was rejected by the Bedouin citizens, who have since fought for recognition of their ownership of the land they hold, including through the courts, but to no avail.<sup>13</sup> Since this proposal, the policy adopted by all the Israeli governments has effectively been to transfer all the land held by the Bedouin in the *Naqab* to state ownership. This policy was manifested in the program introduced in the late 1960s and early 1970s to “urbanize the Bedouin,” i.e. to transfer Bedouin citizens from their places of residence on the land they held to townships established for them by the state,<sup>14</sup> disconnecting them from their land and agricultural way of life. In some cases, draconian measures were employed in order to undertake this transfer.<sup>15</sup>

In early 2003, as a continuation of Israeli government policy, a new five-year plan was announced providing for the transfer of the remaining Bedouin citizens who do not live in the seven permanent settlements<sup>16</sup> to three new settlements to be established by the state in the same format as the seven existing towns.<sup>17</sup>

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<sup>13</sup> For examples of claims filed in the courts by Bedouin citizens seeking recognition of their ownership of land in their possession, and rejected by the courts, see Yosef Ben-David, *Strife in the Negev – Bedouin, Jews, Land* (Center for the Study of Arab Society, 1996), pp. 65-67.

<sup>14</sup> The first such settlement, known as Tel Sheva, was established in 1969. The second, Rahat, was founded in 1972. There are now seven such settlements, inhabited by approximately half the total Bedouin population of the *Naqab*. See the joint report from May 2003 by the HRA and the Regional Council of the Unrecognized Villages in the Negev on the subject of the unrecognized villages in the *Naqab*, p. 10.

<sup>15</sup> *Ibid.*

<sup>16</sup> These citizens, that constitute half of the population of the Bedouin citizens in the *Naqab* (70,000), live in the villages that are unrecognized by the state, and do not receive such basic services as water, electricity, etc.

<sup>17</sup> Joint report, *op. cit.*, p. 24.

## Aerial Spraying by the ILA: The Facts

### A) Sequence of Events

This chapter offers a concise summary of the sequence of events from the days prior to the first spraying, on February 14, 2002, through the last recorded incident of spraying on March 11, 2004. Factual discussion of the manner of implementation of the spraying appears below in Section **B**.

On February 14, 2002, **suddenly and without any prior warning**, seven spraying airplanes commissioned by the ILA circled over the skies of the *Naqab* for some six hours, spraying chemicals on approximately 3,000 acres of agricultural land sown with wheat and barley by the Bedouin citizens. The action was undertaken in cooperation with inspectors from the Green Patrol, and was accompanied by a substantial police presence, due to concern that the Bedouin citizens might cause disturbances.<sup>18</sup>

Avigdor Lieberman, Minister of National Infrastructures and the minister responsible for the management of state lands at the time, explained the motives for the spraying operation in the following terms:

**“We must stop their illegal invasion of state land *by all means possible*. The Bedouins have no regard for our laws; in the process we are losing the last resources of state lands. One of my main missions is to return to the power of the Land Authority in dealing with the non-Jewish threat to our lands.” (italics added)<sup>19</sup>**

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<sup>18</sup> Aliza Arbel, “Planes Destroy Thousands of Dunums of Bedouin Fields in the Negev,” *Ha’aretz* A1, February 15, 2002; Ali Abu-Rabi’a, “The Israel Lands Administration Destroyed 12,000 Dunums of Wheat Crops Belonging to Bedouin in the Negev by Spraying,” *Kol Bi*, February 21, 2002.

<sup>19</sup> *Ma’ariv*, February 15, 2002. In the opinion of the HRA, Minister Lieberman’s comments reflect a racist approach to the Bedouin population in the *Naqab*. Lieberman draws a clear distinction between Palestinian and Jewish citizens of Israel, and ignores the fact that the Bedouin in the *Naqab* are Israeli citizens, and as such entitled to receive land for their use, just like Jewish citizens. The use of such expressions as “our lands,” “our laws,” and “their [...] invasion” concretize the racist motivation behind his comments in the clearest manner. Further corroboration of this opinion may be found in the comments made by Minister Lieberman during a visit to the *Naqab* in February 2002. Commenting on the plan to establish fourteen Jewish settlements in the *Naqab*, he stated that the purpose of the plan is to “halt the seizure of land in the

During the days preceding the spraying operation, articles appeared in the Israeli press (both in Arabic and Hebrew) regarding the intention of the ILA to destroy crops planted by Bedouin citizens.<sup>20</sup> The reports were based on the disclosure of this information to the media by MK Yossi Sarid of Meretz, who was the leader of the opposition at this time.<sup>21</sup>

In response to these articles, the Association for Civil Rights in Israel (“**ACRI**”) contacted the ILA and asked it to respond immediately regarding its plans as published in the media. ACRI further asked the ILA to halt any such plans, if any existed.<sup>22</sup>

In response to the letter from ACRI, the ILA noted that the State of Israel, through the ILA and the Green Patrol, was engaged in a protracted struggle to protect state land, in order to enable the use of this national resource to benefit all citizens of the state; and that the ILA and the Green Patrol were acting energetically, by various means, to remove squatters from state land, in order to return such land to the ILA and enable citizens who had leased areas lawfully to use them for the purpose for which they were let.<sup>23</sup>

Attorney Zakai-Neuman’s letter did not state whether or not the ILA indeed intended to destroy the crops of the Bedouin citizens. She noted that the ILA and the Green Patrol were acting energetically, by various means, to remove the squatters from the state land, but did not specify whether the destruction of crops by means of aerial spraying constituted one

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Negev by the Bedouin, and the best thing for the plan is silence” (Yasser Uqbi, “Council of Unrecognized Bedouin Villages in the Negev: Government Plans to Establish 14 Settlements on Bedouin Land,” *Sheva*, February 21, 2002). These comments clearly and overtly manifest the racist worldview and motives underlying the manner in which the State of Israel treats the Bedouin citizens.

<sup>20</sup> Ali Abu-Rabi’a, “Israel Lands Administration Plans to Destroy 12,000 Dunums of Bedouin Wheat Fields,” *Kol-Bi*, February 7, 2002; “Israel Lands Administration Plans to Spray 12,000 Dunums of Land Belonging to Negev Arabs with Poisons,” *Sawt Al-Haq Wal-Huriyya*, January 25, 2002 (in Arabic).

<sup>21</sup> “Sarid Reveals: ILA Plans to Use Poison to Destroy Crops of the Bedouin in the Negev,” *Al-Sunara*, January 25, 2002.

<sup>22</sup> Letter from Attorney Bana Shughri-Badarna of the Association for Civil Rights in Israel to Mr. Yaakov Efrati, director of the ILA, dated January 30, 2002. In her letter, Attorney Shughri-Badarna argued that the destruction of crops constituting the principal and/or sole source of livelihood for the farmers would constitute a grave infringement of the right to livelihood and property; and that this act was particularly serious since it was to be undertaken without any warning or due process, and by the means of brutal methods such as the spraying of poison from the air, which would be liable to injure by-passers and contaminate entire areas. She further argued that there was no legal justification or proper authority by which the ILA could destroy the crops, even if it were assumed that the areas were indeed being farmed unlawfully through the invasion of land belonging to the state. The ILA, she reasoned, had access to reasonable and lawful means for preventing the invasion of land, such as seeking relief through the appropriate judicial authorities.

<sup>23</sup> Letter from Attorney Rachel Zakai-Neuman, legal adviser to the ILA, dated February 11, 2002. In her letter, Attorney Zakai-Neuman further claimed that the said areas are areas suitable for farming that had been lawfully let to other residents of the *Naqab*; and that in the period 2001-2002, by contrast to previous years, the scale of invasion of land in the *Naqab* was unprecedented and could not be tolerated.

of these means. Accordingly, Attorney Shugari-Badarna wrote again to the ILA, noting this fact and reiterating the arguments presented in her first letter.<sup>24</sup> The ILA did not reply to this second letter from Attorney Shugari-Badarna.

On February 13, 2002, following the media reports, the Knesset Economic Affairs Committee met to discuss the issue,<sup>25</sup> including the intention of the ILA to destroy crops belonging to the Bedouin citizens by means of aerial spraying with poison.<sup>26</sup>

From the comments made throughout the committee discussion by the representatives of the various government ministries, it was evident that they did not deny the intention of the ILA to destroy crops belonging to the Bedouin citizens **by means of aerial spraying with chemicals**;<sup>27</sup> on the contrary, they attempted to justify the use of such means.<sup>28</sup> At the end of its deliberations, the committee did not recommend that the use of aerial spraying with chemicals as a means of destroying crops be avoided, though it did recommend that the Bedouin citizens be given prior notice before the spraying operation was undertaken, if this was indeed intended, in order to enable them to turn to the courts to prevent the spraying,<sup>29</sup> if there were any legal grounds for such a request.

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<sup>24</sup> Letter from Attorney Bana Shughri-Badarna to Attorney Rachel Zakai-Neuman dated February 11, 3003. Attorney Shughri-Badarna further argued that, as an arm of the state, the ILA must observe due process in acting against those who, it claimed, had invaded state land; and that due process requires, inter alia, the granting of warnings to those farming the land, with reasonable advance notice, in order to enable them to exercise their right to a hearing against the ILA's decisions regarding the land whose ownership was in dispute. She added that the Public Land Law (Eviction of Squatters), 5741-1981, regulated the proceedings that should be instigated by the ILA or any person lawfully empowered thereby in order to evict squatters from public land, and that the destruction of crops by means of the aerial spraying of poison is not one of the lawful means in accordance with this law, and the ILA is accordingly prohibited from resorting to such action.

<sup>25</sup> The discussion was at the request of MK Tamar Gojansky of the DFPE, and was attended by representatives of the Ministry of National Infrastructures, the ILA, the Green Patrol, the Ministry of Agriculture, Bedouin citizens and human rights organizations.

<sup>26</sup> Minutes No. 424 of a Meeting of the Knesset Economic Affairs Committee, Wednesday, 1 Adar 5762, February 13, 2002, 10:20 am.

<sup>27</sup> Ibid., pp. 2-3.

<sup>28</sup> For discussion of the arguments raised by the state to justify the use of aerial spraying with chemicals to destroy crops, see below, Section C.

<sup>29</sup> Minutes No. 424 of a Meeting of the Knesset Economic Affairs Committee, pp. 18-19. The chairperson of the committee, MK Avraham Poraz, **explicitly** commented that he did not think that spraying was an improper means, in appropriate cases. By contrast, MK Tamar Gojansky, who represented a minority opinion, demanded that the committee's recommendations include the provision that such means should be completely excluded. The HRA believes that the committee should have recommended that the use of this means be completely excluded, given the grave injuries resulting to the rights of the Bedouin citizens.

The next day, February 14, 2002, the first spraying was undertaken, covering an area of some 3,000 acres of land farmed by Bedouin citizens.<sup>30</sup> No prior notification or warning was given to the Bedouin citizens, contrary to the committee's recommendations.<sup>31</sup>

As a result of the spraying operation, all the crops were destroyed.<sup>32</sup> Thereafter, on February 19, 2002, the Joint Knesset Internal and Labor Affairs Committee for the Unrecognized Villages in the Negev met.<sup>33</sup> At the end of the committee's deliberations, it issued the following recommendations:<sup>34</sup>

**“Chairperson, MK Taleb Al-Sana’a**

**In conclusion:**

- A. The committee requests that the ILA furnish us with details of the land sprayed, with a distinction between disputed land and land registered in the state's name.**
- B. We ask to receive in writing the steps taken since the decision to spray, both steps required by law and safety measures as adopted.**
- C. The committee views the act of spraying with the utmost gravity, and considers it a completely unlawful step that is harmful to citizens and to flora. The committee asks the Ministry of Infrastructures and the Ministry of Agriculture to compensate the farmers in the Negev for the [damage] caused to them.**
- D. The committee prohibits the use of the spraying of arable areas as a means of evicting squatters.**
- E. The committee will consider whether it is necessary to amend the law – insofar as the law permits this – although the committee believes**

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<sup>30</sup> It was claimed in the media that the ILA was quick to spray the crops out of concern that human rights organizations would petition the Supreme Court against the intention to destroy the fields: Yasser Uqbi, “Planes Destroyed 3,000 Dunums of Crops,” *Sheva*, February 21, 2002. If this claim is true, the HRA believes that the ILA acted in a grave manner by acting to undertake controversial actions in public, moral and legal terms hurriedly in order to prevent the possibility of addressing the empowered court in order to examine the legality of its actions a priori. As a quasi-governmental body, it is subject to the public obligations that apply to any other governmental body, including the obligation to act fairly, which required that the ILA **firstly** provide advance warning to the Bedouin citizens regarding the intention to undertake the spraying operations; and **secondly** enable Bedouin citizens to turn to the empowered court in order that it might review its actions.

