

# **Bedouin Communities in Area C: Contemporary Realities, Indigeneity and British Historical Responsibility**

November 2021

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## FOREWORD BY ANGELA GODFREY-GOLDSTEIN

All societies are measurable by various criteria and benchmarks. Treatment of minorities, or the weak or sick or poor, illuminates very clearly that society's values.

Israeli treatment of its indigenous Bedouin refugees living under its military control in Area C is such a case in point.

Officially denied status as an indigenous people, Bedouin under Israeli occupation have been forced to live without their animals or the income inherent in traditional Bedouin pastoral herding, whether by the declaration of military "firing zones" or prohibition of grazing near the ubiquitous settlements. Hence no Bedouin can legally be a pastoral herder, *de facto* forbidding a tradition prefacing biblical days, when the Patriarch Abraham/Ibrahim's sons tended flocks, calmly shepherding goats and sheep in desert.<sup>1</sup>

The situation for those Bedouin who were forcibly displaced, becoming refugees in the early days of the Israeli state, is an indication that Israel has never intended or worked to be a democracy in which all citizens are equal participants. Forced out of Israel, these Bedouin refugees are not landowners in OPT, nor do they have any civil rights. In Area C, they suffer under full military occupation, without access to education, work, health or planning (as opposed to their settler neighbours), and since the PA has no authority in Area C, no entity or institutions to protect them.

So, while obviously the Bedouin – whether refugees in Area C, or citizens inside Israel – deserve our empathy most, the question should also be asked: "Whither Israel?" What is the price being paid by Israelis for its lack of democracy? What values does this society project when its occupation is so blatantly harsh? And at what point will all this unsustainability come crashing down?

Bedouin are guardians of desert, their culture built around sustainable living in those deserts. In days of climate change, with increasing scarcity of water already apparent in droughts, heatwaves, soaring summer temperatures extending throughout autumn, and regularly raging forest fires, the criminalisation of the sustainable lifestyle of Bedouin is a sign of arrogance and short-sightedness. The policies implemented by Israel, labelled as "apartheid" by B'Tselem, Human Rights Watch and various leaders of the South African anti-apartheid movement, are symptoms of a society that is not ready to recognize all human beings living in it as equals, with a worldview instead that sees some as worthy of health, prosperity and protection, and some as unworthy, based on a narrow view of ethnicity and nationality.

Whilst an International Criminal Court investigation on the matter is ongoing, the world is watching, mostly in silence, with only citizens of the world community roaring and shouting, in demands for justice. The government of Britain is a mostly silent observer, despite historic responsibility for the plight of the Bedouin: the Balfour Declaration of 1917 and subsequent Mandate policies were supposed to protect the local population such as the Bedouin of Palestine:

*"it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine."*

Is it not time for the United Kingdom to fulfil its historic responsibilities? Or is it on a course of appeasement that bodes ill for all?

1 DZG-VSF Belgium, 'Pastoralism is the Future - Dutch & French Subtitles,' June 2, 2021, YouTube video, 2:23, <https://www.youtube.com/watch?v=ERGc0Yk-l40> (accessed October 12, 2021).

## ACRONYMS

<b>EU</b>	European Union
<b>ICA</b>	Israeli Civil Administration
<b>ICC</b>	International Criminal Court
<b>IDF</b>	Israel Defence Forces
<b>IHL</b>	International Humanitarian Law
<b>IHRL</b>	International Human Rights Law
<b>OPT</b>	Occupied Palestinian Territory
<b>OCHA</b>	United Nations Office for the Coordination of Humanitarian Affairs
<b>PA</b>	Palestinian Authority
<b>UNRWA</b>	The United Nations Relief and Works Agency for Palestine Refugees

## EXECUTIVE SUMMARY

This report aims to shed light on the current realities of the Bedouin communities in Area C of the West Bank in the Occupied Palestinian Territory while contextualising it in an analysis of British historic responsibility and the legal status of these communities as an indigenous group under International Law. In the three separate sections, this report will 1) firstly map the current situation of the Palestinian Bedouin communities in Area C, considering the latest information from Human Rights organisations on the ground, 2) secondly, make the case for the historic responsibility of the UK for this situation as the holder of the Mandate for Palestine and 3) thirdly, argue for the recognition of this responsibility by the UK within the international legal framework of indigeneity and post-colonial reparations. In addition, this report also provides recommendations for policymakers and other stakeholders in the UK Parliament to be presented on the House floor.

As the situation on the ground continues to deteriorate and the Palestinian Bedouin communities struggle to realise even their most basic human and political rights, the UK government is failing to make good on its historic promises and obligations as well as modern moral and legal responsibilities under international law. We hope that the information and insight contained within this report will prove a useful tool not only in the Houses of Parliament but also for public advocacy and the raising of popular awareness in the wider UK. The report's ultimate goal is to contribute to the recognition and support for Palestinian Bedouin communities as an indigenous group, with clearly determined political rights, by the UK government alongside an acknowledgement of their entitlement to reparations.

