

# ARTICLES

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## **Dignity and the Right to Water in Comparative Constitutional Law: Israel’s Supreme Court Extends the Human Right to Water**

Introduction .....	2
I. The Concept of Dignity .....	3
II. Dignity and the Law .....	4
III. Dignity and Israel’s Constitutional Development .....	6
IV. Dignity and the Right for Water .....	8
V. <i>Abu Masad v. Water Commissioner</i> .....	9
A. Facts of the Case .....	9
B. Lack of Access to Water: The Problem.....	11
C. The Legal Issues.....	13
D. The Proceedings Before the High Court of Justice .....	14
E. The Constitutional Right for Water.....	17
F. The Court Finds that Even the Right to Water Has Limits .....	19
Conclusion.....	21
Table .....	22
Figures.....	25

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## INTRODUCTION

Svitlana Kravchenko was a person of dignity who believed in the dignity of humanity. Her efforts and labors over the past few decades were driven by her belief in the dignity of her fellow man and woman. She could literally feel the Godliness of people and their need to be treated as such. When I speak of dignity, the reader has a general idea of what I mean, and indeed, what Svitlana worked towards.

Svitlana toiled in fields, touching peoples' lives, and traveled across Ukraine, among other locales, to convince politicians, policy-makers, and others to allow ordinary people—the poor, and the uninformed—to have open access to records and to learn about their environmental conditions; by supporting the Aarhus and Espoo Conventions, others too have fought and continue to fight on behalf of the downtrodden in courts. The battles to convince are hard-fought. Advocates of and for environmental rights, nay human rights, more often than not fight apathy and ignorance by policy-makers and judges who think or believe that they have better things to do than to do justice.<sup>1</sup> Other policy-makers and judges are bolder than that and are often unencumbered by the veil of the *status quo*, which allows them to struggle with vexing problems. In the process, they always look forward beyond the mountains of obstacle in order to do justice.

This Article focuses on just such a legal case, an adjudication, in the growing field of the environment and human rights: the human right to water. The case, *Abdallah Abu Masad v. Water*

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<sup>1</sup> See, e.g., *Massachusetts v. E.P.A.*, 549 U.S. 497 (2007), a case where the United States Supreme Court was asked to decide whether carbon dioxide was a pollutant that could be regulated under the Clean Air Act. *Id.* at 532 (discussing 42 U.S.C. § 7521(a)(1) (2011)). During that hearing, Associate Justice Antonin Scalia had the following colloquy with counsel for the State of Massachusetts:

JUSTICE SCALIA: Mr. Milkey, . . . I always thought an air pollutant was something different from a stratospheric pollutant, and your claim here is not that the pollution of what we normally call “air” is endangering health. That isn’t, that isn’t—your assertion is that after the pollutant leaves the air and goes up into the stratosphere it is contributing to global warming.

MR. MILKEY: Respectfully, Your Honor, it is not the stratosphere. It’s the troposphere.

JUSTICE SCALIA: Troposphere, whatever. I told you before I’m not a scientist.

. . . .

JUSTICE SCALIA: *That’s why I don’t want to have to deal with global warming, to tell you the truth.*

Transcript of Oral Argument at 22–23, *Massachusetts v. E.P.A.*, 549 U.S. 497 (2006) (No. 05-1120) (emphasis added).

*Commissioner*, is from the Israel Supreme Court, which found that under Israel's Basic Law, its equivalent of a constitution, international human rights law, and Israeli statutory law, the right to dignity encompasses the right to water. Part I discusses and defines the concept of dignity in international law. Part II addresses dignity and Israel's constitutional development.

## I

### THE CONCEPT OF DIGNITY

Dignity is akin to pornography,<sup>2</sup> you know it when you see it. It is clear to most people when they are being treated with dignity or, in the alternative, when they or a fellow human being is not. Nevertheless, the law being what it is—a tool that requires exactness in word-smithing, *i.e.*, specificity, or a specific definition—those who read “into” the text of a document, *i.e.*, textualists,<sup>3</sup> may abandon common sense while purportedly teasing out a word or a text's original meaning.<sup>4</sup> Being in the trenches and not in an ivory tower like appellate judges who are devoid of contact with those who suffer or are aggrieved, Professor Kravchenko and other rights activists did not have the luxury of philosophizing about the law or its meaning.

For those who toil in the legal vineyards of despair, practicality is the order of the day. They must be lawyers and not legal philosophers. Indeed, some judges, whose efforts mirror those of lawyers who fight for justice, also grapple with doing justice and furthering the rights of the downtrodden. However, from my perspective, textualists use this interpretive tool to trample upon people's rights in the name of the

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<sup>2</sup> In a concurring opinion in *Jacobellis v. Ohio*, 378 U.S. 184 (1964), regarding a claim by the State of Ohio about a purported pornographic film, “The Lovers,” Justice Potter Stewart asserted that, with regards to hardcore pornography, “*I know it when I see it*, and the motion picture involved in this case is not that.” *Id.* at 197 (emphasis added).

<sup>3</sup> Textualism is “the interpretive approach that looks to the Constitution's original public meaning . . . . As the name of the movement suggests, textualism's search for original public meaning centers on the Constitution's text.” William Michael Treanor, *Against Textualism*, 103 NW. U.L. REV. 983, 983 (2009). In the United States, one of the foremost adherents of textualism is Antonin Scalia, Associate Justice of the United States Supreme Court. *See, e.g.*, ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* (2012). Other adherents include Scalia's colleague, Justice Clarence Thomas, and Professor Steven Calabresi.

<sup>4</sup> *See, e.g.*, Johnson Language, *Textualism and Prescriptivism: A Conservative Relationship*, THE ECONOMIST (Sept. 10, 2012, 3:19 PM), <http://www.economist.com/blogs/Johnson/2012/09/textualism-and-prescriptivism> (describing/defining textualism as “a philosophy of legal interpretation concerned with remaining faithful to a text”).

“law”: their law. I discuss the issue of judges grappling to do justice below. However, I next discuss the concept of dignity in the law.