<sup>31</sup> No notification or warnings were provided on any of the occasions on which spraying operations were implemented. For detailed factual discussion of the manner in which the spraying took place, including the lack of prior notification or warning, see below, Section B.

<sup>32</sup> See Photo 1.

<sup>33</sup> The meeting was attended by representatives of the Prime Minister's Office, the Ministry of National Infrastructures, the ILA, the Green Patrol, the Ministry of Agriculture, Bedouin citizens and human rights organizations.

<sup>34</sup> Minutes of a Meeting of the Joint Knesset Internal and Labor Affairs Committee for the Unrecognized Villages in the Negev, Tuesday, 7 Adar 5762 (February 19, 2002), 11:45 am.



that the existing law does not permit the use of spraying as a means of eviction.

- F. The persons farming the land have an affinity to the land, and the ownership has not yet been determined in this matter. The ILA is taking the law into its own hands in assuming the right to transform land regarding which there is an ownership dispute, and for which claims are pending before the Land Arrangement Office, into state land. In the future, the entire matter of the management of disputed land shall be undertaken in cooperation insofar as possible, while taking into consideration the positions of those demanding the property rights in the Land Office. The fact that there is a pending claim means that the land is not owned by the state, and means that at most there is an equivalent affinity. Accordingly, the entire management should not be by the ILA, but through attention to the positions and opinions of those claiming right to this land, for so long as the matter has not been forwarded for determination by the legal instances.
- G. The committee requests to receive the required details within two weeks.”

The committee’s recommendations were **clear and unequivocal**: The Bedouin citizens were to receive compensation for the damage caused by the spraying undertaken on February 14, 2002, and, in the future, the use of the spraying of crops was to be completely avoided. However, the committee’s recommendations were not respected. **Firstly**, the Bedouin citizens have not, to this day, received compensation as stated. **Secondly**, after the spraying operations undertaken on February 14, 2002, the ILA carried out six additional spraying operations on various dates. From February 14, 2002 through the time of writing this report, the ILA sprayed some 7,425 acres on seven different dates, and in different areas. Once again, the Bedouin citizens received no compensation for the destruction of their crops.

The following table details the dates of the spraying operations, the localities affected, and the approximate area (in acres) subjected to spraying:<sup>35</sup>

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<sup>35</sup> This information was collated by the HRA, both through fieldwork undertaken by Attorney Tarek N. Ibrahim of the HRA and through information provided by the Regional Council and *Adalah* – the Legal Center for Arab Minority Rights in Israel. In a conversation on December 16, 2003, between Attorney Tarek N. Ibrahim and Mr. Salman Al-Ghanami, executive director of the Regional Council, it was noted that the information on the areas sprayed was provided to the Regional Council by the Bedouin farmers themselves, and is based solely on their estimates. To date, no precise measurement has been undertaken of any of the areas sprayed.

#	Date of spraying	Localities affected	Area sprayed (acres)
1	February 14, 2002	Al-Araqib, Al-Makiman, Uajan, Um Batin, Khirbet Al-Watan, Sa'awa, Atir / Um Al-Hiran, Um Ratham, Abda, Al-Baqar	3,000
2	March 4, 2003	Abda, Al-Baqar	250
3	April 2, 2003	Al-Araqib, Um Batin, Sa'awa, Al-Makiman, Uajan	1,250
4	June 17, 2003	Al-Araqib	375
5	January 15, 2004	Al-Araqib, Al-Makiman, Sa'awa, Khirbet Al-Watan	1,000
6	February 10, 2004	Al-Araqib, Wadi Gwein, Qtamat Al-Mazra'a, Arara Al-Naqab	800
7	March 11, 2004	Qtamat, Abeida	750
	Total		7,425 <sup>36</sup>

Following the second spraying operation on March 4, 2003, Physicians for Human Rights – Israel (“**PHR-Israel**”) wrote to the Ministry of Health,<sup>37</sup> the Ministry of the Environment,<sup>38</sup> the District Veterinary Office,<sup>39</sup> and the ILA,<sup>40</sup> requesting the following information from each body:

<sup>36</sup> It should be noted that some areas of land were sprayed more than once. The figures in the table relate to the areas sprayed, including repeated spraying of the same area.

<sup>37</sup> Letter from Ms. Orly Almo (Coordinator of the Unrecognized Villages in the Negev project in PHR-Israel) to Dr. Ilana Blaimaker (District Physician, Ministry of Health – Southern District) dated March 12, 2003.

<sup>38</sup> Letter from Ms. Orly Almo to Mr. Arik Bar-Sadeh (Director, Southern District, Ministry of the Environment) dated March 12, 2003.

<sup>39</sup> Letter from Ms. Orly Almo to Dr. A. Gross (District Veterinary Surgeon, Southern District Veterinary Office) dated March 12, 2003.

<sup>40</sup> Letter from Ms. Orly Almo to Mr. Gabi Weissman (Director, Southern District, Israel Lands Administration) dated March 12, 2003.

**Ministry of Health:** 1) Was the spraying coordinated with and authorized by the District Health Office? 2) Was an examination undertaken regarding the type of substance immediately after the spraying was reported, in order to instruct health providers for citizens as to the proper course of treatment, and in order to determine the necessary steps among the residents of the villages? 3) Was a field investigation undertaken after the spraying in order to assess damages and determine the ministry's course of action in this case? 4) Does the Ministry of Health have standing procedures regarding such situations? 5) Was any information provided to citizens regarding the potential dangers presented by the sprayed fields? 6) If not, how does the Ministry of Health intend to address this matter, given that the fields are slowly dying, while humans and livestock continue to live near the sprayed areas without any proper separation?

**Ministry of the Environment:** 1) Was the spraying coordinated with and authorized by the Ministry of the Environment? 2) What substance was used to spray the fields, and in what concentrations? 3) Was a prior examination undertaken in order to ascertain the distance of residential areas from the fields earmarked for spraying? 4) What steps were taken after the spraying to ensure that humans and livestock would not come into contact with the sprayed area and would not be injured by the spraying in the future? 5) Was any information provided to citizens regarding the potential dangers presented by use of the sprayed fields? 6) Does the Ministry of the Environment have standing procedures regarding such situations?

**District Veterinary Office:** 1) Was the spraying coordinated with and authorized by the District Veterinary Office? 2) Was an investigation undertaken immediately after the spraying was reported in order to evaluate the dangers facing livestock in the region, and in order to ascertain the necessary steps to be taken among the residents of the village? 3) Was any information provided for citizens regarding the potential dangers inherent in the use of the sprayed fields and the actions necessary to prevent injury to livestock and to humans consuming animal products (such as camels milk)? 4) If not, how does the District Veterinary Office intend to address this matter, given that the fields are slowly dying, while humans and livestock continue to live near the sprayed areas without any proper separation? 5) Does the Veterinary Office have standing procedures regarding such situations?

**Israel Lands Administration:** 1) What substance was used to spray the fields, and in what concentration? 2) Was any prior investigation undertaken in the area in order to ascertain the distance of residential areas from the fields earmarked for spraying? 3) Why did the citizens not receive any warning regarding the spraying and the possibility of appealing against this action, as should have been the case? 4) Was the spraying coordinated with and authorized by the Ministry of the Environment? 5) Was the spraying coordinated with and authorized by the District Health Office? 6) Was the spraying coordinated with and authorized by the Veterinary Office? 7) What steps were taken during spraying to ensure that no persons or animals were within the appropriate distance from the point of spraying,

given the wind speed on the day of spraying? 8) What steps were taken after spraying to ensure that humans and animals would not enter the sprayed area or be injured in the future by the spraying? 9) Was any information provided for citizens regarding the potential dangers inherent in the use of the sprayed fields? 10) Has spraying been used to destroy the crops of any population in Israel other than the Bedouin in the *Naqab*?

Only **two** replies were received by PHR-Israel. The **first** was from the Ministry of Health.<sup>41</sup> According to Dr. Bilanko: 1) **The Ministry of Health was not informed of the spraying;** 2) Contacts between the Ministry of Health and the Chief Veterinary Surgeon in the Ministry of Agriculture revealed that there was no evidence of elevated disease or mortality among livestock in the area during the period immediately following spraying; 3) According to her review of the literature, the material used in spraying (Roundup) is not toxic to humans when used in accordance with the manufacturers' instructions; neither is there any requirement to prevent people entering a field sprayed with this substance.<sup>42</sup>

The **second** reply was from the Veterinary Office.<sup>43</sup> According to Dr. Gross: 1) He first learned of the spraying on receiving the letter from PHR-Israel; 2) It is not within the mandate or authority of the Veterinary Office to authorize spraying, and no request to this effect was received by the office; 3) The office does not have any standing procedure to address such a situation, since this is not within its mandate.<sup>44</sup>

The HRA believes that the failure of the Ministry of the Environment and of the ILA to reply to the letters from PHR-Israel is telling. This failure constitutes grave dereliction on their part, and is inconsonant with the standards of behavior expected of governmental

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<sup>41</sup> Letter from Natalya Bilanko (Office Physician, Ministry of Health, Health Office, Southern District) to Ms. Orly Almo (Coordinator of the Unrecognized Villages of the Negev project in PHR-Israel), dated April 27, 2003.

<sup>42</sup> The HRA believes that the response of the Ministry of Health is unsatisfactory, and even misleading, for the following reasons: **Firstly**, the ministry is apparently unaware of new studies indicating health risks connected to the use of Roundup (See Chapter **Four** below). **Secondly**, the use of Roundup was contrary to the manufacturer's instructions: the safety precautions specifically note that the substance is not to be applied by means of aerial spraying. **Thirdly**, the assertion that there was no evidence of elevated disease or mortality among animals in the sprayed area during the period immediately after the spraying is incorrect. Testimonies collected by the HRA show that, in one locality, the spraying operations caused deaths among livestock (See Section **B** below).

<sup>43</sup> Letter from Dr. A. Gross to Ms. Orly Almo, dated April 31, 2003.

<sup>44</sup> The HRA believes that the response of the Veterinary Office is unsatisfactory and perplexing. It is unclear how it cannot be part of the office's mandate to detect signs of disease or mortality among livestock in the sprayed area.

bodies. The information requested in the letters is vital in order to ascertain whether or not the various authorities properly examined all aspects of the spraying operations prior to their implementation. Moreover, the information is also required in order to determine whether the spraying operations were implemented in accordance with the legally-established procedures.<sup>45</sup>

On March 22, 2004, *Adalah* – the Legal Center for Arab Minority Rights in Israel (hereinafter – “*adalah*”) filed a petition at the Supreme Court on behalf of a number of Bedouin citizens whose land was sprayed with chemicals, and on behalf of various Israeli human rights organizations. The petition was filed against the ILA, the Ministry of Industry, Trade and Labor and the Ministry of Agriculture, and argues that the spraying of the crops of Bedouin farmers should be halted, since these operations are dangerous to human life and health, to animals and to the environment, and are therefore unlawful.<sup>46</sup> On March 23, 2004, the Supreme Court issued an interim decree against the respondents in the petition, preventing them, or persons acting on their behalf, from undertaking spraying operations of the crops of Bedouin citizens pending the final ruling in the petition. The petition was scheduled for a hearing at a judicial panel, on 20 October 2004.