## ABOUT THE AUTHORS

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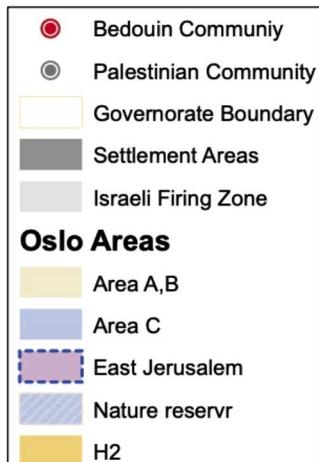
## RECOMMENDATIONS

**In recognition of its historic responsibility towards the Mandate in general and the Bedouin communities in particular, especially as an indigenous group, the British government should:**

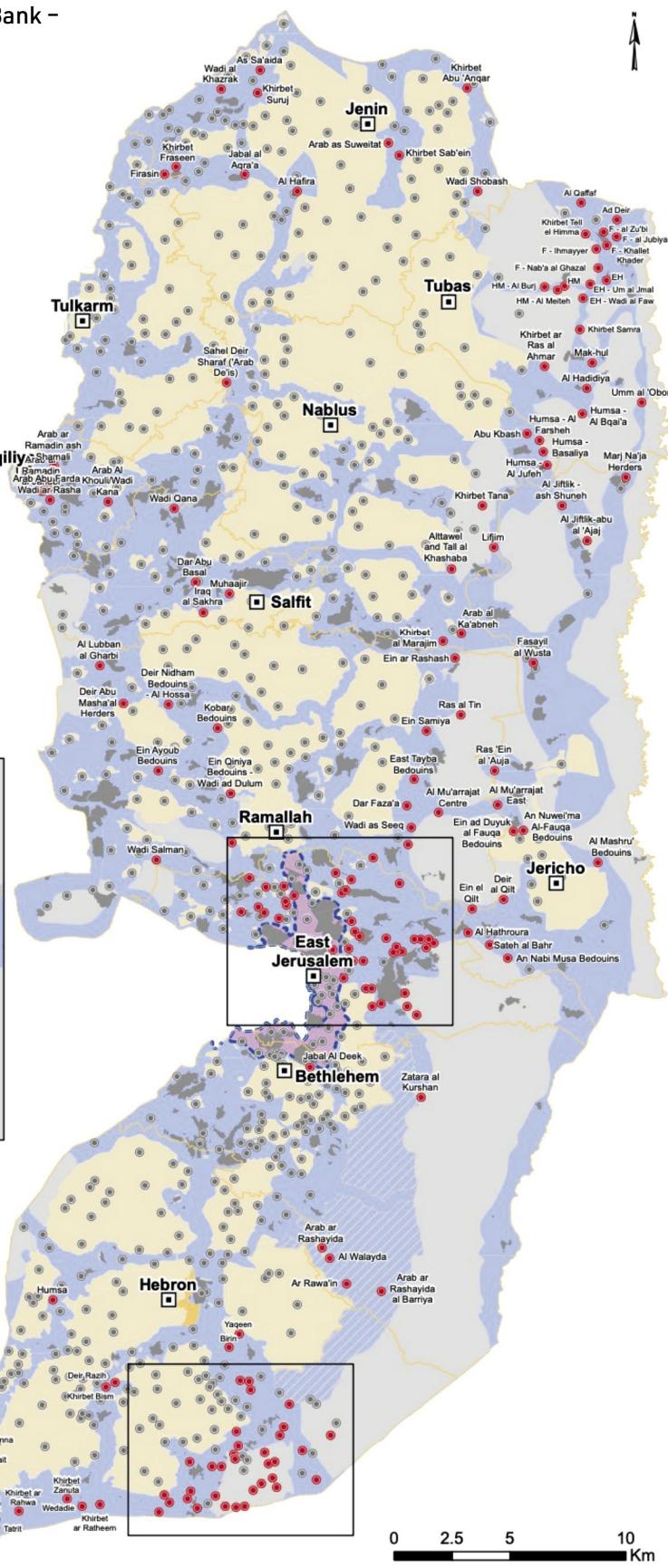
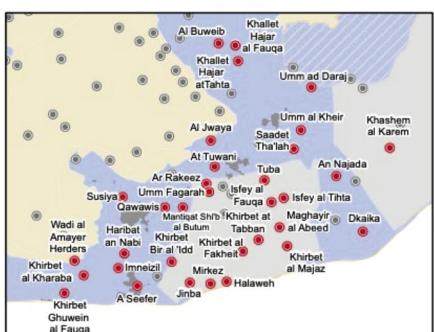
- > Issue an apology to the Bedouin communities in Area C and provide reparations as compensation for the hardships faced by these communities as a consequence of British actions during the Mandate era.
- > Recognise the Bedouins as an indigenous people within the territory of former Mandatory Palestine. In turn, this would pressure Israel and the Palestinian Authority to recognise the rights of these communities under International Law as it pertains to the rights of indigenous peoples.
- > Support the work of the International Criminal Court in its inquiry into potential War Crimes committed in the Occupied Palestinian Territory, and in particular, bring to the fore the case of the Bedouin and herding communities, as a recognised indigenous group with specific rights under International Law.
- > Address the contemporary injustice that Palestinian Bedouin communities face under the Israeli occupation. This would include continuing to put pressure on Israel to end its occupation and respect the indigenous rights of Bedouin communities despite the historic British laws that violated them and recognising a Palestinian state alongside Israel to ensure the Palestinian Bedouins' right to self-determination as part of the Palestinian people. In the most immediate and practical terms, this would include the government adopting a strong position in opposition to the increasing number of enforced demolitions and forcible transfers by Israel against the Palestinian Bedouin communities, particularly in Area C.

