

MORE THAN A DROP – RIGHT TO WATER

In March 2012 a diverse group of Fordham Law students advocating for the right to water in the Negev Desert went on a fact-finding mission to Bedouin Villages in Southern Israel. This is a brief summary of our trip.



Pictured: Water access point near the village of Bir Hadaj.

Introduction

The Israeli Supreme Court case *Abu Masad*¹, brought by Bedouin appellants representing six unrecognized villages in the Negev against the Israeli Water Authority, held that the right to water access is inherent within the Israeli Basic Law on Human Dignity and Liberty. The original case and appeal sought improved water access to the six villages and review of the request for such access that was denied by the Authority's Water Committee. The Court noted that access to water, despite rights of the citizens, could be limited by the interests of the state. The Court said the Water Authority can balance the right to water against policy interests, but "must ensure in all cases reasonable accessibility on a minimal level to homes in illegal settlements." However, the Court failed to define the meaning of "reasonable accessibility on a minimal level."

Given the lack of guidance in the *Abu Masad* case, we researched the core of the right to water under both international and Israeli laws. We looked at the history of the Bedouin in the Negev and researched the current legal framework governing the right to water under both international and domestic law. We also performed comparative research on water rights issues in other countries and prepared a preliminary report.

¹ CA 9535/06 *Abu Masad v. Water Commissioner* [2011] (Isr.)

After determining a minimal access to water standard under international law applicable to Israel, we travelled to Israel to research how the Bedouin access water. With the help of Adalah, a legal NGO based in the region, we went to sixteen villages (both recognized and unrecognized) and interviewed village leaders and residents. The Bedouin opened their homes to us, sharing stories and food. We glimpsed the lifestyle of the modern Bedouin, who are no longer nomadic, and wish to subsist on farming and pasturing. While every village was unique, we were frequently told that water was just one of the many problems they faced, which included recognition and land ownership. Problems exist in recognized villages as well, though in different forms. Despite recognition, many villages still lack basic services such as water, electricity, roads, garbage collection, health, education, and, as a result, land owners are unable to adequately maintain farms or pastures.

A positive note in our findings is the effect of privatization and technology, which is making the lives of Bedouin a little easier. Though this can be prohibitively expensive at times, villagers are able to install solar panels for electricity, satellite dishes for television, and use cellular phones for communication. These are all services they cannot receive through government organizations due to the unrecognized status of their villages. Privatization of water services could potentially improve the Bedouin's access to water.

In addition to visiting villages, we also met with specialists. Dr. Thabet Abu Rass, the director of Adalah's Negev office, gave us information on Bedouin villages in Negev, the geopolitical significance of the area and the policies behind some Israeli government actions. He brought our attention to the increase in house demolitions² and the Praver Plan, which if implemented will result in the demolition of most unrecognized villages and the displacement of 40,000 Bedouin. Professor Yeela Raanan, from Sapir College, informed us about current and past means by which Bedouin obtain water and the government policies served by keeping inadequate methods in place.

One element of our trip to the Negev was learning about problems that had not come up while writing the preliminary report. The topic raised most often was afforestation and its use in displacing Bedouin villages, as well as its use of the desert's scarce water resources. For example, eucalyptus forests—once used to dry swamps and displace natives—use up a lot of water. We witnessed a water-tanker truck being used to water a small grove of these trees near a school where classes had been postponed for a week because the water company had cut service.

In the wake of the Praver Plan, water seems the least of peoples' concerns. However, water access echoes many other conflicts, such as the land disputes and discrimination faced daily by the Bedouin. In sum, water helps us see the bigger picture: the Bedouin are not welcome in the Negev as they currently live. However, they are unwilling to leave their ancestral land for promises of more comfortable lives elsewhere. One villager summed up the problems well: "Praver came to serve a certain policy and came to take our roots out of the earth."

"We are the only society that does not need the government," said the villager. "Mekorot cut off the water, we live; they cut off the electricity, we live. . . . Today they demolish houses and people live under the sky. It is not a patriarchal society that makes us survive; it is the simplicity of our lives."