It should be mentioned that the spraying operations that commenced on February 14, 2002 were not the first time that the ILA has destroyed the crops of Bedouin citizens. Mr. Jaber Abu Kaf, the former chairperson of the Regional Council, claims that Bedouin crops had been destroyed before the two years of respite prior to the first aerial spraying. On these occasions, however, tractors were used rather than the aerial spraying of chemicals. Mr. Abu Kaf reports that tractors staffed by employees of the Green Patrol would arrive, accompanied by police, and uproot the wheat fields. The Bedouin citizens stood in front of the tractors and objected to the destruction. When tempers flared, there was concern that violent clashes would ensue, and the destruction was therefore halted.<sup>47</sup> It should also be noted that during the two years preceding the first spraying operation on February 14, 2002, no steps were taken to destroy the crops of Bedouin citizens – neither through the use of tractors nor by aerial spraying of chemicals.<sup>48</sup>

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<sup>45</sup> The Flora Protection Regulations (Use of Herbicides), 5729-1969, establish a clear procedure for the aerial spraying of herbicides (See below, Chapter **Five**, Section **F**). Accordingly, the implementation of spraying otherwise than in accordance with this procedure is unlawful.

<sup>46</sup> HCJ 2887/04, *Salim Abu Madigam et al. v Israel Lands Administration et al.*

<sup>47</sup> Aliza Arbel, “Planes Destroy Thousands of Dunums of Bedouin Fields in the Negev,” *Ha’aretz* A1, February 15, 2002.

<sup>48</sup> Yasser Uqbi, “Planes Destroy 3,000 Dunums of Crops,” *Sheva*, February 21, 2002.

## **B) Manner of Implementation of Spraying**

The testimonies collected by the HRA from Bedouin citizens whose fields were sprayed with chemicals<sup>49</sup> reveal the following picture of the manner in which the spraying was implemented.

Inspectors from the Green Patrol, accompanied by substantial forces from the police and the Border Guard,<sup>50</sup> would arrive in the locality in the morning, preventing anyone from entering or leaving the area. Airplanes circled above the areas earmarked for spraying, and delivered the chemical substance.<sup>51</sup> After completing the spraying, the airplanes departed, as did the Green Patrol and the police forces.<sup>52</sup>

All the Bedouin citizens who gave testimony to the HRA, without exception, stated that they did not receive any warning from the police, the ILA or any other source regarding the intention of the ILA to spray their crops. It is true that, prior to the first spraying, reports appeared in the media regarding the ILA's plans to undertake aerial spraying. However, these reports related to the adoption by the ILA of a general policy of spraying crops, rather than to any specific intention to spray a particular area on any given date. Accordingly, these publications did not enable citizens to know when and where the ILA intended to undertake spraying. This fact was confirmed by Mr. Gabi Weissman, director of the Southern District in the ILA.<sup>53</sup> However, Mr. Weissman claimed that all the areas earmarked for spraying were signposted by the ILA – a claim that was denied by the Bedouin representatives who participated in the committee meeting.<sup>54</sup> Even if Mr. Weissman is correct in his assertion that the land was signposted, the HRA believes that such signs would, at most, imply that the ILA intended to seize possession of the land. They cannot possibly be considered a substitute for the provision of prior warning to the Bedouin citizens regarding the intention to spray their crops. Furthermore, in the testimonies, none of the Bedouin citizens whose land was sprayed report that the land was signposted by the ILA, nor that they received any notification or order regarding the intention to evict them from the land, whether from the ILA, the Green Patrol or the police. Moreover, after the fifth spraying operation on January

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<sup>49</sup> All the testimonies were collected by Attorney Tarek N. Ibrahim and are held at the HRA's offices.

<sup>50</sup> The involvement of the police and the Green Patrol in the spraying operations was due to concern of disturbances among the Bedouin citizens in reaction to the spraying operations. See Aliza Arbel, "Planes Destroy Thousands of Dunums of Bedouin Fields in the Negev," *Ha'aretz* A1, February 15, 2002.

<sup>51</sup> In one case documented by the HRA, the inspectors from the Green Patrol and the police even lit fires in order to indicate to the airplanes where to spray: testimony of Mr. Salman Salim Abu Jalidan from Wadi Al-Baqar, collected on December 17, 2003.

<sup>52</sup> See photos 2-4.

<sup>53</sup> Minutes of a Meeting of the Joint Knesset Internal and Labor Affairs Committee for the Unrecognized Villages in the Negev, pp. 7-8.

<sup>54</sup> *Ibid.*, p. 8. See also ILA claim No. (7) in Section C below.

15, 2004, the HRA photographed land in the area of Al-Araqib. Contrary to the state's claims, no ILA signs can be seen in the photographs.

The testimonies collected by the HRA further show that, after the completion of the spraying operations, the ILA did not post signs warning the Bedouin citizens that the area had been sprayed with chemicals. The sole exception to this is mentioned in the testimony of Mr. Siah Abu Madijam, from the Al-Araqib area.<sup>55</sup> On the fifth occasion on which spraying took place, on January 15, 2004, the ILA erected a yellow sign bearing the legend **“Caution – Area Sprayed With Herbicide.”**<sup>56</sup> According to Mr. Abu Madijam, this was the only time that such a sign was erected in an area following spraying. Moreover, on one of the occasions on which spraying took place in the vicinity of Al-Araqib,<sup>57</sup> a journalist who came to the village ate a cucumber from a field<sup>58</sup>, and subsequently suffered severe stomach pains, possibly caused by poisoning. He states that there was no sign in the sprayed area stating that the area had been sprayed with chemicals. In his testimony, he states:<sup>59</sup>

**“On June 17, 2003, Mr. Ahmad Abu Madijam of Rahat called my mobile phone and told me that aerial spraying with chemicals was taking place in agricultural areas in the vicinity of Al-Araqib and additional villages. Since I am a reporter for *Hadhshot Hayom* in the south, I went straight to the Al-Araqib area, and began to photograph. While I was there, I picked and ate a cucumber, and subsequently went about my work as usual. In the evening, I began to feel pains in my stomach, and went to the clinic in Rahat, where I was told that I might have ingested poison. The pains continued, and the next morning I returned to the clinic, where I was referred to an internal medicine expert at one of the clinics of the Maccabi HMO in Beersheva. I went to this clinic and, after tests, it emerged that the pains were due to the presence of toxins. The pains continued for three days.**

***I should add that on the site of the spraying operations, there was no sign or notice stating that the area had been sprayed with chemicals or poison.”*** (italics added)

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<sup>55</sup> Testimony collected January 23, 2004.

<sup>56</sup> See photo 5.

<sup>57</sup> June 16, 2003.

<sup>58</sup> During the summer months, some of the Bedouin farmers sow summer crops, such as watermelon and cucumber.

<sup>59</sup> Testimony of Mr. Ahmad Sawis of Rahat, collected January 23, 2004.

The testimonies collected by the HRA clearly show that in some of the areas sprayed with chemicals, the chemicals were sprayed not only above the agricultural areas, but also above the residential areas of Bedouin citizens who live adjacent to the sprayed agricultural areas. Thus, for example, members of the Al-Turi tribe who live in the Al-Araqib area reported that each time that spraying operations took place in the area, with the exception of the fifth time on January 15, 2004, the chemical was sprayed on their tents, as well as on the nearby agricultural areas that they farmed.<sup>60</sup> The same phenomenon is reported in the testimony of Mr. Farij Al-Sadan and Mr. Suleiman Kharnik from the Al-Gharir area.<sup>61</sup>

In some of the cases in which spraying operations took place, the chemicals came into contact with Bedouin citizens who were present in the fields that were sprayed.<sup>62</sup> As a result, they inhaled the chemicals,<sup>63</sup> resulting in respiratory difficulties, headaches, blurred vision and general weakness. Mr. Salama Al-Azazmeh from the Al-Gharir area<sup>64</sup> stated as follows:

**“In March 2003, I heard that the ILA was spraying our village’s land with chemicals that destroyed the crops. I went to the farming area. As I approached, I saw an airplane flying around the area, spraying chemicals. I also saw police and employees of the Green Patrol. When I reached the land, because of the direction of the wind, the chemical came toward where I was standing and I came into contact with it. As a result, I had difficulty breathing. I couldn’t breathe. Later I went to the clinic in Mitzpe Ramon, where I was informed that the chemical was not dangerous. They treated me and I returned to my village. I would like to mention that about ten other people who were on the land at the time of the spraying, including small children, were also affected and went to the clinic in Mitzpe Ramon, where they received treatment like me.”**<sup>65</sup>

Mr. Siah Abu Madijam and Mr. Salim Abu Madijam from the Al-Araqib area stated<sup>66</sup> that, on one of the occasions on which spraying took place, the chemical was sprayed on them. As a result, they experienced breathing difficulties, headaches, blurred vision and general weakness.<sup>67</sup>

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<sup>60</sup> Testimonies from members of the Al-Turi tribe, collected January 23, 2004.

<sup>61</sup> Testimonies collected January 22, 2004.

<sup>62</sup> The Bedouin had gone to the fields after hearing rumors that they were being sprayed with chemicals.

<sup>63</sup> For discussion of the health risks posed by the use of Roundup for humans, animals and the environment, see Chapter **Four** below.

<sup>64</sup> Testimony collected December 17, 2003.

<sup>65</sup> This report was confirmed by the **Ministry of Health**, in the letter from Dr. Natalya Bilanko to Ms. Orly Almo, dated April 27, 2003; and by **Klalit Health Services**, in a letter from Attorney Iris Duvdevani (Legal Department, Klalit Health Services) to Attorney Marwan Dalal (*Adalah*) dated March 16, 2003;

<sup>66</sup> In testimonies collected January 23, 2004.

<sup>67</sup> They stated that they did not go to a clinic or hospital in order to receive medical treatment.



The testimonies collected by the HRA further show that the chemical led to mortality among livestock. Members of the Al-Turi tribe living in the Al-Araqib area<sup>68</sup> stated that, following the spraying operation, the animals that they raised fed on the crops that had been destroyed. As a result, they report that some 150 goats died, and some 400 pregnant goats aborted their fetuses.

### **C) The State's Arguments**

The following are the arguments presented by the relevant state authorities relating to the spraying operations, as collected and collated by the HRA from various sources:

- (1) *The State of Israel, through the ILA and the Green Patrol, is waging a protracted struggle to protect Israel's land, in order to enable this resource to be used to the benefit of all citizens. Within this framework, they act by various means to remove squatters from such land, in order to return it to the management of the ILA and enable its use for the allotted purpose. The spraying operations are one means of removing squatters from state land. These operations are regulated by law, and their execution took place while strictly observing the legal provisions regulating the manner in which authorizations are to be granted for such operations, and the conditions in which they are permitted.*<sup>69</sup>

In the opinion of the HRA, this argument is misleading, and ignores the fact that the land involved is the subject of an ownership dispute between the ILA and the Bedouin citizens. This dispute has not yet been resolved.<sup>70</sup> Accordingly, the claims about “squatters” on state land are inaccurate, since this land is not currently state land.

- (2) *The Bedouin citizens invaded state land unlawfully and without permission, and hence the spraying operations were intended to evict them, on the basis of Article 18(B) of the Land Law, 5729-1969.*<sup>71</sup>

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<sup>68</sup> Testimonies of members of the Al-Turi tribe were collected January 23, 2004.

<sup>69</sup> Letter from Attorney Rachel Zakai-Neuman to Attorney Marwan Dalal, dated March 11, 2003; letter from Attorney Quint Yaakov (Office of the Legal Adviser, ILA) to Attorney Marwan Dalal dated March 18, 2003.