## II

### DIGNITY AND THE LAW

One of the first incorporations or uses of the term “dignity” in a legal document was in the 1948 United Nations Declaration of Human Rights (“UNDHR”),<sup>5</sup> which was advocated for, and partially drafted by, former United States First Lady Eleanor Roosevelt. The Declaration’s preamble sets the document’s tone with regards to human dignity, as follows:

#### PREAMBLE

*Whereas* recognition of *the inherent dignity* and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world . . . .  
*Whereas* the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, *in the dignity* and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom . . . .<sup>6</sup>

Similarly, Article 1 of the Declaration provides that “[a]ll human beings are born free and *equal in dignity* and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”<sup>7</sup>

In the field of international law, Myers McDougal, Harold Lasswell, and Lung-Chu Chen observed that employing dignity as the foundation for laws was an approach of “natural law.”<sup>8</sup> The natural law<sup>9</sup> approach, they argued, depends upon “exercises of faith.”<sup>10</sup> They

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<sup>5</sup> Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

<sup>6</sup> *Id.* at Preamble (emphasis added).

<sup>7</sup> *Id.* at art. I (emphasis added).

<sup>8</sup> MYRES S. MCDUGAL ET AL., HUMAN RIGHTS AND WORLD PUBLIC ORDER: THE BASIC POLICIES OF AN INTERNATIONAL LAW OF HUMAN DIGNITY 70 (1977).

<sup>9</sup> ‘Natural law theory’ is a label that has been applied to theories of ethics, theories of politics, theories of civil law, and theories of religious morality. . . .

When we focus on the recipient of the natural law, that is, us human beings, the thesis of Aquinas’s natural law theory that comes to the fore is that the natural law constitutes the basic principles of practical rationality for human beings, and has this status by nature . . . . The notion that the natural law constitutes the basic principles of practical rationality implies, for Aquinas, both that the precepts of the natural law are universally binding by nature . . . and that the precepts of the natural

also observed that “[t]he abiding difficulty with the natural law approach is that its assumptions, intellectual procedures, and modalities of justification can be employed equally by the proponents of human dignity and the proponents of human indignity in support of diametrically opposed empirical specifications of rights.”<sup>11</sup> Although these authors were or are American, it should be clear that under U.S. law there is no right “of” or “for” dignity. I posit that the Founding Fathers would have been appalled at such a circumstance.<sup>12</sup>

A different view of dignity was expressed in a recent article in the U.K. newspaper *The Guardian*. The author asserted that “[e]veryone wants their dignity respected and protected. We understand this concept intuitively. But what does dignity mean for law and human rights?”<sup>13</sup>

The article went on to state that dignity is an emerging jurisprudential notion in the United Kingdom, and it is also an adjunct to that country’s Human Rights Act of 1998 (“HRA”).<sup>14</sup> This may well be correct; however, just as important is the fact that prior to the 1998 adoption of the Human Rights Act, it was not possible in the courts of the United Kingdom to expressly challenge the existence and use of broadly framed measures by reference to the substantive European Convention on Human Rights<sup>15</sup> (“ECHR”).<sup>16</sup> The United Kingdom ratified the ECHR on November 1, 1993, when the Treaty

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law are universally knowable by nature. The precepts of the natural law are binding by nature: no beings could share our human nature yet fail to be bound by the precepts of the natural law. This is so because these precepts direct us toward the good as such and various particular goods.

Mark Murphy, *The Natural Law Tradition in Ethics*, in STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta ed., 2011), <http://plato.stanford.edu/entries/natural-law-ethics>. See also Robert P. George, *Natural Law*, 31 HARV. J.L. & PUB. POL’Y 171 (2008).

<sup>10</sup> MCDUGAL ET AL., *supra* note 8, at 69.

<sup>11</sup> *Id.* at 70.

<sup>12</sup> See, e.g., U.S. CONST., art. IV, § 2, cl. 1 (“The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.”).

<sup>13</sup> Catherine Dupré, *What Does Dignity Mean in a Legal Context?*, THE GUARDIAN, (Mar. 24, 2011), <http://www.guardian.co.uk/commentisfree/libertycentral/2011/mar/24/dignity-uk-europe-human-rights>.

<sup>14</sup> Human Rights Act 1998, 1998, c. 42 (U.K.).

<sup>15</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221 (entered into force Sept. 3, 1953).

<sup>16</sup> The treaty is formally known as the Convention for the Protection of Human Rights and Fundamental Freedoms.

on European Union (also known as the Maastricht Treaty)<sup>17</sup> came into force. “As such, it [now] sits in the wider human rights landscape of the European convention on human rights (ECHR) brought into UK law through the Human Rights Act (HRA) 1998.”<sup>18</sup>

### III

#### DIGNITY AND ISRAEL’S CONSTITUTIONAL DEVELOPMENT

The example of the United Kingdom is employed here because Israel adopted a good deal of British mandatory law at its inception as a state in 1948. Much of that law is still utilized by the State, including a number of “emergency laws” that allow the military to administratively detain a person, without charge, for a term of years.<sup>19</sup>

Like the United Kingdom, Israel came somewhat late to human rights. Similarly, the ECHR also had a profound effect on Israeli law.<sup>20</sup> Israel’s *constitutional revolution* began with the passage, by the Knesset (Israel’s Parliament), of the Basic Law<sup>21</sup> in 1992.<sup>22</sup> The Basic

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<sup>17</sup> Consolidated Version of the Treaty Establishing the European Community, art. 4, Dec. 29, 2006, O.J. C 321 E/37; *The History of the European Union*, EUROPA, [http://europa.eu/about-eu/eu-history/index\\_en.htm](http://europa.eu/about-eu/eu-history/index_en.htm) (last visited Sept. 4, 2013).

<sup>18</sup> Dupré, *supra* note 13. The Maastricht Treaty or European Union entered into force in 1993:

Courts in England and Wales have so far protected a number of facets of human dignity, such as disabled patients’ right to be lifted in an appropriate manner by their caregivers; homosexuals’ right to equal treatment in tenancy agreements; or asylum seekers’ right to receive asylum support and to be protected against destitution while their claim is being considered. This case law paints a sorry picture of how some of the most vulnerable members of society are treated when their need for support is at its greatest. Reliance on dignity has highlighted their vulnerability and imposed a positive duty to treat everyone in a human way that does not degrade or ignore their identity.

*Id.*

<sup>19</sup> See generally Shiri Krebs, *Lifting the Veil of Secrecy: Judicial Review of Administrative Detentions in the Israeli Supreme Court*, 45 VAND. J. TRANSNAT’L L. 639, 660 (2012).

<sup>20</sup> See, e.g., Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances, May 3, 2002 (signed at Vilnius, Lithuania) (“Convinced that everyone’s right to life is a basic value in a democratic society and that the abolition of the death penalty is essential for the protection of this right and for the full *recognition of the inherent dignity of all human beings.*”) (emphasis added), available at <http://www.conventions.coe.int/Treaty/en/Treaties/Html/187.htm>.