## BEDOUIN COMMUNITIES IN THE WEST BANKS

Map of Bedouin Communities in the West Bank – courtesy of OCHA (2019)



EH: Ein al Hilwa  
 F: Al Farisiya-Ihmayer  
 KA: Khan al Ahmar  
 HM: Hammamat al Maleh



## SECTION 1: THE CONTEMPORARY REALITIES OF BEDOUINS IN AREA C

There are many Bedouin and other herding communities living in Area C of the West Bank; in 2011, they numbered almost 30,000. This area is entirely under both the security and civic control of the Israeli authorities, in line with the division of the West Bank by the 1995 Oslo II Accord. As such, along with the other 300,000 Palestinian inhabitants of Area C, these Bedouins are separated from the rest of the Palestinians living in the West Bank under the rule of the Palestinian Authority and must abide by rules and regulations put in place by the Israeli military authorities. Notably, while a large proportion of the communities are refugees from the Naqab-Negev, in what is now southern Israel, many of them do not have access to UNRWA services. For some it is because of the occupation itself, preventing them from accessing the services directly, while others were never registered with the agency because of being away, grazing their flocks at the time of the UN agency's census.<sup>2</sup>

Bedouin and herding communities in Area C are made extremely vulnerable by the continuing occupation of their lands by Israel and its policies of dispossession. Unemployment is rife, and the ability of these communities to live as they traditionally would—that is, nomadically or semi-nomadically—is limited. In addition to this, they frequently suffer from poor infrastructural provisions. For example, none of the approximately 2,800 Bedouins who live around the hills east of Jerusalem, over 85% of whom are refugees, are connected to the electricity network, while only 50% have access to the water network. Moreover, the Bedouins' access to land in Area C is increasingly limited.<sup>3</sup>

An example is the situation of communities residing and owning land in what has come to be called the 'Seam Zone', located outside the municipal border of annexed East Jerusalem, although inside the illegally-built<sup>4</sup> Separation Wall, separating them from the rest of the West Bank. Members of these communities, the extended Za'atari family, who number around 320 people, find themselves in a particularly difficult situation, both economically and existentially. Their green West Bank IDs prohibit them from accessing Jerusalemitic services and jobs, while being unable to easily cross into the West Bank because of checkpoints and the military occupation, or having access to pastoral grazing land. The situation has rapidly deteriorated after the illegal construction of the Separation Wall on their lands, impacting their ability to access services, pastures and the job market in the West Bank.

The expansion of settlements and settler highways has meant that these Bedouin communities east of Jerusalem no longer have access to land. Furthermore, most of their homes are also subject to demolition orders, while in the 1990s more than 200 families were made to relocate from the area, with some of these relocations taking place by force.<sup>5</sup> This issue is not limited only to this part of Area C, however; as has been noted in a testimony to the UN Permanent Forum on Indigenous Issues, 'access to 70 per cent of Area C is now severely restricted to all Palestinians (42 per cent of the entire West Bank)', after having been 'taken over by the Israeli Authorities for the building of settlements, firing zones, the West Bank barrier, checkpoints and protected nature reserves'.<sup>6</sup>

2 Farah Mihlar, *Israel's Denial of the Bedouin* (Minority Rights Group International, November 2011), 9.

3 United Nations Office for the Coordination of Humanitarian Affairs, Occupied Palestinian Territory, *In The Spotlight: Area C Vulnerability Profile* (OCHA oPt, March 5, 2014), 4.

4 United Nations, 'International Court of Justice Finds Israeli Barrier in Palestinian Territory Is Illegal' (9 July 2004), <https://news.un.org/en/story/2004/07/108912-international-court-justice-finds-israeli-barrier-palestinian-territory-illegal> (accessed July 7, 2021).

5 United Nations Office for the Co-ordination of Humanitarian Affairs, Occupied Palestinian Territory, *In The Spotlight*, 4.

6 Mihlar, *Israel's Denial*, 9.

Considering the example of firing zones, the designation of land in Area C as such by the Israeli authorities is of particular concern with regard to the situation of the Bedouins living in the area. As of February 2021, such firing zones make up almost 30% of the total land area of Area C. These zones are reserved for training by the Israeli military, and Palestinians are not permitted to live there or even gain entry to the area. Within these firing zones live 6,200 Bedouins and herders, comprising 38 communities. These communities are intensely vulnerable, and their access to necessities including water, electricity, sanitation, healthcare, and education is limited.<sup>7</sup> Moreover, displacement and demolitions have been known to take place often in these areas. For example, between 2010 and 2012, around 45% of all buildings owned by Palestinians in Area C that were demolished by the Israeli authorities were located in firing zones, resulting in the displacement of more than 820 Palestinian civilians.<sup>8</sup> The conditions faced by Bedouin communities within these firing zones are highlighted by the case of Humsa Al Bqai'a. According to a recent report by UN OCHA, between 2012 and 2021, its inhabitants have been 'temporarily displaced' over 50 times 'while the Israeli authorities carried out military training in the vicinity.' One such incident occurred as recently as 22nd February 2021:

