

A b s t r a c t

In northern and central Israel are some 70 villages that are not recognized by the state of Israel. At least half of these villages are not connected to the national drinking water networks and lack sufficient quality and quantity of water. Outbreaks of diseases associated with contaminated water supply have occurred, as well as substantial environmental distress. An outbreak of hepatitis A led to the cooperation of a public health physician, a nurse, an environmental engineer, and a human rights lawyer in successfully taking a case to the International Water Tribunal to get access to safe drinking water for these communities. This case study provides a model for cooperation between proponents and practitioners of health and human rights.

En el norte y centro de Israel hay alrededor de 70 aldeas las cuales no son reconocidas por el estado de Israel. Al menos al mitad de estas aldeas no están conectadas al sistema nacional de aguas potables y les hace falta suficiente calidad y cantidad de agua. Brotes de enfermedades asociados con la contaminación de los suministros del agua han ocurrido, así también como un considerable daño al medio ambiente. Un brote de hepatitis A produjo que, con la cooperación de un médico de la salud pública, una enfermera, un ingeniero ambiental y un abogado de los derechos humanos el caso se llevara satisfactoriamente ante el Tribunal Internacional del Agua para obtener el acceso a agua potable segura para estas comunidades. Este estudio de caso provee un modelo de cooperación entre los promotores y los practicantes de la salud y los derechos humanos.

Il existe dans la région nord et au centre d'Israël soixante-dix villages lesquels ne sont pas officiellement reconnus par l'état d'Israël. Au moins la moitié d'entre eux n'est pas approvisionnée par le réseau national d'eau potable et manque d'eau qui soit à la fois de bonne qualité et disponible en quantité suffisante. Des flambées de maladies associées à la contamination des réserves d'eau ont survenu, ainsi que de sérieux dommages causés à l'environnement. C'est une flambée d'hépatite A qui est à l'origine d'une action commune menée par un médecin de santé publique, une infirmière, un ingénieur de l'environnement et un avocat des droits de l'homme. Ensemble, ils ont avec succès porté l'affaire devant la cour Internationale de l'Eau pour que ces communautés aient accès à l'eau potable. Cette étude offre un modèle de coopération entre militants et professionnels de la santé et ceux des droits de l'homme.

A HUMAN RIGHTS APPROACH FOR ACCESS TO CLEAN DRINKING WATER: A CASE STUDY

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There are a number of communities within the State of Israel that have existed since before the country's establishment in 1948 but have not been incorporated into the State's urban planning scheme. In northern and central Israel there are roughly 70 such communities, with an estimated total population of 15,000.

The unrecognized villages are populated by mostly Bedouin Arabs who settled in permanent dwellings before 1948 on privately owned land. A 1988 survey showed a high birth rate and very low emigration, indicating that these are growing communities, in spite of the harsh living conditions. Homeowners in these communities are not allowed building permits.

These unrecognized villages were made illegal in 1965 when their land was re-zoned as non-residential.¹ Nevertheless, the government had continued to permit on an *ad hoc* basis the provision of a few basic services, including water. However, since the

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late 1970s, the government has refused requests from the unrecognized villages for approval of plans and services as a means of enforcing its resettlement policy. The resettlement policy seeks to remove Arab communities from remote mountain-top locations in the Galilee and to replace those communities with Jewish communities. This policy was developed without consultation with or participation by the citizens involved.²

In 1981 the Building and Planning Law was amended to reflect the government's resettlement policy. The amendment prohibited the supply of electricity, water, sewage disposal, roads, on-site health care, and telephone lines to buildings not having a building permit.³ The amendment does allow for exceptions to be made at the discretion of the Local Planning and Building Commission,⁴ and such discretion has been used in several recent cases.⁵ Therefore, despite the status of the unrecognized villages as illegal, the government could have legally connected these communities to the water network without or until the granting of building permits. However, most unrecognized villages that had requested connection to the water network had been refused.⁶

In addition to declaring it illegal for houses in unrecognized villages to be connected to the national water system, after 1981 the government also refused to provide a communal water point for each unrecognized village. Only one unrecognized village possessed a single water point at that time, installed by the National Water Company in exchange for the villagers' permission for water pipes to cross their land.

A typical case among these communities is that of the unrecognized village of Husseinyeh. Residents of Husseinyeh had to collect contaminated water from wherever it was available, because the village well became contaminated after a sewage plant was located next to it. Residents resorted to collecting rainwater in rooftop cisterns during the rainy season. When the rainwater ran out, they imported water, usually purchased from a nearby settlement or kibbutz, in tanks drawn by donkey or tractor.

In Husseinyeh, health problems associated with limited access to clean drinking water are compounded because there is no system for sewage disposal, and most homes lack toilet facilities. The dearth of water makes fecal waste disposal difficult. Pit latrines could be built that do not need water; however, building any structure in Husseinyeh is illegal.⁷

Communities that lack clean drinking water are exposed to numerous diseases classified epidemiologically in terms of their mode of transmission as belonging to the "fecal-oral" route. Gastrointestinal (fecal-oral) infectious diseases are among the most common diseases spread, especially among infants and children. Other diseases, such as scabies and skin infections, are also common due to the lack of clean water required for proper personal hygiene.