<sup>70</sup> See above, Chapter **Two**, Section **C**. See also Minutes No. 424 of a Meeting of the Knesset Economic Affairs Committee, p. 4 (MR. Gilad Altman, director of the Green Patrol). It should be noted that Mr. Gilad Altman claimed that the state held court rulings in its favor regarding some areas of land, while other areas were the subject of ownership disputes. However, he did not have precise data relating to the number of acres in each of these categories. Accordingly, the ILA itself admits that it does not know which areas are owned by the state and in which areas ownership has yet to be determined.

<sup>71</sup> The article states as follows:

**(B) If a person seizes land unlawfully, the lawful possessor thereof may, within thirty days from the date of seizure, reasonably use force to remove him therefrom.”**

Minutes No. 424 of a Meeting of the Knesset Economic Affairs Committee, pp. 3-4; Minutes of a Meeting of the Joint Knesset Internal and Labor Affairs Committee for the Unrecognized Villages in the Negev, p. 9.

Even if the ILA is correct in its assertion that the Bedouin citizens invaded state land, the HRA believes that it cannot use the aerial spraying of chemicals in order to evict them from these areas. Moreover, it cannot base its argument on Article 18(B) of the Land Law, 5729-1969.<sup>72</sup>

- (3) *During the process of granting annual rights of lease to state land to Bedouin citizens for the purpose of farming, the ILA discovered that the holders of the lease rights had been expelled from the land by other Bedouin citizens who claim ownership to the leased land;<sup>73</sup> accordingly, the spraying operations were intended to evict them.*

*It is further argued that part of the sprayed land farmed by the Bedouin citizens is within a closed military zone, entry to which is prohibited.<sup>74</sup>*

In the opinion of the HRA, these two arguments are vague and imprecise. It is unclear which of the sprayed areas were invaded by Bedouin citizens and which are within a closed military zone. If the ILA sprayed some 3,000 acres on February 14, 2002, and if, as Mr. Krispin claims, some 2,500 – 3,000 acres were let by the ILA to Bedouin citizens who were then expelled by other citizens with claims to the land,<sup>75</sup> where is the remaining land that was sprayed because it is within a closed military zone? The various authorities did not answer these questions, despite being asked to do so.<sup>76</sup>

- (4) *Prior to undertaking the spraying operations, the procedure is as follows: **Firstly**, planted areas on state-managed land are located; **secondly**, the area is signposted by the ILA; **thirdly**, in cases when the identity of the person planting the area is known, he is informed of the intention to evict him; **fourthly**, in cases when the identity of the person planting the area is unknown, a complaint is filed with the police; **fifthly**, the police process the complaint and inform the person that the ILA intend to evict him; **sixthly**, if the identity of the person is unknown and, for whatever reason, the police fail to process the complaint or to locate him, the area is not sprayed<sup>77</sup>.*

*In addition, the Ministry of Health claims that prior notification of spraying was given to the residents of the sprayed area.<sup>78</sup>*

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<sup>72</sup> See Chapter **Five**, Section **A**, below.

<sup>73</sup> According to Mr. Meir Krispin, director of the Southern District in the Ministry of Agriculture, the area in question totals some 2,500 – 3,000 acres: Minutes No. 424 of a Meeting of the Knesset Economic Affairs Committee, p. 8.

<sup>74</sup> Minutes No. 424 of a Meeting of the Knesset Economic Affairs Committee, pp. 3, 6.

<sup>75</sup> See Footnote 73 above.

<sup>76</sup> Minutes No. 424 of a Meeting of the Knesset Economic Affairs Committee, pp. 4, 6.

<sup>77</sup> Minutes of a Meeting of the Joint Knesset Internal and Labor Affairs Committee for the Unrecognized Villages in the Negev, p. 18 (Mr. Gilad Altman, director of the Green Patrol).

<sup>78</sup> Letter from Natalya Bilanko to Ms. Orly Almo, dated April 27, 2003.

Testimonies collected by the HRA from the Bedouin citizens whose land was sprayed<sup>79</sup> show that the above-mentioned process was not followed. The sprayed areas were never signposted by the ILA, and the Bedouin citizens were not informed by the ILA, the Green Patrol or the police of the intention to evict them from the land.

As to the claim that the Bedouin citizens were informed in advance prior to the spraying operations, the testimonies show that these warnings were never given. Moreover, the ILA itself stated that, in accordance with the law,<sup>80</sup> it is not required to send prior warnings.<sup>81</sup>

- (5) *The spraying was undertaken using a chemical called Roundup, which has been approved for use by the Ministry of Agriculture (Flora Protection Division), and which is not toxic or harmful to humans or animals.<sup>82</sup> Moreover, no requirement was found in the professional literature to prevent the entry of animals or humans into an area sprayed with this chemical.<sup>83</sup>*

The HRA claims that the professional opinions of two experts – a chemist and a medical expert – held by the HRA contradict the claim that the substance is not toxic and is not harmful to humans, or at the very least raise doubts as to its veracity. In any case, both these opinions and the instructions for use of the chemical prohibit its dispersal from the air, let alone in the vicinity of populated areas<sup>84</sup>.

- (6) *During the course of the spraying operations, only fields of crops were sprayed, and not residential or public areas.<sup>85</sup>*

The HRA claims that, according to the testimonies that it collected from Bedouin citizens whose land was sprayed,<sup>86</sup> the chemicals were sprayed not only above the agricultural areas, but also above the residential areas of Bedouin citizens who live adjacent to the sprayed agricultural areas.

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<sup>79</sup> See Section **B** above.

<sup>80</sup> Article 18(B) of the Land Law, 5727-1967.

<sup>81</sup> Minutes of a Meeting of the Joint Knesset Internal and Labor Affairs Committee for the Unrecognized Villages in the Negev, p. 7, 8 (Mr. Gabi Weissman, director of the Southern District, ILA).

<sup>82</sup> Letter from Attorney Rachel Zakai-Neuman to Attorney Marwan Dalal dated March 11, 2003; letter from Attorney Quint Yaakov to Attorney Marwan Dalal dated March 18, 2003; Minutes of a Meeting of the Joint Knesset Internal and Labor Affairs Committee for the Unrecognized Villages in the Negev, p. 12 (Mr. Gabi Weissman, director of the Southern District, ILA).

<sup>83</sup> Letter from Attorney Quint Yaakov to Attorney Marwan Dalal dated March 18, 2003; letter from Natalya Bilanko to Ms. Orly Almo dated April 27, 2003.

<sup>84</sup> See Chapter **Four** below.

<sup>85</sup> Letter from Natalya Bilanko to Ms. Orly Almo dated April 27, 2003.

<sup>86</sup> See Section **B** above.

- (7) *The ILA claimed that its inspectors, as well as the Green Patrol, signpost areas earmarked for eviction with signs warning persons not to enter the area, and stating that those who enter do so at their own risk and will face the consequences.*<sup>87</sup>

The HRA believes that this claim is incorrect, since it contradicts the testimonies collected from Bedouin citizens whose land was sprayed, which show that, except on one occasion (15 January 2004), the ILA did not post signs after the completion of the spraying operations warning the Bedouin citizens that the area had been sprayed with chemicals.<sup>88</sup> Furthermore, this claim contradicts the ILA's claim on another occasion that it does not erect any such warning signs after spraying.<sup>89</sup>

- (8) *No notification of the spraying was given to the Ministry of Health.*<sup>90</sup>

In the opinion of the HRA, this admission reflects a grave failing, on the level of negligence. The authorities undertaking the spraying should have been aware that the land concerned was situated in close proximity to civilian population centers, and that humans were therefore liable to be affected. They thus had a duty to inform the Ministry of Health in order to ensure that proper preparations were made.<sup>91</sup>

- (9) *There is no need to receive authorization to undertake spraying.*<sup>92</sup>

The HRA believes that failure to receive authorization violates the Flora Protection Law (Use of Herbicides), 5729-1969, and is therefore unlawful.<sup>93</sup>

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<sup>87</sup> Letter from Attorney Quint Yaakov to Attorney Marwan Dalal dated March 18, 2003.

<sup>88</sup> See Section **B** above.

<sup>89</sup> Minutes of a Meeting of the Joint Knesset Internal and Labor Affairs Committee for the Unrecognized Villages in the Negev, p. 13 (Mr. Gabi Weissman, director of the Southern District, ILA).

<sup>90</sup> Letter from Natalya Bilanko to Ms. Orly Almo dated April 27, 2003.

<sup>91</sup> Such as clarifying the nature of the substance to be used, the risks it poses for those exposed to the chemical and the forms of treatment, etc.

<sup>92</sup> Minutes of a Meeting of the Joint Knesset Internal and Labor Affairs Committee for the Unrecognized Villages in the Negev, p. 10 (Mr. Gabi Weissman, director of the Southern District, ILA).

<sup>93</sup> See Chapter **Five**, Section **F** below.

## The Dangers Involved in the Use of Roundup by Means of Aerial Spraying

As noted above,<sup>94</sup> the ILA uses a chemical known as Roundup in order to undertake the spraying operations. The ILA claims that this chemical is not toxic and is not harmful to humans or animals.

The HRA believes that this claim is both incorrect and misleading. **Firstly**, the fact that Roundup poses dangers to humans and to the environment is apparent from the instructions and warnings that appear on the canister containing the substance. For example, the label states that those using the substance must take special measures to ensure that they do not come into any contact with it. The instructions for usage also explicitly note that the substance must not be used in drift (i.e. from the air), for example over fish ponds. Indeed, the instructions on the canister itself expressly state that the substance is toxic and dangerous.<sup>95</sup> **Secondly**, the HRA is in possession of **two** professional opinions relating to the dangers inherent in the use of Roundup by means of aerial spraying. The **first**, entitled “The Dangers in the Use of Roundup as a Spraying Agent,” was prepared by Dr. Awad Abu-Freih;<sup>96</sup> the **second**, entitled “Health Risks Resulting from Exposure to Drift of ‘Roundup’ Dispersed by Aerial Spraying,” was prepared by Dr. Elihu D. Richter (MD, MPH).<sup>97</sup> According to these opinions, the use of Roundup entails risks to the health of humans and animals, including: risks to fertility, genetic defects and possible carcinogenesis. The following sections summarize each of the professional opinions.<sup>98</sup>

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<sup>94</sup> Chapter **Three**, Section **C**, ILA claim No. 5.

<sup>95</sup> The canister includes the following comment relating to the toxic nature of the substance: “toxic category IV – dangerous.”

<sup>96</sup> Dr. Awad Abu-Freih has a doctorate of physical organic chemistry from the Technion – Israel Institute of Technology. He is currently a lecturer in chemistry and head of the Biotechnology track at the School of Technical Engineers at Zaper college in the Naqab. In addition, Dr. Abu-Freih worked for some eight years as a senior researcher in chemical factories.

<sup>97</sup> Dr. Elihu D. Richter is a senior lecturer and head of the Unit of Occupational and Environmental Medicine Unit at the School of Public Health and Community Medicine of the Hebrew University and Hadassah. Dr. Richter holds a Ph.D. in medicine from New York University and an MA in Public Health from Harvard University.

<sup>98</sup> The authors of the professional opinions confirmed that these summaries faithfully reflect the content of their opinions.

## **A) Professional opinion of Dr. Awad Abu-Freih: “The Dangers in the Use of Roundup as a Spraying Agent”**

Roundup is a substance used to kill weeds and various pests. The central production plant belongs to Monsanto Company in the USA. In Israel, Roundup is produced by Agan Chemicals of Ashdod. Roundup comprises two principal chemicals – glyphosate and isopropylamine (the literature raises reasonable concern that it also includes diquat dibromide). In addition to these three ingredients, additional ingredients may also be included in order to facilitate use of Roundup in the field. Although referred to as “inert,” these substances may be highly dangerous, including polyacrilamide, phosphonemethyl and other chemicals. Each of the principal ingredients and the “inert” substances has different effects on the environment and on humans. Some of these effects are highly destructive in ecological terms and in terms of human and animal health.