<sup>21</sup> State of Israel, *Basic Law: Human Dignity and Liberty*, (Mar. 17, 1992), published in Sefer Ha-Chukkim No. 1391 of the 20th Adar Bet, 5752 (Mar. 25, 1992); the Bill and Explanatory Note were published in Hatza’ot Chok, No. 2086 of 5752, at 60, available at

Law contains a number of provisions that are very similar to the ECHR, particularly with regards to the right to dignity. It did not take long after the Law's enactment for the judiciary to be called upon to interpret it. Israel's Supreme Court initiated the country's constitutional revolution when it handed down its judgment in the case of *United Mizrahi Bank Ltd. v. Migdal Cooperative Village*,<sup>23</sup> which is Israel's *Marbury v. Madison*.<sup>24</sup>

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[http://www.knesset.gov.il/laws/special/eng/basic3\\_eng.htm](http://www.knesset.gov.il/laws/special/eng/basic3_eng.htm). The law was amended in 1994 as follows:

Basic principles

1. Fundamental human rights in Israel are founded upon recognition of the value of the human being, the sanctity of human life, and the principle that all persons are free; these rights shall be upheld in the spirit of the principles set forth in the Declaration of the Establishment of the State of Israel.

Amended Mar. 9, 1994. Amended law published in Sefer Ha-Chukkim No. 1454 of the 27th Adar 5754 (Mar. 10, 1994), at 90; the Bill and an Explanatory Note were published in Hatza'ot Chok No. 2250 of 5754, at 289.

<sup>22</sup> For the history of the Basic Law, see generally RAN HIRSCHL, *TOWARDS JURISTOCRACY: THE ORIGINS AND CONSEQUENCES OF THE NEW CONSTITUTIONALISM* (2004). See also Leslie Friedman Goldstein, *From Democracy to Juristocracy*, 38 *LAW & SOC'Y REV.* 611, 624 (2004), which provides in pertinent part:

In Israel, which entrenched certain rights by adopting a Basic Law in 1992, the hegemonic elite was the group of Ashkenazi Jews, of European and/or North American descent, who were typically affluent, secular Zionists and dominated political office and cultural institutions. They wanted Israel to be democratic and Jewish (in the ethnic sense) and favored Enlightenment values. The challenging groups were (1) the Jews of North African and Middle Eastern (Mizrahi) and Ethiopian descent, who were often religiously Orthodox; (2) the ultra-Orthodox, who have very large families and are often poor; (3) the Arab Israelis (20% of the population by 2002); and (4) the largely poor and nonreligious million or so recent immigrants from the former Soviet Union / Russia. These "disadvantaged minorities" grew in both population and political clout during the 1980s and 1990s. Suddenly, in 1992, after years of opposition to an entrenched bill of rights, the politically dominant but soon to be nondominant Ashkenazi changed their tune. The Basic Law does not say explicitly that Israel's Supreme Court has the power to throw out legislation, but that court had exercised such activist administrative review and aggressive legislative "interpretation" (altering apparent meanings of laws in order to have them conform to certain principles such as equality before the law) long before the advent of a written bill of rights . . . that its use of the new list of rights and liberties in the Basic Law to rescind legislation was quite predictable. Incidentally, as with the European examples, the Israeli Basic Law strikes an American as remarkably easy to amend (it takes only a majority of the total Knesset), but the practice seems to be that entrenched provisions do not later get altered.

<sup>23</sup> CA 6821/93 *United Mizrahi Bank Ltd. v. Migdal Coop. Vill.* 49(4) PD 221 [1995] (Isr.).

<sup>24</sup> *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

As part of the constitutional transformation fostered by *United Mizrahi*, the Supreme Court, sitting as The High Court of Justice, or a constitutional court, established a regime for judicial review, constructional corrective justice, and an expansion of human rights and freedoms. However, as Daphna Barak-Erez, an Israeli constitutional law expert who was recently appointed to the Supreme Court, has noted:

Criticism of the Israeli Supreme Court intensified due to changes that occurred during the 1990s, following the enactment of two new Basic Laws regarding the protection of human rights—Basic Law: Freedom of Occupation, and Basic Law: Human Dignity and Liberty. These Basic Laws specified a list of human rights which were granted constitutional protection against infringing legislation, and therefore threatened the omnipotence of the legislature.<sup>25</sup>

Table I below lists the provisions of the Basic Law. Note that sections two and four address the concept of dignity. Section two, entitled “Preservation of Life, Body and *Dignity*,” states that “There shall be no violation of the life, body or *dignity* of any person as such . . .” while section four, “Protection of Life, Body and *Dignity*,” provides that “[a]ll persons are entitled to protection of their life, body and *dignity*.”

#### IV

#### DIGNITY AND THE RIGHT FOR WATER

In 1992, Professor Stephen McCaffrey authored a seminal article proposing a human right to water.<sup>26</sup> Since then, his efforts fostered a stream of scholarship—by such well-recognized scholars as Edith Brown Weiss and Laurence Boisson de Chazournes, among many others<sup>27</sup>—affirming his proposed entitlement. Indeed, McCaffrey’s and other scholars’ urging for a human right to water, via their scholarship, most likely caused the United Nations’ Committee on Economic, Social and Cultural Rights to author Social and Cultural

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<sup>25</sup> Daphna Barak-Erez, *Law in Society: A Unifying Power or a Source of Conflict?*, in *LAW AND SOCIOLOGY: CURRENT LEGAL ISSUES VOL. 8* 165 (Michael Freeman ed., 2006).

<sup>26</sup> Stephen C. McCaffrey, *A Human Right to Water: Domestic and International Implications*, 5 *GEO. INT’L ENVTL. L. REV.* 1, 5–8 (1992).

<sup>27</sup> EDITH BROWN WEISS ET AL., *FRESH WATER AND INTERNATIONAL ECONOMIC LAW* (2005). See also Itzhak Kornfeld, *A Global Water Apartheid: From Revelation to Resolution*, 43 *VAND. J. TRANSNAT’L L.* 701 (2010); Joseph W. Dellapenna, *A Human Right to Water: An Ethical Position or a Realizable Goal?*, in *RECONCILING HUMAN EXISTENCE WITH ECOLOGICAL INTEGRITY* 183 (Laura Westra et al. eds., 2008); Peter Gleick, *The Human Right to Water*, 1 *WATER POL’Y* 487 (1999).