'On 22 February, the Israeli Civil Administration (ICA), accompanied by the military, returned to the Palestinian herding community of Humsa-Al Bqai'a and confiscated another 18 residential and animal structures. In addition to food parcels and unassembled structures, the ICA also confiscated all water tanks, leaving the community with no drinking water or water for their livestock. Most of the structures had been provided as a humanitarian response following incidents on 3 and 8 February, in which 37 structures were demolished or confiscated. Ten households, comprising over 60 people, including 36 children, were again displaced and are at heightened risk of forcible transfer.'<sup>9</sup>

Ultimately, the situation of Bedouin and herding communities of Area C of the Occupied West Bank is closely linked to the question of Palestinian state sovereignty and the ability to maintain a practically conceivable independent state entity. These communities are currently on the front lines of Israel's aim to change the demographics of the whole of Area C by inhibiting the Palestinian presence, with demolitions, attacks and forced transfers being part of the daily lived experience for them. Area C is also where the major sources of farmland, access to water and other forms of economic revenue—such as access to tourism in Jerusalem and Bethlehem—are located, in addition to the land border with Jordan. Worryingly, the latest reports issued by NGOs from the field, such as Jahalin Solidarity, show that more imminent demolitions are currently pending all across Area C and further deterioration of the situation is inevitable without the intervention of members of the UN with historic ties to the issue. Notably for the UK, and in addition to its historic responsibility, there is arguably a degree of legal responsibility under IHRL and IHL pertaining to the ongoing dispossession of the Bedouin communities in the OPT, as a third state party to the Fourth Geneva Convention. Such states have the obligation not only to recognise Israel's violations of IHL as unlawful but also to avoid facilitating, albeit indirectly, the continuation of said violations.

Today, humanitarian work and international economic aid prove to be insufficient as the only means to safeguard and support the Bedouin communities of the West Bank, especially in light of Israel continuing with demolitions. The UK government should recognise its historic and legal responsibilities by supporting the indigenous rights of the Palestinian Bedouins as a matter of foreign policy priority. In other words, fulfilling its obligations, taking the first steps towards reconciliation with its colonial past and holding Israel accountable. In addition to this, many of the EU and UK-funded economic and humanitarian projects

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7 United Nations Office for the Co-ordination of Humanitarian Affairs, Occupied Palestinian Territory, *Occupied Palestinian Territory (oPt): Flash Update #5* (OCHA oPt, 25 February 2021), 2.

8 United Nations Office for the Co-ordination of Humanitarian Affairs, Occupied Palestinian Territory, *The Humanitarian Impact of Israeli-Declared "Firing Zones" in the West Bank* (OCHA oPt, August 2012), 1.

9 United Nations Office for the Co-ordination of Humanitarian Affairs, Occupied Palestinian Territory, *Occupied Palestinian Territory (oPt)*, 1.

are regularly demolished by the Israeli state<sup>10</sup>, rendering this form of aid, without robust political stances, largely obsolete. If the UK government is serious in its dedication to the safeguarding of future stability and peace for these communities and the wider region, it must commit to pressuring Israel to abide by International Humanitarian Law in the Occupied Palestinian Territories.

It must also support the work of the International Criminal Court and continue its developmental projects, especially in light of the UK's foreign policy now being entirely independent of the EU, establishing itself as a reliable and influential agent in the region. Recognising historical responsibility would mean greater incentive and legitimacy for the UK's further involvement in the region.

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10 Tamara Nassar, 'Israel Seeks To Demolish EU/British-Funded School,' *The Electronic Intifada* (28 October 2020), <https://electronicintifada.net/blogs/tamara-nassar/israel-seeks-demolish-eubritish-funded-school> (accessed July 7, 2021).

## **SECTION 2: BRITISH HISTORICAL RESPONSIBILITY TOWARDS BEDOUIN COMMUNITIES IN AREA C**

Bedouin communities in Area C thus face considerable difficulties in their day-to-day lives, ranging from inadequate infrastructure to demolitions and dispossession by the Israeli authorities. Importantly, as is the case with other Palestinians living in the West Bank and elsewhere today, the United Kingdom bears a degree of historical responsibility *vis-à-vis* the current situation of many of these Bedouin communities. This responsibility stems from the fact that Britain formerly administered Palestine through its Mandate for Palestine, which was initially assigned at the San Remo Conference in April 1920, officially came into force in September 1923, and lasted until its termination on 15th May 1948. There were a number of aims to this Mandate. According to the preamble of the text of the Mandate, as drawn up at the San Remo Conference, one of these was to enact 'the provisions of Article 22 of the Covenant of the League of Nations.' This would require Britain, as an 'advanced nation,' to exercise 'tutelage' over the people of Palestine, who were considered 'not yet able to stand by themselves under the strenuous conditions of the modern world,' and thus required British assistance to develop before they were able to achieve independence. In addition to this, in line with the British Government's earlier Balfour Declaration of 1917, a further aim of the Mandate was to establish a Jewish national home in Palestine, with the caveat that 'nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine' (or, indeed, 'the rights and political status enjoyed by Jews in any other country').<sup>11</sup>

As a caveat, it should be noted that none of the following information means to suggest that, historically, Britain knowingly acted in a way that would intentionally contribute to the circumstances endured by communities, Bedouin or otherwise, in Area C today. Nevertheless, even in absence of such a motive, it remains clear that the historical actions

of the United Kingdom in Palestine during the period of the British Mandate have borne an effect on the present reality lived by these communities. As such, it is only right that a degree of historical responsibility for this be ascribed. Bearing this in mind, there were several ways in which the United Kingdom's actions as the Mandatory power in Palestine have contributed to the current situation of Bedouin communities in Area C of the West Bank, thus highlighting a level of British historical responsibility for the issue.