**Glyphosate** is considered the primary ingredient of Roundup. This chemical is toxic to animals, causing eye and skin irritation. If glyphosate is present in water in a concentration exceeding the permitted level (0.7 ppm), it may affect humans. Short-term effects include rapid breathing and congestion of the lungs; long-term consequences include renal damage and impaired fertility. Persons are warned not to enter the sprayed area until the substance has dried. After contact with the substance, hands must be washed thoroughly with water and soap. The eyes must also be rinsed thoroughly. This chemical is rapidly absorbed in the soil, but remains active for extended periods, and has negative effects on any crop planted after the chemical has been used.

**Isopropylamine** is the main ancillary agent, combining with glyphosate to produce a mixture that is easy to use. This chemical is malodorous and is dangerous to the environment. Isopropylamine is toxic; gloves must be worn and it must be used in a ventilated space. This chemical damages the respiratory system and causes irritation to skin, eyes and throat. It may cause pulmonary edema, blurred vision, burning of the skin and eyes, and skin infection.

**Diquat dibromide:** It is possible that this chemical is not always included in the spray substance marketed as “Roundup,” but it forms part of the same category of chemicals used to prepare the mixture. This chemical has been used as a herbicide since the 1950s. It is toxic, and must be used in extremely small quantities. It causes oral disease in animals, as well as damage to skin and eyes. The chemical is absorbed by the animals’ skin, causing temporary damage that may become permanent with repeat exposure. Diquat dibromide also affects humans, causing skin and respiratory problems, irritating the eyes and nose (causing bleeding from the nose), vomiting, diarrhea, nausea, chills, spasms and even death. It causes the skin to crack, and damages the lungs, liver and kidneys. It causes cataracts, and may lead to infertility in both men and women (the highest risk is to pregnant women). Repeat exposure to this chemical causes grave and incurable damage. Immediately on exposure to this substance, or shortly thereafter, it causes irritation to the eyes, throat and nose (including bleeding from the nose).

The instruction sheet that accompanies Roundup explicitly notes that the substance should not be used for aerial spraying, due to the significant danger to humans and crops exposed to drift from the substance. The report further notes that vapors from the substance may cause irreparable damage to crops. The sheet states in large letters: “AVOID SPRAYING OVER LEAVES OR VEGETATION, BUT ONLY CLOSE TO SOIL. DO NOT SPRAY IF THERE IS A RISK THAT THE SUBSTANCE WILL LATER DRIP.” Vapors from the substance may disperse over kilometers and cause damage. Spraying from a tractor is equally dangerous. Spraying must be completely prohibited over populated areas, and detailed information obtained from the relevant institutions regarding the level of toxicity of the substance. Joint study is needed with the Ecology Department to examine the effects of the substance on the population.

Although Roundup has been used as a herbicide and pesticide for decades, and despite the claims of manufacturers and advertisers that the substance is not harmful to the environment, and is even “eco-friendly,” numerous studies have shown that this substance is highly dangerous to the environment. Accordingly, it has recently received increasing attention from environmental protection agencies in the US and elsewhere. As use of the substance spreads, growing research interest is shown in the possible environmental damage it causes. The ramifications of the use of this substance for the environment and for humans are lethal. The risk that Roundup” with all its constituent ingredients, causes severe problems to humans, livestock and the environment, including skin problems, liver and kidney damage, cataracts, respiratory problems, eye and throat irritation, and male and female infertility mean that it is unjustified to use this substance in any form, and certainly not by means of direct spraying on humans. The environmental ramifications are no less serious – for soil, plants and livestock. Soil and plants require a protracted period to recover and return to their normal state; even after this happens, their functioning is not the same as it was before the substance was used. In addition to the grossly immoral results of spraying over an entire, peaceful population, it should be noted that the risk inherent in the exposure of children, men, and women (including pregnant women) is tangible and lethal, in both the short and the long term.

### **B) Professional opinion of Dr. Elihu D. Richter: “Health Risks Resulting from Exposure to Drift of Roundup Dispersed by Aerial Spraying”**

Roundup is the world’s most widely used herbicide, reported in its warning label to be without known acute, residual or long-term toxicological effects in humans – unless there are acute ingestions. Glyphosate does not bioaccumulate, biomagnify, or persist in a biologically available form in the environment. Its mechanism of action is specific to plants and it is stated to be relatively nontoxic to animals. As a commercial product, glyphosate may be formulated with surfactants, including the so-called “inert” ingredients that increased efficacy but, in some cases, are more toxic to aquatic organisms than the parent material.

Yet, aerial spraying of Round-up is a public health danger. The Material Data Safety Sheet specifically states: “DO NOT APPLY THIS PRODUCT USING AERIAL SPRAY EQUIPMENT.” The reason for this instruction is the danger of spread of drift to adjacent residential areas and human exposures. The Data Sheet further states “Do NOT ALLOW SPRAY MIST TO DRIFT SINCE EVEN MINUTE (SMALL) QUANTITIES CAN CAUSE SEVERE DAMAGE OR DESTRUCTION TO NEARBY CROPS ... OR OTHER UNINTENDED CONSEQUENCES”.

Another instruction, also in capital letters, says: “AVOID DRIFT”. A third instruction, also in capital letters, says: “APPLY IN PROPERLY MAINTAINED AND CALIBRATED EQUIPMENT CAPABLE OF DELIVERING DESIRED VOLUMES. DO NOT APPLY UNDER WIND OR OTHER CONDITIONS WHICH ALLOW DRIFT TO OCCUR ...

“.

One study showed that, despite advertising claims that Roundup is safe for humans, pets and wildlife, and is benign to the environment, it is known to cause a variety of often serious health problems. An extensive scientific review by the US-based National Coalition for Alternatives to Pesticides (NCAP) found a variety of human health and environmental problems associated with the herbicide. In particular, oral and skin testing on glyphosate placed the herbicide in Toxic Category III (Caution), and other testing suggested that glyphosate can cause toxic reactions on mammals (which include convulsions and even cessation of breathing).

Severe toxicity problems associated with Roundup, however, are not thought to stem primarily from the active ingredient glyphosate, but rather from unlabelled “inert” ingredients designed to make Roundup easier to use and more efficient. The term “inert” relates to chemicals in a herbicide that are not directly responsible for killing the intended target. These ingredients “help” the active ingredients (the chemicals directly responsible for killing the target) to perform its function.

Roundup consists of 99.04 per cent “inert” ingredients, many of which have been identified, including polyoxyethylene amine surfactant (known as POEA), related organic acids of glyphosate, isopropylamine, and water. Researchers have found that the acute lethal dose of POEA is less than one-third that of glyphosate alone. Studies by Japanese researchers on poisoning victims discovered that this “inert” ingredient caused acute toxicity in patients. Symptoms of acute POEA poisoning included gastrointestinal pain, vomiting, excess fluid in the lungs, pneumonia, clouding of consciousness and destruction of red blood cells. Another Roundup “inert,” isopropylamine, is extremely destructive to mucous membrane tissue and the upper respiratory tract. Ultimately, the Japanese researchers calculated that ingestion of slightly more than 200 ml (three quarters of a cup) of Roundup would be fatal. Subsequent laboratory studies have also shown that glyphosate-containing products cause genetic damage and reproductive effects in a wide variety of organisms.



Another study revealed that Roundup can cause a number of negative environmental impacts. For instance, while it is claimed that Roundup is inactivated rapidly in soil, it is more accurate to say it is usually absorbed into soil components. Thus, glyphosate remains active in soils, and residues of glyphosate have been found in lettuce, carrots and barley planted one year after glyphosate treatment. The chemical has detrimental environmental effects. Glyphosate-containing products have been found to kill beneficial insects such as parasitoid wasps, lacewings and ladybugs. Roundup has also been shown to affect earthworms and beneficial fungi, to inhibit nitrogen fixation, and to increase the susceptibility of crop plants to disease.

Glyphosate is toxic to mammals: Most toxicity tests cited by industry and the EPA investigate toxicity through oral exposure routes. The toxicity of glyphosate and the common surfactant POEA is much greater through inhalation routes of exposure, which is a likely exposure scenario for humans exposed to drift. Experimentally induced inhalation of Roundup by rats produced 100% mortality in 24 hours. Humans ingesting as little as 100 ml of Roundup have died. Glyphosate produces toxic effects on mammalian sperm.

Roundup may cause endocrine disruption. One study shows a specific effect of Roundup formulations on endocrine disruption by disrupting steroidogenic Acute Regulatory Protein Expression.

Studies on animals (rats) showed that: a) herbicides applied in the spring may be a factor in the birth defects observed; and b) fungicides can be a significant factor in the determination of sex of the children of the families. Thus, two distinct classes of pesticides seem to have adverse effects on different reproductive outcomes.

Glyphosate is not currently considered to be carcinogenic. However, a recent epidemiological study has reported that past use of Roundup is associated with an increased risk of non-Hodgkin's Lymphoma.

**In conclusion**, pesticides are unique in that they are the only chemicals designed to be damaging to life systems. The literature shows real potentials for adverse toxic health impacts, even if there is uncertainty concerning the existence and severity of these impacts from Roundup as it is used, from glyphosate and the inert ingredients. The evidence from research show reproductive risks from paternal and maternal exposure in animals and paternal exposure in humans. There is a suggestion of carcinogenic risk. There are reports of ecosystem impacts affecting crop quality.

The application of any pesticide or herbicide by aerial spraying near human settlements is dangerous, and should be banned. Advance warning, which may or may not have been carried out here, does not provide a pretext for violating this rule, since there is the potential for exposure to residues after spraying. Even ground spraying by tractors may produce such drift, but not at distances as far as with aerial spraying. With aerial spraying, depending on height of application, amount, droplet size and mode of delivery, drift can travel kilometers.

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## The Authority of the ILA to Apply Chemicals to the Fields of Bedouin Citizens by Means of Aerial Spraying as a Way of Evicting them from the Lands that they Hold

As mentioned above,<sup>99</sup> the claim made by the ILA regarding its right to spray the fields belonging to the Bedouin citizens is that these citizens invaded state land unlawfully and without permission. Accordingly, the use of spraying is intended to evict them from this land, on the basis of Article 18(B) of the Land Law, 5729-1969

Even if one assumes that the land involved is indeed owned and was possessed by the state (the ILA), and that the Bedouin citizens invaded this land and farmed it unlawfully and without permission – **assumptions that the HRA rejects** – the HRA believes that from a legal point of view the ILA **does not have** the authority to undertake spraying operations in order to evict them from this land. In the opinion of the HRA, the ILA is undertaking draconian and arbitrary measures, with the help of the police and the Green Patrol, to remove the Bedouin citizens from their land, without taking heed of the proper legal procedures and violating their human rights. The following analysis will deal with the legal claims of the ILA and will attempt to invalidate these claims.

### A) Article 18(B) of the Land Law, 5729-1969

Article 18(B) of the Land Law, 5729-1969 (hereinafter – “**the Land Law.**”) forms part of a distinct section of the law<sup>100</sup> that comprises six articles, all of which address the same theme. These articles establish as follows:

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<sup>99</sup> Chapter **Three**, Section **C**.

<sup>100</sup> Section **C**, Part **B**, entitled “Protection of Ownership and Possession.”

#### **“Possession**

15. In this section, “possessor” applies whether direct control of the land rests with him, or whether direct control thereof rests with a person possessing on his behalf.

#### **Demand to deliver land**

16. The owner of land and a person entitled to hold land are entitled to demand delivery of land from a person possessing them unlawfully.

#### **Demand to prevent disturbance**

17. The possessor of land is entitled to demand that any person who has no right thereto refrain from any action tantamount to disturbance of the use of the land, and to remove any object that is tantamount to such disturbance.