Rights General Comment No. 15, The Right to Water (pursuant to articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights).<sup>28</sup>

Today, the existence of a human right to water is seldom challenged.<sup>29</sup> Nevertheless, few states have adopted either General Comment No. 15 or other legal regimes that seek to afford the human right to water. However, in the recent case of *Abu Masad v. Water Commissioner*,<sup>30</sup> the Israeli Supreme Court found that under both the laws of the State of Israel and human rights law, there exists a basic human right for water. In *Abu Masad*, Justice Ayala Procaccia, writing for a unanimous court, initially noted that the Respondents Water Commissioner and the Israel Lands Administration “do not deny the right of the Appellants to water as part of their basic rights to live in dignity.”<sup>31</sup> Following an extensive survey of the literature, decisions in other countries, and human rights law, the Justice held that in this case, brought by Bedouin residents who reside in unrecognized villages in southern Israel’s Negev Desert, the right for water is a basic right deserving of protections under Israel’s Basic Law’s “right to live in dignity”<sup>32</sup> as well as its water law and international human rights law.

## V

### *ABU MASAD V. WATER COMMISSIONER*

#### *A. Facts of the Case*

This case came to the Court as an appeal by six Bedouin plaintiffs from a decision of the district court in Haifa sitting as the Water Tribunal. Justice Procaccia framed the issue before the High Court as raising:

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<sup>28</sup> U.N. Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003).

<sup>29</sup> *But cf.* Kornfeld, *supra* note 26.

<sup>30</sup> CA 9535/06 Abdallah Abu Masad v. Water Comm’r [2011] (Isr.). The opinion was authored in Hebrew. However, there is English translation, *available at* <http://adalah.org/upfiles/2012/Supreme%20Court%20Ruling,%20Civil%20Appeal%20No.%209535.06%20-%20Abu%20Masad,%20Right%20to%20Water%20-%20English.pdf> (last visited Sept. 4, 2013).

<sup>31</sup> *Id.* ¶ 12.

<sup>32</sup> *Id.* ¶ 19.

[T]he question of the extent to which Bedouins living in various illegal places of settlement in the Negev have a legal right to demand that the State install private connection points to water in their homes in their illegal place of residence, while in current circumstances they are provided water through two alternative supply systems: first, through water centers adjacent to permanent settlements, where water can be purchased and independently transported to their place of residence; second, by applying to the allocations committee for drinking water, which is authorized to recommend the connection of unrecognized village residents to private water connections through specific requests, and following special humanitarian considerations.<sup>33</sup>

The court below rejected Petitioners' request to overturn the decision of the Water Commissioner to not provide them and their families<sup>34</sup> "with private connections to water in their illegal places of settlement."<sup>35</sup> Indeed, Justice Procaccia explains in the High Court's decision that the issue of these illegal places of settlement is a complex one. She notes that the settlements are both unorganized and unrecognized and were "built without plans, and without any of the legally required adaptations to the regulations of [Israel's] Planning and Construction Law."<sup>36</sup>

Moreover, in a line of cases regarding the illegal settlements, the Court observed that there exist:

[I]ssues of trespassing on government or privately-owned land. This type of settlement raises many substantial difficulties in various spheres, including the provision of vital services to the residents of those villages. The government's general policy, and its

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<sup>33</sup> *Id.* ¶ 1. I quote the entirety of the Court's framing of the issue for two reasons. First, to provide the reader with Justice Procaccia's exact wording, as I believe that it conveys how she sees the question before the Court, and second, because I am concerned that in paraphrasing, I will unintentionally leave out an important element.

<sup>34</sup> *Id.* ¶ 3 ("Each of the Appellants submitted a request on his behalf and on behalf of several additional families, so that, in fact, each request was submitted by several dozen people, all Bedouin citizens . . .").

<sup>35</sup> *Id.* ¶ 2. The issue of the illegality of the Bedouin settlements is a thorny one in Israel. Since the Bedouins are aboriginal residents of the Negev and Sinai Deserts, who have inhabited these areas as pastoralists for at least a millennium, they consider the land that they live on their own. However, the Government of Israel, which adopted the British colonial geography, asserts that it—the government—owns all of the land in Israel, unless a person has a bona fide deed. However, that is not the end of the issue. If a non-Jew, i.e., a Bedouin who is Muslim, claims land even via a deed, the courts may not honor the document. Moreover, like most aboriginal people, e.g., American Indians or Canadian First Peoples, Bedouins generally do not have deeds evidencing ownership of the land that they inhabit. These are peoples who have lived in these areas for hundreds of years prior to the arrival of Europeans.

<sup>36</sup> CA 9535/06 Abdallah Abu Masad v. Water Comm'r, ¶ 5 [2011] (Isr.).

implications for the Bedouin community in the Negev, is a widespread and complicated question with many ramifications.<sup>37</sup>

But that policy and the Bedouins have been described as follows:

The Bedouins are an indigenous people, most of whom internally displaced from lands they had owned for centuries. From the 1950s on the Bedouins were dispossessed from their land by means of laws passed by the Israeli Parliament (the Knesset), the Israeli legal system and varied administrative measures. Today the 190,000 Bedouins living in the Negev are the most disadvantaged citizens in Israel and are struggling for their rights of land ownership, equality, recognition, and the pursuit of their distinctive way of life. About 60% of the Bedouin citizens live in seven failing government-planned towns. The remainder 40% live in dozens of villages that are not recognized by the government as well as in several new recognized townships. These Israeli citizens do not receive basic services, such as running water, electricity, roads, proper education, health and welfare services. In addition, they live under the continuous threat of home demolition, crop destruction and further displacement.<sup>38</sup>

### ***B. Lack of Access to Water: The Problem***

The Bedouins who live in these unrecognized villages reside in one of three structures: large tents, tents attached to tin structures, or structures built with cinder blocks and other materials, such as tin or wood.<sup>39</sup> Most of these structures have no connection to electricity or water. With regards to the lack of access to household water connections, the Bedouins in these makeshift and unrecognized communities are required to obtain water in one of two ways. First, they can purchase water from a “water center,” which may be located near a “legal” village, and transport it back to their homes, utilizing whatever means are available to them.<sup>40</sup> However, these centers often

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<sup>37</sup> *Id.*

<sup>38</sup> Negev Coexistence Forum for Civil Equality, *The Bedouin-Arabs in the Negev-Naqab Desert in Israel: Response to the Report of the State of Israel on Implementing the Covenant on Civil and Political Rights (CCPR)* 1 (Aug. 2009), available at <http://ccprcentre.org/doc/HRC/Israel/NegevCoexistenceForumResponse%20to%20State%20Report.pdf> (The “shadow report relates to the periodic report submitted by the State of Israel [CCPR/C/ISR/3] on July 25th, 2008 regarding implementation of the Charter for Civil and Political Rights.”) (last visited Oct. 4, 2013).