Now that we are back from our fact-finding mission we are preparing a final report on the right to water in the Bedouin villages of the Negev. We will present our findings to our law school and other organizations to raise awareness about the problems facing the Bedouin. We are also actively seeking opportunities to draw attention to other issues in the area and hope to continue to build a strong connection between Fordham, Adalah and the Bedouin

² The number of houses demolished doubled in 2011, affecting 6,000 people.

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through continued advocacy and future research missions to the Negev.

Right to Water under International Law

The United Nations' International Covenant on Economic, Social and Cultural Rights (ICESCR) is a key treaty for water rights, which Israel ratified in 1991.³ In *Abu Masad*, the Israeli Supreme Court refers to General Comment No. 15 of the United Nations Committee on Economic, Social and Cultural Rights when examining rights to water under international law.⁴ Although the right to water is not specifically mentioned in the ICESCR, Comment 15 states that the right to water falls within the right to an adequate standard of living, the right to health, the right to adequate housing and adequate food under ICESCR, and the right to life and human dignity under the International Bill of Human Rights.

Under Comment 15, five factors must be met in all circumstances for the realization of the right to water. Water must be **available** in sufficient and continuous quantity for personal and domestic use.⁵ The **quality** of water must be safe and free from threats to a person's health, and **acceptable** in color, odor and taste. Further, water and adequate water services must be **accessible**⁶ to all individuals physically and must be **affordable** for all, without discrimination.

Comment 15 further provides that States have an obligation to guarantee access to the minimum essential amount of water, satisfying the five factors: (1) availability, (2) quality, (3) acceptability, (4) accessibility and (5) affordability. Water must be sufficient and safe for personal and domestic uses on a non-discriminatory basis, especially for marginalized groups, and the State must ensure equitable distribution of all available water facilities and services. Comment 15 explains, "a State which is unwilling to use the maximum of its available resources for the realization of the right to water is in violation of its obligations under the Covenant."

Right to Water under Domestic Law

Though Israel is a party to the ICESCR, the covenant has not been incorporated into the legal system via legislation, and, thus, is interpreted as only a guideline for domestic law.⁷ Article 1 of the Israeli Water Law of 1959 states that water sources are public property shared by all citizens of the state.⁸ Article 3 further explains that "every person is entitled to receive water" subject to the provisions of the Water Law and the Water Management Authority.⁹ Article 4 of the Israeli Water Law states that a person's right in any land does not confer upon him a right in a water resource situated therein or crossing it. In Israel, water may be drawn from a well on a person's property only in accordance with a water production license.¹⁰

³ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

⁴ Although it is not formally non-binding, Comment 15 can be used as an interpretive guide with respect to states' treaty obligations under ICESCR. Comment 15, available at <http://www2.ohchr.org/english/bodies/cescr/comments.htm>.

⁵ According to WHO standards an average person in any household needs at least 15 litres of water per day for drinking, cooking and personal hygiene.

⁶ According to WHO standards the maximum distance between any household to the nearest water point is 500 meters.

⁷ *Abu Masad* at para 25-29.

⁸ Israel's Water Economy, "Thinking of Future Generations", Israel Ministry of Foreign Affairs, Aug. 10, 2002, available at www.mfa.gov.il. [Hereinafter *Future Generations*] see also *Abu Masad* at para 30.

⁹ *Abu Masad* at para 31.