#### **Use of force against a trespasser**

18. (A) The lawful possessor of land is entitled to use reasonable force in order to prevent trespassing thereof or to deny unlawful control thereof.

(B) If a person seizes land unlawfully, the lawful possessor thereof may, within thirty days from the date of seizure, use reasonable force to remove him therefrom.

#### **Return of usurpation**

19. A person who removes land from its possessor otherwise than as stated in Article 18(B) must return it to the possessor; however, this provision does not derogate from the authority of the court to hear the rights of both parties simultaneously, and the court is entitled to regulate possession however it shall consider just and on such conditions as it shall see fit, pending the determination of their rights.

#### **Preservation of remedies**

20. Nothing in the provisions of clauses 16 through 19 shall derogate from the right to compensation or to any other remedy or relief by law.”

As customarily interpreted by legal experts, Article 18 entitles the possessor of land to use force in order to prevent trespassing or the unlawful denial of his control of the land; or, if the trespasser has already invaded the land – to remove him from it. However, **two** conditions apply to the application of Article 18: **firstly**, the force used must be reasonable.<sup>101</sup> **Secondly**, the use of reasonable force must occur within thirty days from the

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<sup>101</sup> M. Deutsch, *Property*, (Vol. A), p. 375.

date on which the trespassing occurred.<sup>102</sup> Naturally, the loss of the right to use reasonable force due to the expiry of thirty days from the date of invasion **does not** nullify or negate the right of the lawful possessor of the land to evict the squatter by means of filing suit.<sup>103</sup>

In contrast to Article 18, the accepted interpretation of Articles 16, 17 and 19 among legal experts is that the rights granted therein relate solely to the return of possession by means of **legal proceedings**, and not by the use of force.<sup>104</sup>

In the opinion of the HRA, even if one assumes that the land involved is indeed owned and possessed by the state – **an assumption that the HRA rejects** – the ILA may draw solely on Articles 16, 17 and 19 of the Land Law in evicting Bedouin citizens from their land, i.e., solely by means of filing suit in the courts. **Firstly**, it may use Article 16, since as we assumed, it is the owner of the land. **Secondly**, it may use Article 17, since as we assumed, it is the possessor of the land.<sup>105</sup> **Thirdly**, it may use Article 18, since as we assumed, it is considered the possessor of land removed by force by the Bedouin citizens otherwise than in accordance with Article 18(B), and accordingly the Bedouin citizens must return the land to the ILA.

Furthermore, in the opinion of the HRA, the ILA may not rely on Article 18, i.e. on the use of force in the form of the aerial spraying of chemicals, in order to evict the Bedouin citizens from the land. **Firstly**, as will be recalled,<sup>106</sup> studies have suggested that the use of Roundup poses various dangers to the health of human and animals, and to the environment. Accordingly, spraying of Roundup in close proximity to civilian population centers may not be considered as use of “reasonable force.” **Secondly**, the ILA has not met the condition that reasonable force may only be used within thirty days from the date of invasion. Most of the spraying operations were undertaken toward the beginning of the year (January through April), whereas the Bedouin citizens begin to plant crops on the land at the end of October or the beginning of November.<sup>107</sup> Accordingly, the use of force by the ILA took place after

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<sup>102</sup> It is true that a person entitled to use reasonable force in accordance with Article 18 is also entitled to turn to the police – which acts within the framework of its administrative powers to fulfill its function of maintaining public order – so that it can undertake the act of eviction in his place. However, the authority of the police is also subject to the restrictions established in Article 18(B): it may act solely within the thirty-day limit, and it may only use reasonable force (M. Deutsch, *Property* (Vol. A), pp. 418-419). Accordingly, both the act of contacting the police on the part of the holder of the right, and the action of the police in accordance with Article 18(B) must be undertaken within thirty days **from the date of invasion**.

<sup>103</sup> M. Deutsch, *Property* (Vol. A), pp. 378, 389.

<sup>104</sup> *Ibid.*, pp. 364, 374.

<sup>105</sup> The ILA is considered the possessor of the land, even if it rented or let the land to others, since, in accordance with Article 15 of the Land Law, the term “possessor” applies whether direct control of the land rests with him, or whether direct control thereof rests with a person possessing on his behalf. It is accepted by legal experts that the renting or letting of land by the owner to another is considered possession on his behalf.

<sup>106</sup> See Chapter **Four** above.

<sup>107</sup> This information was provided to Attorney Tarek N. Ibrahim by Mr. Siah Abu Madijam from the Al-Araqib area in a conversation on March 8, 2004.

the expiry of the thirty-day period, in stark violation of the provision in Article 18. **Thirdly**, a basic condition of relying on article 18 is proving possession of land. In our case, the Bedouin citizens have been in possession of the land in question for a long period of time, and so the ILA cannot rely on this article, because it is not in possession of the land. **Fourthly**, in the ruling on CC 756/80, *Rosenstein v Solomon, Piskei Din* 38(2), 113, one of the judges (Judge M. Elon.) gave the dissenting opinion that discretion in favor of the holder of rights granted to the court in the latter part of Article 19 should not be exercised **when the holder took the property by use of brute force, and long after the date of invasion**. He further stated that an additional and crucial consideration in exercising this discretion is the extent to which the right of the person claiming the right is certain. For example, a person who holds a decree absolute mandating the eviction of a squatter is still not entitled to execute the decree independently, and must act in accordance with the laws of execution or of the execution of decrees. Nevertheless, the fact that he holds such a decree will have significant ramifications in exercising the above-mentioned discretion. The HRA believes that this opinion also applies regarding the right of the ILA to use force in order to evict Bedouin citizens by means of the aerial spraying of chemicals. **Firstly**, the ILA has used brute force against the Bedouin citizens, long after the date of invasion of the land; **secondly**, the right of the ILA to the sprayed lands is in dispute, since as noted above,<sup>108</sup> the ownership of much of this land has yet to be determined. Accordingly, the ILA cannot rely on Article 18.

## **B) The Public Land Law (Eviction of Squatters), 5741-1981**

In 1981, a law was passed relating specifically to the eviction of squatters from public land.<sup>109</sup> This law enables the eviction of squatters from public land through an administrative procedure, without the need for a court order. According to this law, if a person has invaded public land, and if, in the opinion of a person empowered therefore,<sup>110</sup> the invasion was unlawful, the latter person is entitled, within three months from the date on which he learned that the invasion was unlawful, and not more than twelve months from the date of the invasion itself, to establish this fact in an order signed by himself, and, in the same order, to demand that the person who seized the land remove himself within the period stated therein, which shall be not less than fourteen days.<sup>111</sup> This order is to be delivered to the squatter.<sup>112</sup> The status of such an order is equivalent to a court ruling for the eviction of a

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<sup>108</sup> See above, Chapter **Two**, Section **C**.

<sup>109</sup> Public Land Law (Eviction of Squatters), 5741-1981 (hereinafter – “**the Eviction of Squatters Law**”).

<sup>110</sup> The director of the ILA or district director of the ILA – each of these together with the legal adviser of the ILA or of the district director of the ILA (Article 1 of the Eviction of Squatters Law).

<sup>111</sup> Article 4(A) of the Eviction of Squatters Law.

<sup>112</sup> The Public Land Regulations (Eviction of Squatters) (Form and Delivery of Order), 5741-1981 establishes the manner in which the order is to be delivered to the squatter: the person delivering the order shall deliver it to the squatter (Regulation 2(A)); if the squatter is not present, the person delivering the order is entitled

squatter from public land,<sup>113</sup> and it may therefore be executed through the executor's office.<sup>114</sup> A person against whom such an order has been issued is entitled to address the court within the period of time established for his removal, in order to prove that he has the right to possession of the land.<sup>115</sup>

Accordingly, the Eviction of Squatters Law establishes a **clear and explicit** procedure for the eviction of squatters from public land. The law does not provide for the aerial spraying of public land with chemicals as such a method.<sup>116</sup> The delineation of what is permitted implies what is prohibited: if this means was not established by law, there is therefore no authority to undertake such actions.

In addition, an order for the eviction of a squatter from public land must be delivered to the squatter.<sup>117</sup> The testimonies collected by the HRA from Bedouin citizens whose land was sprayed with chemicals show<sup>118</sup> that no such orders were delivered. Without delivering these orders, the ILA cannot use its authority under the Public Land Law.

### **C) The Doctrine of the Abuse of a Right**

According to the traditional approach to property law, ownership imbues the owner of a property with an autonomous area within which he enjoys the freedom to act as he sees fit, without his being required to consider the needs and desires of others. As a counterpoint to this approach, the doctrine of the "abuse of a right" was developed, denying the owner this freedom. According to this doctrine, the owner is not entitled to act in an arbitrary manner, or for other unworthy motives, with regard to his property, if this is liable to harm another. The law is prepared to tolerate the damage caused to another by the use made of a property by its owner if this use is for proper reasons, and if the extent of the damage is not unreasonable relative to the benefit yielded by such use.<sup>119</sup> The doctrine of the abuse of a right addresses the question as to whether an act that causes damage to others, and which is

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to deliver it to a member of his family who is present and who appears to be at least eighteen years old (Regulation 2(B)); if the land is locked or it proves impossible to deliver the order as stated, the person delivering the order is to stick it or fix it to the entrance to the land (Regulation 2(C)).

<sup>113</sup> Article 4(B) of the Eviction of Squatters Law.

<sup>114</sup> Article 5(A) of the Eviction of Squatters Law.

<sup>115</sup> Article 5(B) of the Eviction of Squatters Law.

<sup>116</sup> Moreover, Article 64 of the Execution Law, 5727-1967 establishes the manner of eviction of land by the executor, while the Public Land Regulations (Eviction of Squatters) (Execution), 5741-1981 establish the manner of execution of an eviction order in accordance with the Eviction of Squatters Law. These acts of legislation make absolutely no mention of aerial spraying of land with chemicals as a means for evicting squatters.

<sup>117</sup> See Footnote 112 above.

<sup>118</sup> See above, Chapter **Three**, Section **B**.

<sup>119</sup> Y. Weissman, *Property Law – Ownership and Cooperation* (5757-1997), pp. 49-50.

permitted by law, should be prohibited if the act is committed due to an improper motive, such as the desire to harass or take revenge on another.<sup>120</sup>

Two approaches have been proposed for implementing this doctrine.<sup>121</sup> The **subjective** approach emphasizes the motives of the landowner. This approach argues that a person is not entitled to cause damage to another if his entire purpose is to cause this damage, even if this action would be permitted were it not for this improper motive. If the entire purpose of the landowner is to cause damage, he cannot justify the causing of this damage by claiming that his ownership entitled him to act in this manner. The **objective** approach emphasizes the outcomes of the landowner's behavior. This approach argues that if the outcomes of the landowner's behavior are seen to be unreasonable, given the balance of the benefit derived therefrom and the damage caused thereby, the doctrine is applied and the behavior is negated. According to this approach, the activation of the right of ownership is conditioned on a proper balance between the benefit derived from the activation of the right of ownership and the damage caused thereby.

Article 14 of the Land Law establishes as follows:

**“Restriction of rights**

**Ownership and other rights to land do not in themselves justify the performance of an action that causes damage or inconvenience to another.”**

According to Israeli legal experts, this article constitutes a manifestation of the doctrine of the abuse of a right in Israeli law. The question as to which approach the article adopts – subjective or objective – has yet to be determined by court rulings in Israel, although passing comments suggest a tendency toward the subjective approach.<sup>122</sup> Israeli legal experts, on the other hand, tend to favor the objective approach.<sup>123</sup>

Whether Article 14 of the Land Law embodies a subjective or an objective approach, the HRA believes that **in either case** the aerial spraying of the crops of Bedouin citizens with chemicals **constitutes an abuse of a right** on the part of the ILA, and is therefore prohibited under the terms of this article.

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<sup>120</sup> Ibid., p. 50.

<sup>121</sup> Ibid., pp. 51, 53.