<sup>39</sup> Personal observations by the author over the past five years.

<sup>40</sup> Sharmila L. Murthy et al., *The Human Right to Water in Israel: A Case Study of the Unrecognized Bedouin Villages in the Negev* 2 (Jan. 10, 2012), available at [http://www.hks.harvard.edu/var/ezp\\_site/storage/fckeditor/file/pdfs/centers-programs](http://www.hks.harvard.edu/var/ezp_site/storage/fckeditor/file/pdfs/centers-programs)

times are situated many miles from home.<sup>41</sup> Moreover, they are generally nothing more than a large diameter pipe separated into smaller diameter pipes.<sup>42</sup> The pipes are generally individually connected to a water meter. Each meter supplies potable water that is either used by a family or a clan, i.e., it may supply up to a few hundred people.<sup>43</sup>

On the other hand, these Bedouins can seek authorization from the Israel Water Authority and the Israel Land Administration, the administrative bodies that have jurisdiction for granting “the connection of individuals in illegal settlements to private water connection points.”<sup>44</sup> The procedure for the approval of what is termed “a private water connection” necessitates the submission of a request to the “Committee for Allocating Drinking Water” (“Water Committee”).<sup>45</sup> The Water Committee is a special body that acts in response to humanitarian concerns with regards to the Bedouin sector in Israel.<sup>46</sup>

Following the submission of such a request, the Water Committee considers the need for and prospect of providing extraordinary authorization for a private water connection to the Bedouins who reside in what are termed “illegal settlements.” Subsequent to such an analysis, the Water Committee presents its recommendation to the Authority for Water and Sewage, the body that, under Israel’s Water Law,<sup>47</sup> authorizes these types of connections.<sup>48</sup> Private water connections are not household connections. Rather, they are offshoots from a main pipeline that are extended to the nearest road adjacent to a residence or settlement.<sup>49</sup> *See* Figure 1. The Water Authority reasons that it only “runs” the pipe to the nearest road because often times the Bedouin settlements can be kilometers away from it, and the expense

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/centers/carr/programs/RightToWater/HumanRight2WaterIsrael\_SMurthy\_MWilliams\_EBaskin.pdf (last visited Oct. 4, 2013).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> CA 9535/06 Abdallah Abu Masad v. Water Comm’r, ¶ 4 [2011] (Isr.).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* Water Law, 1959, art. 1 (Isr.). Article 1 of the Law provides that “[t]he water sources in Israel are the property of the public. They are controlled by the State and are intended to fulfill the needs of the population and the development of the country.”

<sup>49</sup> Murthy et al., *supra* note 40, at 3.

would be too great.<sup>50</sup> From the road, these pipes are subdivided so that they provide access to several families. Normally, one person—generally a male, possibly the head of a hamula<sup>51</sup> or clan—is in charge of collecting water bill payments, which are then transferred to the government.<sup>52</sup>

The Water Authority pays for the pipe to the access point, e.g., from the main pipe to the nearest roadway. The Bedouins, however, are responsible for the costs of the materials and related supplies required in order to transport the water from the main pipe to individual residences.<sup>53</sup> Since the private access points are generally situated near roadways, the pipes, which may stretch a number of kilometers overland, are open to the elements and therefore to potential damage and may result in lowered water pressure. Consequently, nearly all of the Bedouin settlements possess tanks or storage vessels adjacent to their residences. *See* Figure 2.

### *C. The Legal Issues*

In the *Abu Masad* case, the appellants sought to have additional “private” water connections installed near their unrecognized villages. The Court noted that previously the association of the unrecognized villages in the Negev Desert to potable water sources was deliberated in a previous High Court of Justice case: HCJ 3586/01 *The Regional Council for Unrecognized Villages v. the Minister of National Infrastructure*.<sup>54</sup> In that case, the Court concluded that the most appropriate way for the Bedouin residents in the unrecognized villages to verify their rights to have their dwellings linked to public water was for groups of at least ten families to tender a specific request to the Water Committee, which is authorized to recommend private water connections to the Director of the Authority. The Court

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<sup>50</sup> It is unclear why the Authority does not extend the pipe to the Bedouins’ residence.

<sup>51</sup> “The hamula, a traditional kinship social structure, plays an important part in the internal affairs of the Arab.” Maha T. El-Taji, *Arab Local Authorities in Israel: Hamulas, Nationalism and Dilemmas of Social Change* 1 (2008) (unpublished Ph.D. dissertation, University of Washington) (on file with the University of Washington Suzzalo and Allen Library), available at <http://lib.haifa.ac.il/electronictexts/1435124.pdf> (last visited Oct. 4, 2013).

<sup>52</sup> Murthy et al., *supra* note 40, at 3.

<sup>53</sup> “In most instances, the ‘pipe’ [that extends from the road] is a 1” flexible black [polyvinyl chloride] pipe that snakes across the ground, and in some instances, is buried underground.” *Id.* *See infra* Figure 1.

<sup>54</sup> CA 9535/06 Abdallah Abu Masad, v. Water Comm’r, ¶ 6 [2011] (Isr.).

provided another remedy, should this procedure be inadequate to meet their needs. They were granted the right to appeal the decisions of the Director of the State Authority to the qualified court.”<sup>55</sup>

Thus, following the decision in *Regional Council for Unrecognized Villages*, the appellants presented their requests to the Water Authority for authorization to connect their residences to roadside water pipes.<sup>56</sup> The Court notes that “[r]epresentatives of the Water Committee discussed the appellants’ requests, and even visited their areas of settlement, in an attempt to examine their conditions and the specific need, if it exists, to connect the residents’ homes to private water points.”<sup>57</sup> Thereafter, the Committee determined that they would present the Director of the Authority with the following recommendation: reject five of the appellants’ requests for a private connection and recommend the connection of one of the appellants.<sup>58</sup> The Director of the Authority adopted the recommendations of the Water Committee.<sup>59</sup> Subsequently, the appellants submitted an appeal to the Water Tribunal to be heard by the Director of the Authority. Their appeal was based on the provisions of the Water Law.<sup>60</sup> The Water Tribunal upheld the Director’s decision and an appeal was lodged in the High Court.