Adequate supply of clean and accessible water and adequate human excreta disposal were the focus of the WHO-designated "Decade of Clean Water Supply and Sanitation," which terminated in 1990, and is a major focus of the WHO program of "Health for All by the Year 2000." It is estimated that each year there are some 600 million cases of diarrheal disease resulting in the deaths of some four to five million infants and children worldwide. Experts estimate that water supply and excreta disposal improvements without any attendant change of behavior should reduce this number by at least one-fourth.⁸

Clean water shortage and unsanitary waste disposal all but ensured health hazards for the residents of Husseinyeh. A hepatitis A outbreak in 1989 in Husseinyeh and in one other village resulted in 21 reported clinical cases, all affecting children under seven years of age. Five children were hospitalized and one died. Community members in Husseinyeh and other unrecognized villages petitioned the Ministries of Health and the Interior to investigate the causes of death and insure that no other children would die unnecessarily. These efforts proved futile.

An application to the Israeli High Court was not a feasible legal strategy, due to the cost of litigation, the discretionary nature of the Building and Planning Law, and the community mistrust of any governmental body, combined with fear of a negative precedent. Therefore, this community decided that an international or regional forum that would apply international standards was the best venue in which to make their case heard.

The International Water Tribunal

The International Water Tribunal (IWT) is an independent forum for adjudicating water issues. The IWT was initiated by 11 environmental organizations in The Netherlands, and supported by approximately 90 European environmental organizations. It is funded primarily by various Dutch governmental and

non-governmental organizations and, to a lesser extent, by the Greens Party in Germany.

The IWT jury is composed of independent panelists, assisted by a group of experts in such fields as economics, international environmental law, biology, geology, public health, resource assessment, and ecology. Cases heard by the IWT must be scientifically documented and presented in writing to the jury. Complaints are sent to the defendants at least two months before the hearings. The jurisdiction of the jury is non-binding, but plaintiffs and defendants are invited to argue their case before the tribunal. IWT judgments determine responsibility and make recommendations to responsible parties to end unacceptable practices.

The first IWT, held in Rotterdam in October 1983, focused on cases of water pollution in Europe. The second IWT, held in Amsterdam in February 1992, focused on cases from developing countries.

Cases heard in the second IWT were to be judged primarily against the standard set in the Declaration. The Declaration is a synthesis of treaty law, customary international law, and generally accepted principles and ethics in environmental law. The cornerstone of the Declaration states, *inter alia*, that the right to water is a basic human right: "All members of present and future generations have the fundamental right to a sustainable livelihood including the availability of water of sufficient quantity and quality."⁹ The Declaration emphasizes the right to have one's interest in a water resource duly taken into account when decisions are made about activities that may in any way affect that interest,¹⁰ as well as the right to participate in decision-making with regard to that water resource.¹¹ Additionally, those dependent on a water resource have the right to review and appeal any decision taken that affects either the quantity or quality of their water resource.¹²

Although the majority of plaintiffs prevailed in the two sessions of the IWT, some did not. Some petitions were not accepted because they fell outside the mandate of the particular session: in the case of the first IWT, water pollution in Europe, and in the second session, water pollution from developing countries. Of the petitioners whose cases were heard, some plaintiffs did not receive a favorable judgment because they failed to clearly establish either the existence of damage to a water supply, or that the

damage was more likely than not caused at least in part by the named defendant.

Despite the non-binding nature of its jurisdiction, decisions of the IWT have generally had a significant impact on redressing violations in protection and allocation of water. Many of the defendants in the first IWT altered or halted their environmentally hazardous activities as a partial or direct result of a judgment against them and the resulting negative publicity. These successes encouraged residents of the unrecognized villages to bring a case to the second IWT.

Although standing for the second IWT was limited to cases in developing countries, and Israel is widely considered a developed country, living conditions in the unrecognized villages were deemed sufficiently under-developed to qualify for standing, and the petition was accepted.

The Litigation Team

Residents of the unrecognized villages had been able to lobby on their own behalf on the general issue of denial of clean drinking water. In order to prove their case in a judicial forum, though, these communities required the technical expertise of a team. It was composed of a public health physician who directed operation of primary health care clinics in Husseinyeh and three other unrecognized villages; the public health nurse who provided care at these clinics; an environmental engineer; and a human rights lawyer.

The members of the team had already been working together to address basic public health needs for the Arab community in Israel under the auspices of the Galilee Society for Health Research and Services. For example, the physician and environmental engineer had established a revolving loan fund to provide seed money to install sewage systems in the Arab communities. The physician and nurse were working together in developing childhood immunization programs, primary health care clinics, and community health education programs for the unrecognized villages. The human rights lawyer had already been working on issues of land rights of those living in the unrecognized villages, in conjunction with the Galilee Society and the Association of 40, an NGO which represents the interests of the unrecognized villages. Therefore, the team members had prior experience working together on various health projects involving the un-

recognized villages, were ready to coordinate efforts to assist the advocacy efforts of the community after the outbreak of hepatitis A, and were known and trusted by leaders of the unrecognized villages.