<sup>122</sup> CA 319/74, *Rubinstein & Partners Contracting Company Ltd. V Fein*, *Piskei Din* 30(1) 454, p. 458; TA (Rehovot) 2176/85, *Kasif v Aharon*, *PSM* 5747 (B), 209.

<sup>123</sup> Y. Weissman, *Property Laws – Ownership and Cooperation* (5757-1997), pp. 52-53; A. Rosen-Zvi, “The Abuse of a Land Right,” *Iyunei Mishpat* 4 (5735/6), 651, pp. 661.

According to the **subjective** approach: given the racist comments by Minister Avigdor Lieberman<sup>124</sup> and other government ministers;<sup>125</sup> given that the land is the subject of an ownership dispute between the ILA and the Bedouin citizens that has yet to be determined;<sup>126</sup> given the fact that the Bedouin citizens have held and farmed the land since before the establishment of the state;<sup>127</sup> given that the ILA has used, on several occasions, a chemical substance regarding which there are studies suggesting various dangers to the health of humans and animals and to the environment;<sup>128</sup> – given all these facts, and the other facts presented in this report, the HRA believes that the sole motive of the ILA in undertaking the spraying operations is **to destroy the crops of the Bedouin civilians in order to cause them as much damage as possible**, thereby denying them a source of livelihood so that they will be forced to leave their lands. Thus, the ILA is prohibited from undertaking such operations according to the subjective approach.

According to the **objective** approach: given that the Bedouin citizens in the *Naqab* have the lowest socio-economic status of any population group in Israel,<sup>129</sup> given that the unemployment rate among the Bedouin of the *Naqab* is the highest in Israel,<sup>130</sup> given that the Bedouin population of the *Naqab* is the poorest sector in Israel,<sup>131</sup> given that farming is the sole occupation of the Bedouin citizens whose land was sprayed with chemicals;<sup>132</sup> – given these facts, the damage caused to the Bedouin citizens as the result of the spraying operations is enormous. By contrast, the benefit accruing to the ILA from the undertaking of the spraying operations is minimal, given that the sprayed areas were not used by the ILA, and the ILA did not derive any benefit therefrom. It is the Bedouin citizens who derived benefit from the land that they have always farmed. Weighing the benefit that the ILA

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<sup>124</sup> See above, Chapter **Three**, Section **A**.

<sup>125</sup> Such as the comment by Minister Ehud Olmert, at a convention of the Jewish National Fund on February 29, 2004, that the state will displace unrecognized Bedouin communities in order to make room for thousands of Jews (*Ha'aretz*, March 15, 2004).

<sup>126</sup> See above, Chapter **Two**, Section **C**.

<sup>127</sup> See Chapter **Two** above.

<sup>128</sup> See above, Chapter **Four**.

<sup>129</sup> See: the joint report from May 2003 by the HRA and the Regional Council of the Unrecognized Villages in the Negev on the subject of the unrecognized villages in the *Naqab*, p. 15.

<sup>130</sup> *Ibid.*, *ibid.*

<sup>131</sup> *Ibid.*, *ibid.* See also: HRA Weekly Review of the Arab Press in Israel, No. 154, <http://www.arabhra.org/wrap/wrap154.htm>. See also: Report of the State Commission of Inquiry to Clarify the Clashes between the Security Forces and Israeli Citizens in October 2000 (Or Commission), p. 53:

**“The poverty issue is particularly prominent in the Bedouin sector. The Bedouin population of the Negev is the poorest population in Israel. During the relevant period, 65-70% of this population lived below the poverty line. Six out of the seven Bedouin communities were ranked in the lowest cluster in socioeconomic terms. The Bedouin head the unemployment tables in Israel.”**

<sup>132</sup> All the testimonies collected by the HRA from Bedouin citizens whose farming land was sprayed with chemicals suggest that these citizens lived by farming, and that farming constituted their sole occupation and source of income.



derives from undertaking from the aerial spraying against the damaged caused to the Bedouin citizens, it is clear that the later is much larger than the former. Thus, the ILA is prohibited from undertaking such operations according to the objective approach.

#### **D) The Obligation to Act Fairly, in Good Faith, Reasonably and Unarbitrarily**

The ILA is the body charged with managing land in Israel<sup>133</sup>. It constitutes an administrative body subject to the government, and operates as an organ of the state.<sup>134</sup> As such, it is subject to the public obligations applying to any other governmental body.<sup>135</sup> Inter alia, the ILA must act fairly,<sup>136</sup> in good faith,<sup>137</sup> reasonably<sup>138</sup> and unarbitrarily,<sup>139</sup> and must grant the Bedouin citizens to right of claim before undertaking the spraying operations.<sup>140</sup>

In undertaking the spraying operations against the crops of the Bedouin citizens, the ILA did not, in the opinion of the HRA, act in accordance with these standards and obligations. **Firstly**, it acted out of prejudice and in submission to its own interests; **secondly**, it did not act honestly, but rather vindictively; **thirdly**, it did not weigh all the relevant considerations and did not properly balance these considerations; **fourthly**, it acted recklessly, insofar as it failed to pay attention to all the data before it; and **fifthly**, it failed to provide the Bedouin citizens with a warning or notification of the intention to spray their crops, and hence failed to give them an opportunity to present their arguments prior to the undertaking of the spraying operations; similarly, it failed to enable them to address the courts in an effort to examine the legality of the spraying operations.

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<sup>133</sup> See footnote 1 above.

<sup>134</sup> Y. Weissman, *Property Laws – General Section* (5753-1993), p. 234.

<sup>135</sup> *Ibid.*, p. 238. See also: CA 15/87, *State of Israel v Weiss, Piskei Din* 45(1), 342: “**As the representative of the state, the special norms of public law apply to the ILA as a public trustee.**”

<sup>136</sup> The force of the requirement to act fairly is to act without prejudice and without submission to a contradictory interest, whether of its own or of others, preventing it from honestly exercising independent and balanced discretion. See: Raanan Har-Zahav, *Administrative Law in Israel* (5757-1996), p. 439.

<sup>137</sup> The force of the requirement to act in good faith is to act honestly, without negative or vindictive will, and without deceit. See: Raanan Har-Zahav, *Administrative Law in Israel* (5757-1996), p. 438-439.

<sup>138</sup> The force of the requirement to act reasonably is to weigh all the relevant considerations and interests, and properly to balance these considerations and interests. See: Raanan Har-Zahav, *Administrative Law in Israel* (5757-1996), p. 473.

<sup>139</sup> The force of the requirement to act unarbitrarily is not to act in a manner that is irresponsible or reckless, giving attention to all the data and arguments before it. See: Raanan Har-Zahav, *Administrative Law in Israel* (5757-1996), p. 438.

<sup>140</sup> The force of the requirement to allow the right of claim is to grant a person who will be injured in the future by the actions of the authority a fair opportunity to present his arguments before the decision is made in his matter. This right is present whenever a citizen faces injury to his person, property, vocation, status, etc. Granting the right of claim requires the provision of a warning or notification to a person liable to be injured that a decision is about to be made in his or her matter, and that he is invited to present his arguments before the authority. See: Raanan Har-Zahav, *Administrative Law in Israel* (5757-1996), pp. 263, 266.

### **E) Flora Protection Law (Use of Herbicides), 5729-1969**

Among other issues, the Flora Protection Law (Use of Herbicides), 5729-1969 (hereinafter – “**the Flora Protection Law**”) regulates the undertaking of operations employing herbicides. In accordance with Article 2A1 of the Law, the minister of agriculture is entitled to undertake operations throughout Israel, or in any part thereof, in order to remove pests<sup>141</sup>, including the destruction of crops and ancillary means, **if he considers this necessary in order to prevent the spread of the pests**. In accordance with Article 3 of the Law, the minister of agriculture is entitled, by means of an order and if he considers it necessary **in order to prevent pests or the spread thereof**, to oblige the owners of land, plants, plant products and ancillary means to undertake uprooting operations, including the destruction of plants and plant products, and the destruction of ancillary means, excluding buildings and vehicles. Article 1 of the Law defines the word “pest” as follows: A living organism or plant, including a bacteria and virus, **prone to engender disease in or otherwise to injure plants**.

The HRA believes that a reading of the Flora Protection Law as a whole, and of the above-mentioned articles in particular, yields the following conclusions: **Firstly**, the authority to undertake herbicide operations rests solely with the minister of agriculture, and not with any other body, such as the ILA. **Secondly**, the authority to uproot pests also rests with the minister of agriculture, **and solely with the goal of preventing pests or the spread thereof**. The delineation of what is permitted implies what is prohibited: the minister is not authorized to undertake herbicide operations for any reason other than to prevent pests or the spread thereof. **Thirdly**, the purposes of the Law lies in the realms of health, sanitation and the environment, i.e. to protect human health and the environment from potential pests in the plants. The use of the means provided by the Law for purposes other than these, such as in order to evict squatters from land, is therefore unlawful.

Accordingly, the undertaking of operations to spray the crops of Bedouin citizens is grossly unlawful and contrary to the Flora Protection Law, since it is not intended to prevent pests or the spread thereof, but for a purpose that has nothing to do with pest control.

Moreover, the Flora Protection Regulations (Use of Herbicides), 5729-1969 establish clear procedures and rules for the aerial spraying of herbicides; deviation from these procedures and rules constitutes an unlawful action. Aerial spraying with herbicides requires the written authorization of the director of the Flora Protection Division in the Ministry of Agriculture.<sup>142</sup> Herbicides must not be sprayed from the air in the following situations:<sup>143</sup> 1)

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<sup>141</sup> Operations to uproot pests or destroy plants may be undertaken by means of the aerial spraying of herbicides, see: Flora Protection Regulations (Use of Herbicides), 5729-1969.

<sup>142</sup> Regulation 5(A).

<sup>143</sup> Regulation 11(A).

In drops with a middle volume diameter of less than 400 microns; 2) When the wind speed above the treated field is greater than 12 kph and the flight altitude is less than two meters; 3) When the wind speed above the treated field is greater than 5 kph and the flight altitude is greater than 10 meters. In addition, authorization for the aerial spraying of herbicides will not be granted if, in the opinion of the director of the Flora Protection Division in the Ministry of Agriculture, crops in the vicinity of the treated field are liable to be affected.<sup>144</sup> Lastly, the person undertaking the spraying must carry the authorization at all times during the operation.<sup>145</sup>

It is unclear whether the relevant authorities acted in accordance with these procedures and rules, since they failed to disclose this information, despite being requested to do so.<sup>146</sup> However, the HRA believes that the failure to reveal such information raises the suspicion that they did not, in fact, act in accordance with the above-mentioned procedures and rules.

### **F) A Criminal Offense**

In the opinion of the HRA, the spraying operations undertaken by the ILA constitute an offense under the terms of the Penal Code, 5737-1997 (hereinafter – “**the Penal Code**”).

Article 336 of the Penal Code establishes as follows:

#### **Use of a dangerous poison**

**A person who unlawfully uses against another, or causes another to ingest, a poison or other harmful substance, with the intention of harming or vexing the said person or another, shall be liable to three years’ imprisonment; if, in so doing, he endangered the person’s life or caused grave injury, he shall be liable to fourteen years’ imprisonment.**

Given the studies indicating the various dangers to the health of humans and animals, and to the environment, inherent in the use of Roundup,<sup>147</sup> the HRA believes that the ILA and its senior executives contravened the provision of this article, and thus committed a criminal offense.

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<sup>144</sup> Regulation 12.

<sup>145</sup> Regulation 18.

<sup>146</sup> See above, Chapter **Three**, Section **A**.

<sup>147</sup> See above, Chapter **Four**.

Article 452 of the Penal Code establishes as follows:

**Malicious damage**

**A person who unlawfully and deliberately demolishes or damages a property shall be liable to three years' imprisonment, unless another penalty is established.**

In the opinion of the HRA, the ILA destroyed the crops of the Bedouin citizens unlawfully and without authority; accordingly, it and its senior executives contravened the provisions of this article, and thus committed a criminal offense.