#### *D. The Proceedings Before the High Court of Justice*

In the appellants’ appeal before the Supreme Court, the Water Authority did not contest its duty to provide water to the Bedouins in an amount “required for their existence”<sup>61</sup> and “as part of their basic rights to live in dignity . . . .”<sup>62</sup> Nevertheless, the Authority, which operates in accordance with the Israeli Water Code,<sup>63</sup> argued that it is only authorized to provide household water connections to legally constructed buildings, i.e., for people who have acquired the requisite

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<sup>55</sup> *Id.*

<sup>56</sup> *Id.* ¶ 7.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> CA 9535/06 Abdallah Abu Masad v. Water Comm’r, ¶ 8 [2011] (Isr.).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* ¶ 40 (“The foremost principles of the authority’s policy in this case are: there is no dispute on the obligation to enable the Bedouin community access to water resources required for their existence.”).

<sup>62</sup> *Id.* ¶ 12 (emphasis added).

<sup>63</sup> Water Code of 1966 (Isr.), available at <http://www.water.gov.il/Hebrew/about-reshut-hamaim/Pages/Legislation.aspx>.

building permits under Israeli law. Indeed, the Court noted that these “illegal settlements . . . contradict the planning laws and the government’s policy”<sup>64</sup> which seek to relocate these Bedouins to existing municipalities where the gamut of urban services, including water and sewage services, are provided.

However, Justice Procaccia also observed that “[a]pproximately half of the Bedouin community lives in permanent settlements, established over the years by the governments of Israel, as part of a general plan designed for this purpose. The other half of the Bedouin community [which numbers anywhere from 75,000–100,000 people] lives in illegal locations, also referred to as ‘unrecognized villages.’”<sup>65</sup> Consequently, if a Bedouin family moves to a township, that family will “receive full connection to water infrastructure, and to other vital services that the state provides to those living within [its boundaries by] the law, such as electricity[ ] and other municipal services.”<sup>66</sup>

Indeed, the Court declared that “[t]he decisions of the Director of the Authority in this case must be examined both according to the general policy of the authority in regard to the provision of water to unrecognized Bedouin settlements and in relation to individual decisions that were reached in the case of the Appellants.”<sup>67</sup> As part of that examination the Court noted that it needed to determine how the type of access and manner of delivery of water to the Bedouin residents “is affected, *inter alia*, by the need to adapt the forms of settlement to the legal requirements stated in planning and building laws and according to government policy.”<sup>68</sup> Furthermore, Justice Procaccia observed that so long as these illegal settlements continue to flourish, and as an intermediate step until such time as a comprehensive solution is found for Bedouin settlement, the Authority functions on two separate paths, so as “to ensure that the Bedouins have access to water sources.”<sup>69</sup>

These two tracks include: (1) establishing water centers, from which the Bedouins who reside in unrecognized settlements can move water to their settlements or homes; and (2) granting individual

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<sup>64</sup> CA 9535/06 Abdallah Abu Masad v. Water Comm’r, ¶ 12 [2011] (Isr.).

<sup>65</sup> *Id.* ¶ 5.

<sup>66</sup> *Id.* ¶ 12.

<sup>67</sup> *Id.* ¶ 40.

<sup>68</sup> *Id.*

<sup>69</sup> CA 9535/06 Abdallah Abu Masad, v. Water Comm’r, ¶ 40 [2011] (Isr.).

permits for “private water connections in specific cases, according to the recommendation of the water committee and based on humanitarian considerations.”<sup>70</sup> As a result of these two tracks, Justice Procaccia asserted that the Court was required to contend with an initial issue: whether the Bedouin settlements’ illegality, and in turn the government of Israel’s (“GOI”) policy to resolve this phenomenon, by offering authorized permanent settlements, should be regarded as relevant concerns in ruling on the appellants’ individual submissions to the Water Authority for private water connections; or whether these considerations are perhaps superfluous, thereby requiring the Court to ignore them.<sup>71</sup>

Justice Procaccia answered the above question in the affirmative: “the element of illegal settlement, the need to deal with this phenomenon and the existence of available alternatives—legal settlement—are relevant considerations that can be, and must be, taken into account when examining a request for a private connection to a water source.”<sup>72</sup> The Justice’s conclusion, and therefore the Court’s ruling on this issue, was that in formulating a test for a person’s degree of accessibility to government provided water sources, *i.e.* whether a resident lives in an illegal settlement, “is a relevant consideration which may be taken into account.”<sup>73</sup>

Nevertheless, the Court found that the Basic Law, as well as Israel’s ratification of the International Covenant on Economic, Social, and Cultural Rights (“ICESCR”) requires that the GOI is obligated to provide water to the appellants’ settlements. As part of its analysis in the question of whether the Water Authority and the Lands Administration are legally obligated to provide private connections to the appellants, the Court concluded that there are four alternatives<sup>74</sup>

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.* ¶ 41.

<sup>72</sup> *Id.* ¶ 42. (“The illegal settlements of the Bedouin throughout the Negev have become a leading national problem, whose implications are widespread in all areas of life. It constitutes a phenomenon that greatly harms the laws of planning and construction and the protection of property; it is a case of ‘a group of people making a law unto themselves,’ and choosing, at their own discretion, when and how to settle, with total disregard to state laws, including basic planning regulations.”).

<sup>73</sup> *Id.* ¶ 41.

<sup>74</sup> CA 9535/06 Abdallah Abu Masad, v. Water Comm’r, ¶ 19 [2011] (Isr.). Although the Court stated that “[t]here exist three levels in the normative recognition of a person’s right to water,” it addressed three constitutional grounds and one treaty right, per the ICESCR.