### **THE 1948 WAR**

The first of these concerns the very fact that many Bedouin communities find themselves in Area C, to begin with. During the period of the British Mandate, the majority of the Bedouins now living in this area used to live in the Naqab-Negev. However, they were displaced from there during the 1948 War (known in Arabic as *al-Nakba*, or 'the Catastrophe'), which lasted from late 1947, while the Mandate was still in existence and Britain had responsibility for security, until mid-1949. Many fled to the West Bank, to other Arab states surrounding Palestine, or even further afield. Such was the fate of many hundreds of thousands of Palestinian Arabs, with some estimates suggesting that around 700,000 Palestinians were displaced by the end of the war in 1949.<sup>12</sup> Of these, around 80,000 were Bedouins from the Naqab-Negev, with the region's Bedouin population dropping to 10,000 from a pre-1948 total of 90,000. This forced displacement naturally affected the conditions in which the Bedouin communities of Area C and the wider West Bank came to live. For example, upon their arrival in the West Bank from the Naqab-Negev, Bedouin refugees found themselves in competition with other Palestinian inhabitants and refugees for access to land, for purposes of living and animal grazing.<sup>13</sup> On top of this, the fact that these Bedouin communities were displaced meant that they did not possess

11 'Balfour Declaration 1917,' The Avalon Project, [https://avalon.law.yale.edu/20th\\_century/balfour.asp](https://avalon.law.yale.edu/20th_century/balfour.asp) (accessed April 30, 2021).

12 Simha Flapan, *The Birth of Israel: Myths and Realities* (New York: Pantheon Books, 1987), 83.

13 Mihlar, *Israel's Denial*, 3, 9.

the deeds to the land upon which they settled in the West Bank; as a result, the Israeli authorities have frequently displaced Bedouins in these areas, often repeatedly.<sup>14</sup> This will be dealt with later in this section of the report.

While this displacement was a direct result of the 1948 War, the actions of the United Kingdom contributed to the outbreak of the war, or—at the very least—did not manage to prevent it. Tensions and hostilities between the Jewish and Arab communities in Palestine had been on the rise for years by the time of this war. The British Mandate authorities did make some attempts to defuse these tensions; for example, in order to assuage Palestinian Arab concerns about increasing levels of Jewish immigration to Palestine, Britain sporadically introduced measures in an attempt to limit this immigration. Nevertheless, after the UN's Partition Resolution was passed on 30th November 1947, these tensions boiled over into civil war between the Jewish and Arab communities in Palestine. During this initial period of the conflict, many thousands of Palestinian Arabs were displaced; it has been estimated that 70,000 people had left their homes before the beginning of February 1948.<sup>15</sup> This happened on Britain's watch.

Crucially, the British Mandate authorities generally did not intervene in this conflict to stem the hostilities and, in so doing, prevent the flood of Palestinian refugees. Moreover, not only did Britain—as the Mandatory power—fail to step in, but it had made the decision to end its Mandate, hand over its Mandatory responsibilities to the recently formed United Nations, and pull out of Palestine by 15th May 1948. Indeed, it has been suggested that this planned evacuation was the reason for Britain's lack of intervention in the first place, as the British were mainly focused on withdrawing to Haifa in preparation for their eventual departure.<sup>16</sup> As such, the context in which the British chose to implement this decision to withdraw—one of intercommunal conflict and displacement of

Palestinian Arab civilians—meant that its actions enabled these hostilities and displacement to continue and escalate. Ultimately, following the end of the Mandate on 15th May, Palestine was invaded by the surrounding Arab states in an attempt to crush the newly founded State of Israel, which had been proclaimed the day before in anticipation of the British withdrawal. The new state needed to use force to impose its authority over the area that would become its sovereign territory, and did not specify the extent of that territory in its Declaration of Independence. In this way, what was previously a 'civil' conflict between two communities in Palestine became an all-out international war, throughout which the displacement of a huge number of Palestinian Arabs, including the majority of the Naqab-Negev Bedouins, would continue.

In light of this, Britain's failure to intervene and successfully defuse the intercommunal hostilities in Mandatory Palestine during the initial stages of the 1948 War, and its decision to continue with its plan to terminate the Mandate and withdraw from Palestine even amid this conflict, place upon its shoulders a degree of historical responsibility for the descent into war and displacement of hundreds of thousands of Palestinians that occurred as a result. Indeed, as mentioned above, Britain was tasked with the responsibility both to bring about the establishment of a Jewish national home in Palestine and to protect the 'civil and religious rights of existing non-Jewish communities' as well as to fulfil its obligations under Article 22 of the Covenant of the League of Nations. The fact that it ultimately decided to evacuate from Palestine and allow the two communities to simply fight it out among themselves constitutes a failure of its Mandatory responsibilities and, thus, a level of responsibility for the events that came to pass—including the displacement of most of the Bedouin communities in the Naqab-Negev to other areas, such as the West Bank and, within that, Area C.