¹⁰ *Future Generations*, at 3

The Israeli Supreme Court opinion in *Abu Masad*, which constitutionalized the right to water under the Israeli Basic Law on Human Dignity and Liberty, was a pivotal decision in Israeli domestic water rights policy.¹¹

Summary of Factual Findings

Ten of the sixteen villages we visited were unrecognized villages, while the remaining six had been recognized by the State of Israel in 2004. An unrecognized piece of land is considered illegal by the government. On that basis the state denies municipal services to unrecognized villages, including water access. The difference between recognized and unrecognized villages, however, is not clear. Further complicating this, a village may be considered recognized despite large portions of its land remaining unrecognized. For example, in Be'er Hadaj, a recognized village, the only recognized structure was the school; the remainder of the village was unrecognized. In Abu Qrinat, some neighborhoods were recognized, but 90% of the families' homes remain unrecognized. This means 90% of the villagers in this technically recognized village receive no municipal services. Access to water is one of the municipal services that the State of Israel is required to offer its citizens. However, we witnessed that there is a great discrepancy between municipal services in Jewish villages and those in Bedouin villages. These differences are particularly evident in water access and pricing.

During our mission, we observed several methods of accessing water. Two decades ago, almost all villagers transported water to their homes using donkeys or tractors from a central source. Today, most villages have self-installed pipes which connect to the government water centers. Even in recognized villages, the municipality fails to provide the entire water infrastructure. The water company has installed one or two main pipes, or water centers, near the road, to which families have connected their own smaller pipes. In some cases one main pipe serves multiple towns and villages on the same road. The villagers, at their own cost, are entirely responsible for the purchase and installation of these smaller pipes. In villages further from water centers, Bedouins continue to transport water in tanks. This method is especially burdensome. Every few days the villagers have to drive several kilometers and wait for up to 4 hours to fill the tanks. These tanks usually hold up to 4,000 liters of water. The cost for water is extremely high, ten times greater than for nearby Jewish farmers because of the expense of transportation. The Bedouins pay up to NIS 230 for transportation, and up to NIS 20 for water, bringing the total cost to NIS 250 for every purchase of water. In contrast, Jewish farmers across the valley pay under NIS 10 for the same amount of water.

Water prices differ from one village to the other, with the greatest discrepancies between Jewish and non-Jewish villages. In the recognized villages we visited the Bedouin stated they pay between NIS 8.5 to NIS 12 per kiloliter. In the recognized village of Umm Batin, the prices were adjusted according to the amount used: the first 20,000 liters cost NIS 4 and the second 20,000 liters cost NIS 6. In the unrecognized villages we observed water prices between NIS 10 and NIS 17. Villagers also complained of recent price increases, stating a 50% increase over several months. In some villages the cost of water constitutes 10-50% of villagers' monthly income. In al-Makiaman, an unrecognized village, the Bedouin chief noted that in certain months his entire salary would be spent on water.

Due to the limited number of water access points per village, families are dependent on each other to receive water. In some villages, all residents must contribute to one total bill because water meters are only present at the main pipes. This means that one family's inability to pay threatens their neighbors' water access as well. Where possible, a council has

¹¹ "Basic Law, Human Dignity and Liberty," The Knesset, http://www.knesset.gov.il/laws/special/eng/basic3_eng.htm.

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been set up with the sole duty of collecting money every month to pay the water company on time so that water access is not cut off. If capable, Bedouin families chip-in to support their fellow villagers. “We are all family here,” remarked Mohammed Abu Fahad of Umm Al-Ithnan. Even this strong communal support is not always enough to keep their water flowing.

Another issue arising from having one meter per village is the inability to determine precisely how much water is used per household. In order to overcome this problem, some villagers have purchased and installed their own water meters. However, the installation of individual water meters revealed an inconsistency between the water consumption shown on the main water meter and the total water consumption combined from each individual water meter. Hence, villagers believe that in addition to paying more than Jewish citizens they are also being charged for more than their actual monthly consumption.

The difference in water prices for Jewish and non-Jewish citizens of Israel constitutes blatant inequality. This is but one form of discrimination faced by the villagers. In truth, they are discriminated against in many aspects of their lives. From education, health care, and basic public services like roads to the repeated destruction of their homes, the villagers face discriminatory treatment on many fronts. When asked what they wanted, the Bedouins said: equality. The villagers had one request from the Legal Right to Water Team: to speak the truth about their situation.

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