“in the normative recognition of a person’s right to water.”<sup>75</sup> Since the focus of this paper is constitutional law, only the three normative constitutional grounds are addressed here. They are as follows:

[1] [T]he right to water on the level of a regular law, both by virtue of a statutory arrangement and by virtue of customary law; [2] the constitutional right to water, derived from another recognized constitutional right, by virtue of [Article 2 of] the Basic Law: Human Dignity and Liberty—in our case, the right to live in dignity; and finally, [3] at the top of the pyramid, the legislative right to water that is recognized by virtue of itself. This constitutional right for water is recognized in different countries, particularly in those that suffer from a severe shortage of water.”<sup>76</sup>

Justice Procaccia began her analysis of Israel’s constitutional scheme by noting that “Israel recognizes the right to water first and foremost as a statutory right by virtue of the Water Law.”<sup>77</sup> Nonetheless, she noted that an independent constitutional right to water was not granted prior to this case by virtue of the country’s Basic Law. But “water is vital to the very existence of a person, and to his *existence with dignity* . . . .”<sup>78</sup> Accordingly, in her view, the Court had to consider “whether the right to water was granted the normative status of a constitutional right, *deriving from the constitutional right to life with dignity*; and whether, by extension, the State is obligated to provide any person living in Israel with water to the extent needed for minimal existence with dignity.”<sup>79</sup>

### ***E. The Constitutional Right for Water***

The basic right to human dignity is the foundation of the right to a dignified existence, “given recognition as a constitutional right in constitutional law in Israel.” The Court cited Section 4 of the Basic Law: Human Dignity and Liberty and quoted its text as follows: “[a]ll persons are entitled to protection of their life, body and dignity,” and section 2 of the Basic Law provides that: “There shall be no violation of the life, body or dignity of any person as such.”<sup>80</sup> Indeed, Justice

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<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* ¶ 20.

<sup>78</sup> *Id.* (emphasis added).

<sup>79</sup> CA 9535/06 Abdallah Abu Masad, v. Water Comm’r, ¶ 20 [2011] (Isr.) (emphasis added).

<sup>80</sup> *Id.*

Procaccia observed that *the right to dignity lies therefore, in the basic law, both in the positive and negatives aspects thereof . . .*”<sup>81</sup>

The Court went on to observe the following:

[T]he idea that *the dignity of a person* [is undeniably] a constitutional right [that] also includes the right of a minimum of human existence, such as a roof over one’s head, basic food, and basic medical care, and that the state is obligated to ensure that a person’s level of existence does not go below a minimum required for living with dignity has put down deep roots in the Israeli legal system.<sup>82</sup>

Moreover, Justice Procaccia observed that a line of the Court’s cases has held that human dignity means living “without being subdued by distress and encountering unbearable depravity. This is an approach, by which the right to dignity is the right that a person be ensured the minimum of material means to exist within the society in which he lives.”<sup>83</sup> Indeed, the Court noted that human dignity is a multifaceted notion that assimilates numerous and diverse values, which include physical and mental-spiritual features.<sup>84</sup>

The injury to human dignity may well be characterized by both psychological humiliation and physical deprivation and might be articulated in the abjuration of basic physical-existential requirements without which a human being might not exist with dignity. Moreover, the Court cited the following examples: “[t]ake from a person the roof over his head, his food, his water, and his basic medical treatment and you have taken his ability to exist with dignity, and to realize his existence as a human being.”<sup>85</sup> Consequently, the essential significance of the human right to a minimal subsistence is that the need to realize this right in severe situations may lead to a situation where the constitutional duty to guarantee a person’s most basic rights, including the right to water, develops into a State obligation. In this fashion “the nature of the *right to minimal existence with dignity*”

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<sup>81</sup> *Id.* ¶ 21. (citing Barak, J., in H CJ 366/03, Commitment for Peace and Soc. Justice Soc’y v. Minister of Fin., § 11 (Isr.) (unpublished opinion, Dec. 12, 2005); Aharon Barak, *Prologue*, in *ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN ISRAEL 7* (Yoram Rabin & Yuval Shani, eds., 2004) (in Hebrew)).

<sup>82</sup> *Id.* (emphasis added) (quoting AdminA 3829/04 Twito v. the Municipality of Jerusalem 59(4) PD 769, 779 [2004] (Isr.)).

<sup>83</sup> *Id.* (quoting H CJ 366/03 Commitment for Peace and Soc. Justice Soc’y v. Minister of Fin., § 15; Aharon Barak, *Human Rights as a Legislative Right*, 41 HAPRAKLIT 271, 280 (1994) (in Hebrew)).

<sup>84</sup> CA 9535/06 Abdallah Abu Masad, v. Water Comm’r, ¶ 22 [2011] (Isr.).

<sup>85</sup> *Id.*

is distinctive; it may impress on the State the positive duty to ensure the fulfillment of this right, as distinguished from other legislative rights, typified “by the upholding of a prohibition on the State to harm the rights of an individual to realize them himself . . . .”<sup>86</sup>

Justice Procaccia also found that “[a]ccessibility to water sources for basic human use falls within the realm of the right to minimal existence with dignity. Water is a vital need for humans, and without basic accessibility to water of a reasonable quality, humans cannot exist.”<sup>87</sup> She went on to note that from a constitutional analysis, one must therefore deem “the right to water as a right to human existence with dignity,”<sup>88</sup> which is accorded constitutional safeguards because it is part and parcel of the constitutional right to human dignity, which is secured in the Basic Law: Human Dignity and Liberty.<sup>89</sup>

#### ***F. The Court Finds that Even the Right to Water Has Limits***

Nevertheless, the Court observed that no constitutional right is absolute.<sup>90</sup> Consequently, the right to water is a right which has relative protections and must be balanced in each case against other rights, some of which may possess contradictory values.<sup>91</sup> Indeed, Justice Procaccia observed that “[t]here might be competing interests of another person or of society at large,” which could ostensibly run counter to the right to water.<sup>92</sup> Accordingly, the requirement “for water under given concrete circumstances is a vital and existential need”<sup>93</sup> when balancing competing interests. As a result, the Court asserted, the right for water acquires more weight, and therefore, the competing values must yield.<sup>94</sup>

Alternatively, “insofar as the right to water is realized in its basic form, as part of the right for minimal existence with dignity, and the stated demand is for its realization in a more comfortable and accessible manner,”<sup>95</sup> other competing interests might become more

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<sup>86</sup> *Id.*

<sup>87</sup> *Id.* ¶ 23.

<sup>88</sup> *Id.*

<sup>89</sup> CA 9535/06 Abdallah Abu Masad, v. Water Comm’r, ¶ 23 [2011] (Isr.).

<sup>90</sup> *Id.* ¶ 24.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> CA 9535/06 Abdallah Abu Masad, v. Water Comm’r, ¶ 24 [2011] (Isr.).

<sup>95</sup> *Id.*

important and override that right. Indeed, the foregoing principles also speak to what the Court termed the “reasonableness and proportionality of decisions”<sup>96</sup> carried out by a competent governmental department with respect to making potable water accessible either to individuals or settlements, when assessed on an administrative level. The Court’s “balancing” is counter to what it held earlier in its judgment: the human right to water is absolute.<sup>97</sup> It is illogical and ignores the very foundation of human rights law.