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14 Ahmad Amara and Mansour Nasasra, *Bedouin Rights under Occupation: International Humanitarian Law and Indigenous Rights for Palestinian Bedouin in the West Bank* (Norwegian Refugee Council, November 2015), 5.

15 Ilan Pappé, *The Making of the Arab-Israeli Conflict, 1947-1951* (London: I.B. Tauris, 1992), 88.

16 D.K. Fieldhouse, *Western Imperialism in the Middle East, 1914-1958* (Oxford: Oxford University Press, 2006), 216.

## LAND SURVEYING

A further way in which the United Kingdom bears historical responsibility for the situation of Bedouins in Area C today is related to the issue of land ownership and the potential for displacement by the Israeli authorities. As mentioned above, because the Bedouins who fled from the Naqab-Negev to the West Bank during the 1948 War were displaced, they do not enjoy formal, documented land ownership and are subsequently exposed to displacement by the Israeli authorities. However, even for those Bedouins and other Palestinians who lived in the West Bank prior to the mass displacement of the 1948 War, the British Mandate's legacy has contributed to their displacement due to a similar absence of an official, recorded land ownership. The reason for this comes down to British efforts during the Mandate period to carry out cadastral surveying, which records who owns which pieces of land. By the end of the Mandate in 1948, the British authorities had only covered 20% of the total land area of Palestine, concentrated in the north of the country, with other areas—including what is now the West Bank—not being surveyed. It has been claimed that Britain's failure to complete this cadastral surveying before its withdrawal from Palestine in 1948 continues to constitute the crux of land ownership disputes between Israel, Israeli settlers and Palestinians. This is especially the case in the West Bank, where the lack of surveying to establish land ownership may also have resulted in agricultural underdevelopment.<sup>17</sup> Moreover, while attempts were made to continue cadastral surveying and land registration by the Jordanian authorities while the West Bank was occupied by Jordan from 1948 until 1967, by the time of the 1967 Israeli occupation, fewer than half of the villages and towns in the area had been surveyed. As such, those in unsurveyed areas did not possess formal recognition of their ownership of the land, unless

they were able to find some kind of documentation dating back to the Ottoman period. This lack of official documentation would later prove to be an issue when faced with Israeli attempts to expropriate land, for example.<sup>18</sup>

The United Kingdom is thus partially historically responsible for the land disputes and other issues arising in the West Bank because it failed to conduct formal registration of land ownership there during the Mandate. Indeed, while Jordan did not manage to finish the job either, this was because of the military occupation of the West Bank by Israel in 1967. In Britain's case, however, this failure was because it chose to end its Mandate and withdraw from Palestine before it had completed the task. This is important for the situation of Bedouins in Area C (and other inhabitants of the West Bank), because even those communities who had been present in the West Bank before the 1948 War—who did not arrive as refugees—were perhaps unlikely to have had formal documentation registering their ownership of the land upon which they lived by the time the area was militarily occupied by Israel in 1967. This increases the vulnerability of these communities to the denial of their rights and land by Israel.<sup>19</sup> Moreover, this would also facilitate the process of expropriation of land as 'state land' by the Israeli state. This has been used by the Israeli authorities for purposes such as the building of settlements in the West Bank. By declaring land to be 'state land,' Israel has been able to expropriate 16% of the total land area of the West Bank (over 900,000 dunams) to build settlements there.<sup>20</sup> This building of Israeli settlements also particularly affects the Bedouin in Area C because much of their land and resources for animal grazing have been handed to Jewish settlers in the area, who often attack them.<sup>21</sup>

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17 Dov Gavish and Ruth Kark, 'The Cadastral Mapping of Palestine, 1858–1928,' *The Geographical Journal*, vol. 159, no. 1 (March 1993): 70, 79.

18 Michael R. Fischbach, 'The Implications of Jordanian Land Policy for the West Bank,' *Middle East Journal*, vol. 48, no. 3 (Summer 1994): 501, 507.

19 Amara and Nasasra, *Bedouin Rights*, 10.

20 B'Tselem, *By Hook and By Crook: Israeli Settlement Policy in the West Bank* (B'Tselem, July 2010), 5.

21 Mihlar, *Israel's Denial*, 10.

## THE DEFENCE (EMERGENCY) REGULATIONS OF 1945

A final way in which the legacy of the British Mandate for Palestine continues to affect the Bedouins in Area C—along with other communities in the West Bank—is related to the fact that the West Bank remains militarily occupied by Israel. This is, of course, a matter of Israeli responsibility. However, some of the laws and regulations that are in force under this military occupation have their roots in the British Mandate-era Defence (Emergency) Regulations, enacted in 1945. These regulations permitted the Mandatory authorities to undertake a variety of unsavoury activities, such as censorship of newspapers, the demolition of houses, the placing of individuals in indefinite administrative detention, the imposition of curfew, and the trying of civilians at military tribunals with no right of appeal.<sup>22</sup>