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## Human Rights Violations as the Result of the Spraying Operations

The HRA believes that the spraying operations undertaken by the state drastically violate a number of basic rights of the Bedouin citizens. In the following sections, we shall briefly review these rights.

### A) The Right to Health and to a Healthy Environment

In the opinion of the HRA, the undertaking of the spraying operations violates the right of the Bedouin citizens to health and to a healthy environment, since, as noted above,<sup>148</sup> the chemical substance used to undertake the spraying operations (Roundup) has a negative impact both on humans (in health terms) and on the environment.

It is the HRA's opinion that the rights to health and to a healthy environment are enshrined under the framework of the Basic Law: Human Dignity and Liberty.<sup>149</sup> Article 2 of the Basic Law states that **“the life, person or dignity of a person shall not be injured.”** Article 4 states that **“every person is entitled to the protection of his life, person and dignity.”** The basic perceptions of modern, enlightened society recognize the inherent right to life of every person. A person's right to life is based on the value of human dignity. Accordingly, to infringe the health of a person is to violate the value of life.<sup>150</sup>

The rights to health and to a healthy environment are also recognized in international law. Article 25(1) of the Universal Declaration of Human Rights (1948) establishes as follows:

**“1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness,**

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<sup>148</sup> See above, Chapter Four.

<sup>149</sup> The Basic Law: Human Dignity and Liberty was enacted by the Knesset in 1992 and has the status of a constitution.

<sup>150</sup> See also the opinion of A. Carmi, *Health and Law* (Vol. A, 2003), p. 799.

**disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”**

Article 12 of the International Covenant on Economic, Social and Cultural Rights (1966) establishes as follows:

- “1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.**
- 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:**
  - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;**
  - (b) The improvement of all aspects of environmental and industrial hygiene;**
  - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;**
  - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”**

At a United Nations conference held in 1972, it was proposed that the human right to an environment enabling a healthy and dignified right be recognized:<sup>151</sup>

**“[m]an has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and wellbeing.”**

## **B) The Right to a Livelihood and to a Minimum Human Subsistence**

The HRA believes that the spraying operations violate the right of the Bedouin citizens to a livelihood and to a minimum human subsistence. As noted above,<sup>152</sup> the Bedouin citizens whose land was sprayed with chemicals existed solely from farming, and farming is their **sole** livelihood. Accordingly, the destruction of their crops has left them without any alternative source of livelihood.

In the opinion of the HRA, the rights to a livelihood and to a minimum human subsistence are protected within the framework of the Basic Law: Human Dignity and Liberty. Articles 2 and 4 of the Basic Law protect the right to life, person and dignity. The rights to a

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<sup>151</sup> United Nations Conference of the Environment, 1972. The declaration was adopted by the United Nations.

<sup>152</sup> See above, Chapter **Five**, Section **C**.

livelihood and to a minimum human subsistence derive from these provisions, since the right to life and dignity assume a minimum standard of human subsistence.<sup>153</sup>

The rights to a livelihood and to a minimum human subsistence are also recognized in international law. Article 25(1) of the Universal Declaration of Human Rights (1948) establishes as follows:

**“1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”.**

Article 7(A)(2) of the International Covenant on Economic, Social and Cultural Rights (1966) establishes as follows:

**“The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favorable conditions of work which insure, in particular:**

**(a) Remuneration which provides all workers, as minimum, with:**

**...**

**(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;”**

Article 11 of the same Covenant establishes as follows:

**“1. The states Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent”.**

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<sup>153</sup> This is also the position of the President of the Supreme Court, Justice Prof. A. Barak. See: A. Barak, *Interpretation in Law – Constitutional Interpretation* (Vol. C, 5754), pp. 422-423. See also: HCJ 161/94, *Atri v State of Israel* (not yet published); PDM 3045/94M, *Isawi v State of Israel* (not yet published), where Justice Barak comments: **“the Appellant’s dignity as a human demands concern for a minimum human subsistence.”**

### C) The Right to Work and to Choose a Occupation

The HRA believes that the spraying operations violate the right of the Bedouin citizens to work and to choose an occupation, since the Bedouin citizens whose land was sprayed with chemicals engage in agriculture, and the destruction of their crops prevents their engaging in this occupation.

In the opinion of the HRA, the rights to work and to choose an occupation are protected within the framework of the Basic Law: Freedom of Occupation<sup>154</sup>. Article 3 of the Basic Law establishes that **“every citizen or resident of the state is entitled to engage in any occupation, profession or trade.”** Moreover, numerous rulings by the Supreme Court have established the principle that a person is entitled to choose whichever work or trade he prefers, as long as his engaging in that work or trade is not prohibited by law.<sup>155</sup>

The rights to work and to choose an occupation are also recognized in international law. Article 23(1) of the Universal Declaration of Human Rights (1948) establishes as follows:

**“1. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.”**

Article 6(1) of the International Covenant on Economic, Social and Cultural Rights (1966) establishes as follows:

**“1. The States Parties to the Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”**

### D) The Right to Property

The HRA believes that the spraying operations violate the right to property of the Bedouin citizens, since the undertaking of these operations prevents their ability to exploiting and using the land they hold as they see fit.

In the opinion of the HRA, the right to property is protected under the framework of the Basic Law: Human Dignity and Liberty. Article 3 of the Basic Law establishes that “a person’s property is not to be injured.”

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<sup>154</sup> The Basic Law: Freedom of Occupation was enacted by the Knesset in 1992 and has the status of a constitution.

<sup>155</sup> See: HCJ 1/49, *Bejerno v Minister of Police, Piskei Din B*, 80, p. 82; HCJ 292/87, *Herzliya Studios Ltd. v Minister of Finance, Piskei Din 33(2)* 739, p. 474; HCJ 337/81, *Matrani v Minister of Transport, Piskei Din 37(3)*, 337, p. 353.



The right to property is also recognized in international law. Article 17 of the Universal Declaration of Human Rights (1948) establishes as follows:

- “1. Everyone has the right to own property alone as well as in association with others.**
- 2. No one shall be arbitrarily deprived of his property”.**

Articles 13(1) and 14 of the Indigenous and Tribal Peoples Convention (1989)<sup>156</sup> establish as follows:

**“Article 13**

**1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.**

...

**Article 14**

**1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.**

**2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.”**

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<sup>156</sup> The Indigenous and Tribal Peoples in Independent Countries Convention (No. 169) was adopted on 27 June 1989 by the General Conference of the International Labour Organization at its seventy-sixth session. The Convention entered into force 5 September 1991, and to date, the Convention has been ratified by only 17 countries. It should be noted that Israel has not ratified this document.

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# Summary, Conclusions and Recommendations

A protracted dispute exists between the State of Israel and the Bedouin citizens regarding the ownership of the land in the *Naqab*. **On the one hand**, the state claims that this land is state land; **on the other**, the Bedouin citizens claim that they are the owners of this land, and thus entitled to register it in their name. To date, this dispute remains unresolved, and accordingly it has yet to be finally decided in whose name this land will be registered.

This land, which has been held and farmed by the Bedouin citizens for generations, constitutes **their sole source of livelihood**.

In February 2003, as part of the policy of the State of Israel to transfer all the land owned by the Bedouin citizens to the state, and to transfer the Bedouin citizens themselves from their places of residence on this land to permanent townships established for them by the state, it began to spray their fields from the air with chemicals in order to destroy the crops.

During a period of some two years, 7,425 acres of crops were destroyed after they were sprayed with chemicals, on **seven** different occasions and in different areas. This fact proves beyond any doubt that the spraying operations were not isolated or exceptional incidents, **but form part of a new policy toward the Bedouin citizens that has been adopted and implemented by the state, and which it will probably continue to implement in the future.**

The following facts emerge from the testimonies collected by the HRA from Bedouin citizens whose land was sprayed:

- (1) The spraying of crops was undertaken suddenly, and the Bedouin citizens did not receive any prior warning. They were not granted any hearing before the spraying operation, and they had no possibility to address the court in advance in order to prevent the spraying operations, or at least to examine the legality thereof.
- (2) In some cases, the chemical substance used in the spraying operations was sprayed both on agricultural areas and over the residential areas of Bedouin citizens living in close proximity to the sprayed agricultural areas.

- (3) In some of the spraying operations, the chemical substance came into contact with some of the Bedouin citizens who were present on the land. As a result, they inhaled the chemical, leading to respiratory difficulties, headaches, blurred vision and general weakness.
- (4) In some cases, the spraying operations led to deaths among livestock.
- (5) After completing the spraying operations, and with one sole exception, the ILA did not post signs warning the Bedouin citizens that the area had been sprayed with a chemical substance.

The chemical substance used in the spraying operations is called Roundup. Studies have suggested that the use of Roundup entails various dangers to the health of humans and animals, such as toxicity, respiratory difficulties, impaired fertility and possible carcinogenesis, as well dangers to the environment. According to the safety instructions for this substance, it must not be applied by means of aerial spraying. This instruction is particularly pertinent if the spraying is to take place in close proximity to population centers, and more so still if the spraying is undertaken above the population centers themselves.

Through its various authorities, the State of Israel has adopted a nebulous approach to all matters concerning the spraying operations, and has failed to reveal vital information such as: information regarding the concentrations of the substance as used; details of coordination between the various relevant government ministries; information as to whether any prior examination was undertaken in the area to clarify the distance of the residential areas from the sprayed fields; information as to what steps were taken after the spraying to ensure that people and animals would not enter the sprayed area or be harmed by the spraying in the future; details as to whether any information was provided for the Bedouin citizens regarding the health dangers inherent in the use of sprayed fields; information regarding wind speed and direction at the time the spraying operations were undertaken; and information as to whether the legally-established procedures for undertaking aerial spraying were followed in full. This evasive behavior on the part of the state is inconsonant with the standards required of public authorities, and raises concerns that the authorities are attempting to conceal defects relating to the spraying operations.

The State of Israel argues that the spraying operations were intended to evict the Bedouin citizens from state land which they had invaded unlawfully and without permission. Even if one assumes that this assertion is correct – **an assumption that is rejected by the HRA** – the state cannot, in legal terms, use the aerial spraying of chemicals as a means of eviction, but must use the legal means available, i.e. by filing suit at the courts demanding eviction, or by issuing administrative orders to be implemented through the executor's offices.

In the manner in which they were implemented, the spraying operations entail severe and drastic violations of the basic rights of the Bedouin citizens: their right to health and to a healthy environment; their right to a livelihood and minimum human subsistence; their right

to work and to choose an occupation; and their right to property. These basic rights are recognized and prioritized both in international law and in domestic Israeli law.

In conclusion, the HRA believes that the aerial spraying of crops with a chemical substance is grossly unlawful. Regarding the future, the HRA recommends that this practice be completely avoided and those responsible for the aerial sprayings should be brought to trial. It is also recommended that the Bedouin citizens whose land was sprayed in the past receive compensation on account of the destruction of their crops.

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## Photo 1



**Crops destroyed after spraying operation  
Abda, 4.3.2003**

Photo by Alberto Dankberg

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## Photo 2



**Mr. Jaber Abu Kaf, the former chairperson of the Regional Council, at the time of the first spraying operation  
Al-Makiman Uajan, 4.2.2002**

Photo by the Regional Council

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## Photo 3



**Mr. Jaber Abu Kaf, the former chairperson of the Regional Council, with journalist from Southern Radio at the time of the first spraying operation Al-Makiman Uajan, 4.2.2002**

Photo by the Regional Council



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## Photo 4



**ILA crop duster during spraying operation  
Al-Makiman Uajan, 4.2.2002**

Photo by the Regional Council



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## Photo 5



**Yellow sign bearing the legend “Caution – Area Sprayed With Herbicide  
Al-Araqib, 15.1.2004**

Photo by the HRA, 23.1.2004