When the Court states that “[t]here shall be no violation of the life, body or dignity of any person as such,”<sup>98</sup> does it mean that there can truly be no violation of the life and body? For if this is what Justice Procaccia meant, that right to water is absolute. There can be no wavering from it. Similarly, the Court observed that indeed:

[T]he idea that the dignity of a person as a constitutional right also includes the right of a minimum of human existence, such as a roof over one’s head, basic food, and basic medical care, and that the state is obligated to ensure that a person’s level of existence does not go below a minimum required for living with dignity has put down deep roots in the Israeli legal system.<sup>99</sup>

The foregoing paragraph similarly supports the view that the right to water is, and must be, absolute.<sup>100</sup> Finally, in conducting its balancing act, the Court fell into what numerous human rights courts, particularly the European Court of Human Rights, have done, straying from what ought to be an absolute right to a relative one.<sup>101</sup>

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<sup>96</sup> *Id.*

<sup>97</sup> See *supra* note 83 (the right to water is “a right to human existence with dignity”).

<sup>98</sup> *Id.* ¶ 21 (quoting Basic Law: Human Dignity and Liberty § 2, 5754-1994, SH No. 1454 p. 90 (Isr.), available at [http://www.knesset.gov.il/laws/special/eng/basic3\\_eng.htm](http://www.knesset.gov.il/laws/special/eng/basic3_eng.htm)).

<sup>99</sup> CA 9535/06 Abdallah Abu Masad, v. Water Comm’r, ¶ 21 [2011] (Isr.) (quoting AdminA 3829/04 Twito v. the Municipality of Jerusalem 59(4) PD 769, 779 [2004] (Isr.)).

<sup>100</sup> See generally Krebs, *supra* note 19, at 670–71. See also Theodor Meron, *On a Hierarchy of International Human Rights*, 80 AM. J. INT’L L. 1, 15 (1986) (discussing the “balancing [of] one human right that has assumed the status of *jus cogens* against another human right that has not gained such exalted status . . .”).

<sup>101</sup> With regards to the problems created in balancing by the European Court of Human Rights, I am indebted to, and must acknowledge, a personal communication from Professor Samantha Besson, Chair of Public International Law and European Law, and Co-Director of the European Law Institute, University of Fribourg, Switzerland, on October 16, 2012. Telephone interview with Samantha Besson, Chair of Public International Law and European Law, Co-Director of the European Law Institute, University of Fribourg, Switzerland (Oct. 16, 2012).

### CONCLUSION

In *Abu Masad* the Supreme Court of Israel held that under Israel's Basic Law: Human Dignity and Liberty, water of reasonable quality is a critical requirement for people and without it humans cannot exist. The Court also held that in order to live in dignity, there must be a legal right for water.<sup>102</sup> Indeed, Justice Procaccia, writing for the Court, held that the right for water falls under the specified list of human rights which are granted constitutional protections against infringing legislation. She went on to note that from a constitutional analysis, one must therefore deem "the right to water as a right to human existence with dignity."<sup>103</sup> Nevertheless, the Court held that the right is not absolute, which strikes this author as somewhat oxymoronic. In one sense, I believe that the Court was hamstrung by the fact that it has approved the GOI's characterization of the lands that these Bedouin live on as illegal. However, in this case the Court had the opportunity to state emphatically that whatever the GOI's view of the land that someone lives on, legal or illegal, the Bedouin population must be supplied the basic necessities of life, without exception. Thus, the right for water trumps the finding by the government of the status of the land one resides upon. As it turns out, the Court remanded the case to the Water Court, which recently found that the petitioners have no right of piping water, and the case has once again been appealed to the Supreme Court.

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<sup>102</sup> CA 9535/06 Abdallah Abu Masad, v. Water Comm'r, ¶ 23 [2011] (Isr.).

<sup>103</sup> *Id.*

**TABLE**  
**ISRAEL'S BASIC LAW: HUMAN DIGNITY AND LIBERTY, 5752-1992,**  
**1391 LSI 150 (1991-1992) (ISR).**

§ 1. Purpose	1. The purpose of this Basic Law is to protect human dignity and liberty, in order to establish in a Basic Law the values of the State of Israel as a Jewish and democratic state.
§ 2. Preservation of life, body and dignity	2. There shall be no violation of the life, body or dignity of any person as such.
§ 3. Protection of property	3. There shall be no violation of the property of a person.
§ 4. Protection of life, body and dignity	4. All persons are entitled to protection of their life, body and dignity.
§ 5. Personal liberty	5. There shall be no deprivation or restriction of the liberty of a person by imprisonment, arrest, extradition or otherwise.
§ 6. Leaving and entering Israel	6. (a) All persons are free to leave Israel. (b) Every Israel national has the right of entry into Israel from abroad.
§ 7. Privacy	7. (a) All persons have the right to privacy and to intimacy. (b) There shall be no entry into the private premises of a person who has not consented thereto. (c) No search shall be conducted on the private premises of a

person, nor in the body or personal effects.

(d) There shall be no violation of the confidentiality of conversation, or of the writings or records of a person.

§ 8. Violation of rights

8. There shall be no violation of rights under this Basic Law except by a law befitting the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required.

§ 9. Reservation regarding security forces

9. There shall be no restriction of rights under this Basic Law held by persons serving in the Israel Defence Forces, the Israel Police, the Prisons Service and other security organizations of the State, nor shall such rights be subject to conditions, except by virtue of a law, or by regulation enacted by virtue of a law, and to an extent no greater than is required by the nature and character of the service.

§ 10. Validity of laws

10. This Basic Law shall not affect the validity of any law (*din*) in force prior to the commencement of the Basic Law.

§ 11. Application

11. All governmental authorities are bound to respect the rights under this Basic Law.

§ 12. Stability

12. This Basic Law cannot be varied, suspended or made subject to conditions by emergency regulations; notwithstanding,

when a state of emergency exists, by virtue of a declaration under section 9 of the Law and Administration Ordinance, 5708-1948, emergency regulations may be enacted by virtue of said section to deny or restrict rights under this Basic Law, provided the denial or restriction shall be for a proper purpose and for a period and extent no greater than is required.



**FIGURES**

FIGURE 1. Bedouin Teenager Holding a Pipe that Stretches to his Residence/Village from the Main Pipeline Adjacent to a Road.



FIGURE 2. Water Storage Tank Adjacent to Illegal Bedouin Residences.