The end of the British Mandate for Palestine in May 1948 did not see the end of the Defence (Emergency) Regulations, though. Importantly, this was not Britain's intent, as demonstrated by the fact that the British repealed the Regulations, effective from midnight on 13 May 1948, as part of the Palestine (Revocations) Order in Council enacted by King George VI on 12 May. Moreover, in a move demonstrative of the disorderly manner of the British departure from Palestine, the Jordanians were apparently not made aware of this revocation and thus also introduced further legislation to nullify the British Regulations, or at least any aspect of them that was in contradiction to the Jordanian Defence Law of 1935 and regulations that were introduced by them after having taken control of the West Bank during the 1948 War. The Defence (Emergency) Regulations should therefore have been considered doubly revoked.

How, then, did these regulations come to be in force in the occupied West Bank until this day? The answer lies in the aftermath of the 1967 War, when Israel occupied the West Bank and Gaza Strip (which were previously held by Jordan and

Egypt respectively). Upon doing this, the Israelis declared that the pre-existing legal framework in the territories would remain in force during the occupation. Crucially, in their view, this included the British Mandate-era Defence (Emergency) Regulations. Israel argued that these had not been revoked in 1948, as the British authorities had failed to publish an announcement of this revocation in the official *Palestine Gazette*. This is despite the fact that publication of the *Palestine Gazette* ceased altogether in April 1948 as a result of the civil war, and that, in any case, unlike legislation issued by the British High Commissioner of Palestine, laws introduced by the King were not required to be announced in the *Palestine Gazette* to be considered in effect.<sup>23</sup> If there is any mileage in Israel's argument that there was a defect in Britain's repeal of the regulations, the responsibility for this unquestionably lies at Britain's door. Given that the Israeli occupation of the West Bank continues until today, these regulations remain in force as far as Israel is concerned. Indeed, Israel has made extensive use of them as both deterrent and punishment in the territories that it occupies, providing cover for the implementation of curfews, the administrative detention of thousands of people, and the carrying out of house demolitions and deportations of residents.<sup>24</sup> Thus, given the continued Israeli military occupation of the area, Bedouin communities in Area C find themselves living under a system in which British Mandate-era regulations constitute part of the legal provisions that Israeli authorities would be able to use against them, whenever they choose to do so.

It is true that the continued incorporation of the Defence (Emergency) Regulations is first-and-foremost a result of Israeli legal argumentation and, thus, a matter of primarily Israeli responsibility rather than direct British responsibility. Nevertheless, the very existence of these laws is due to their creation by the British authorities in Mandatory Palestine; as such, Britain could be seen to shoulder some historical

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22 B'Tselem, 'Defense (Emergency) Regulations,' [https://www.btselem.org/legal\\_documents/emergency\\_regulations](https://www.btselem.org/legal_documents/emergency_regulations) (accessed April 30, 2021).

23 Martha Rootstrum Moffett, *Perpetual Emergency: A Legal Analysis of Israel's Use of the British Defense (Emergency) Regulations, 1945, in the Occupied Territories* (Al Haq, 1989), 6–13.

24 B'Tselem, 'Defense (Emergency) Regulations.'

responsibility for this state of affairs. Moreover, the British government has previously shown an unwillingness to acknowledge this responsibility. In 1987, Tim Renton—a Minister of State at the Foreign and Commonwealth Office—confirmed in a letter regarding the 'validity of the British Emergency Powers (Defence) Regulations 1945' that the regulations 'are, as a matter of English law, no longer in force.' However, he then continued,

'The status of the Defence Regulations under the law of any other State is a matter to be determined by the law of that State, and is therefore not one on which I would wish to express a view ... For these reasons, we have not raised with any other country the matter of the applicability of the Defence Regulations under the law of that country.'<sup>25</sup>

This letter largely missed the point, as far as the continued validity and application of the Mandate-era Defence Regulations are concerned. Renton could have clarified that the regulations ceased to have legal effect on the territory of Palestine at the moment the British Mandate there expired. Instead of this, though, he leaves the question of the regulations' validity open for the Israeli courts to decide, thus facilitating their continued application by the Israeli government in the occupied West

Bank. This, therefore, is not only a clear example of a British minister not accepting responsibility for Britain's actions, but also an instance in which an opportunity for Britain to right historical wrongs was allowed to pass by unseized.

The United Kingdom thus possesses a level of at least partial historical responsibility vis-à-vis the situation of Bedouin communities in Area C of the West Bank due to the enduring legacy of the British Mandate era. Indeed, the ways in which this legacy manifests itself in the present are multiple, and include the displacement of Bedouin communities from the Naqab-Negev desert to the West Bank as a result of the descent into war that occurred at the end of the Mandate period; the failure of the British Mandate authorities to conduct cadastral surveying in the West Bank (or in most of Palestine, for that matter) in order to formally record details of land ownership; and the introduction of the Defence (Emergency) Regulations in 1945. While it is true that Britain is not the only party to bear historical responsibility for these factors, a reckoning with the share of this responsibility that does fall upon its shoulders is long overdue.

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25 Roadstrum Moffett, *Perpetual Emergency*, 83.

## **SECTION 3: BRITAIN'S RESPONSIBILITIES TOWARDS BEDOUIN COMMUNITIES AS AN INDIGENOUS PEOPLE UNDER INTERNATIONAL LAW**

Understanding the legal and not merely historical responsibility of Britain towards its former Mandate will allow us to examine its responsibilities towards Palestine-Israel as a whole. Further, our discussion of the particular impact of the Mandate on Bedouin communities will allow us to explore the remedies Britain can and should provide them with, as a recognised indigenous people under International Law.

Britain's responsibility towards the Mandate can be understood in a similar way to its responsibility towards its former colonies. Such an interpretation does not merely rely on the moral equivalence we draw between such systems of domination today, but additionally stems from the legal similarity of both frameworks. Taina Tuori has researched the legal background of the mandate system, concluding that the scope for putting its purportedly more progressive aims in use was not taken advantage of in an as yet colonial world. Ultimately, "[t]he mandates system had many features that were common to contemporary colonial policies. It was based on old ideas of the superiority of European culture and the "white man's burden", and the responsibility to raise inferior cultures to a higher level of civilization. The mandatories mainly treated the mandates as if they were their colonies."<sup>26</sup>

This parallel treatment of mandates and colonies is increasingly relevant in a world that is developing legal mechanisms of reparations for colonial records. The British government only recently apologised for some of its colonial violations in the landmark 2009 legal settlement with 5,200 Kenyan victims of colonial British torture. Alongside an official apology by the British Foreign Secretary, the settlement included significant monetary compensation amounting to £19.9 million.

Although the British government denies any modern-day liability for its predecessors' policies and refuses to accept that the case sets a legal precedent, the fact that it was admitted to the High Court has opened the floodgates to more similar cases being presented. In the words of lead negotiator Martyn Day, "[t]his is a historic judgment that will reverberate around the world. There will undoubtedly be victims of colonial torture from Malaya to Yemen, from Cyprus to Palestine, who will be reading this judgment with great care."<sup>27</sup> Indeed, communities historically impacted by British colonialism have been organising, most notably in the case of the Caribbean Reparations Commission, which emphasises the indigenous components of such claims.

In addition to its general responsibilities towards the fate of the former Mandate, Britain has a particular responsibility towards the Bedouin communities that inhabited it. This responsibility stems not only from the heightened effect of their policies on these communities as discussed above, but also from the special rights of Bedouin communities under International Law, as recognised indigenous communities.

Bedouin communities in the Naqab-Negev and Occupied Palestinian Territory have been recognised as indigenous peoples in a range of international fora, including most notably the International Working Group for Indigenous Affairs (IWGIA) and the United Nations General Assembly through its Special Rapporteur on the Rights of Indigenous Peoples. Palestinian Bedouin communities have taken part in six global conferences of indigenous peoples between 2005 and 2018. Although Israel has not accepted the designation of Bedouin communities as indigenous, Kedar et al prove this position to be untenable under contemporary understandings

26 Taina Tuori, *From League of Nations Mandates to Decolonization: A History of the Language of Rights in International Law* (Helsinki: Unigrafia Oy, 2016), 213.

27 Katie Engelhart, 'Britain's Imperial Apology,' *World Policy Journal* (Winter 2013), <http://worldpolicy.org/2013/06/06/britains-imperial-apology/> (accessed 20 June 2021).

of indigeneity under International Law.<sup>28</sup> Further, some nationalist Palestinian academic attempts to demonstrate that Bedouins could not take on this identity without separating themselves from the rest of the Palestinian people have been rebuffed by Nasasra et al., who argue that modern understandings of indigeneity are nuanced and multifaceted.<sup>29</sup>

The significance of the designation of Bedouin communities as indigenous is two-fold in terms of Britain's heightened responsibilities towards them. Firstly, the principle of indigenous sovereignty underscores their rights to reparations from sovereign states under International Law.<sup>30</sup> Secondly, their right to collective reparations as a recognised community has been recognised by the United Nations Committee on the Elimination of Racial Discrimination (CERD), in line with the van Boven principles.

These responsibilities to redress have been addressed to varying degrees by states that have violated the rights of indigenous communities. For example, they can take the form of public apologies, monetary compensation or cultural reparations. The particularities of these remedies are determined on a case-by-case basis, and we recommend that Britain start by acknowledging its historical responsibility towards the former Mandate and the Bedouin communities within it.

It must be noted that despite Britain's potential legal obligations towards the Bedouin communities of Area C (and the rest of the former residents of its Mandate), there is an equally convincing if not more powerful moral case to make amends for the historic injustice that it sustained.

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28 Alexandre Kedar, Ahmad Amara, and Oren Yiftachel, *Emptied Lands: A Legal Geography of Bedouin Rights in the Negev* (Stanford: Stanford University Press, 2018), 170–181.

29 Mansour Nasasra, *The Naqab Bedouins: A Century of Politics and Resistance* (New York: Columbia University Press, 2017), 14.

30 Federico Lenzerini, 'Reparations for Indigenous Peoples in International and Comparative Law: An Introduction,' in *Reparations for Indigenous Peoples: International and Comparative Perspectives*, ed. Federico Lenzerini (New York: Oxford University Press, 2008), 11.

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