The collection and analysis of data, development of a strategy, and preparation of the brief took approximately one year. The nurse and physician compiled a report of Husseinyeh health statistics. The engineer prepared a report on quantity and quality of the community's water. The team was led by the public health physician, who had investigated the possibility of bringing a case before the IWT and had put the team together. He was responsible for coordinating the team and communicating with IWT staff. The team members had separate fields of expertise and worked together well during the year required for case preparation.

The team members set to work preparing their various components. The public health nurse sought to discover the cause of the hepatitis A outbreak. Her findings are summarized in Table 1:

Table 1: Hepatitis A Outbreak in Husseinyeh, 1989	
Number of clinical cases:.....	21
Ages of clinical cases:.....	2-7 years
Number of children aged 2-7 years:.....	94
Onset dates (of 15 fully investigated cases):.....	5/10/89 to 23/10/89
Number hospitalized:.....	5
Number that died:.....	1
Clinical attack rate within cohort:.....	22%
Case fatality rate:.....	5%

The onset time pattern indicated a common source outbreak. No single common social event involving all or most cases could be determined within the two months prior to the outbreak onset date. After extensive investigation, the nurse determined that the outbreak was linked to a contaminated water supply, most likely water that had been imported to Husseinyeh from a grossly contaminated spring.

In July 1990, the public health nurse conducted an additional survey in Husseinyeh of diarrheal disease incidence among infants and children under five years of age, relying on their mothers' recall over the two weeks prior to the interview. Mothers reported figures they felt to be typical of the summer/autumn months. Table 2 summarizes the results of her findings:

Table 2: Diarrheal Disease in Husseinyeh, July 1990					
Age group	No. of Children	No. with diarrhea	No. of diarrhea illnesses	Attack rates per child	
				in 2 weeks	in 6 months
< 5 yrs	101	11	14	0.14	1.68
< 2 yrs	(39)	8	11	0.21	2.65

These rates are extremely high by international standards. The nurse also found that residents of Husseinyeh, as well as other unrecognized villages, have a higher than average morbidity and mortality risk from these diseases.¹³

The environmental engineer documented that the only water available for domestic use in Husseinyeh was not of sufficient quantity or quality to meet standards recognized in Israel or internationally. In August 1991, the engineer took water samples from five separate locations in Husseinyeh to be tested. He requested the Department of Civil Engineering at the Technion to conduct independent tests on the water samples, in accordance with the Israeli Manual of Obligatory Standards. The samples of water used for drinking, diluted to 1/10, contained between 7 and 70 parts per 100 ml of coliform and between 4 and 45 parts per 100 ml of fecal coliform; and 1-4 parts per 100 ml of fecal streptococcus. (Samples of water not used for drinking, diluted to 1/10, contained approximately 200 parts coliform and

fecal coliform per 100 ml, and 21 parts fecal streptococcus per 100 ml.)

The engineer also found that water consumption in Husseinyeh and the other unrecognized villages is approximately 15 liters per person per day. This compares to an average consumption by the Arab population in Israel as a whole of 100 liters per person per day, and 150 liters by Jews.

The team was able to secure the legal assistance of a volunteer lawyer from Britain who prepared the legal arguments and compiled the case document in English; designed the human rights strategy of the case; conducted research into international human rights documents pertaining to health and water as human rights; and developed a litigation strategy based on existing standards. She also researched existing Israeli law pertaining to the right to water in order to demonstrate the government's non-compliance with domestic as well as international law.

The Case

The physician and the engineer presented the case to the IWT in Amsterdam. The Israeli government, to its credit, was the only named defendant that responded to the complaint against it and appeared before the tribunal to defend itself.

Since the IWT Declaration already established the right to water and states' duties following therefrom, it was sufficient to append an argument of the right to water under international law. The team focused instead on the facts of the case, since there were several compelling aspects that the team knew would be difficult for the government to rebut.

First, the evidence clearly showed that Husseinyeh's lack of water was the result of deliberate government policy. The team's lawyer described the Building and Planning Law and the government policy of implementation; the number of villages and persons affected; and living conditions in Husseinyeh and other unrecognized villages. She then exposed the dramatic contrast between these conditions and the conditions of smaller neighboring communities (*mitzpis*), which enjoy all basic services and often are provided extra amenities like preschools, playgrounds, and community centers. Some of these communities are no more than 50 meters from unrecognized villages. She explained that this was not a consequence of gaps in income levels between the communities, as the new communities were often

populated by poor immigrants and heavily subsidized by the government and other para-state organizations. She also showed that Husseinyeh residents already pay as much or more for water than other communities, and had repeatedly offered to pay to have pipes installed if the government would grant permission for them to receive water from the national water company.

Counsel for the government responded to this argument by explaining that Husseinyeh residents had the option to move to government-planned communities in other locations. There they would have access to all basic amenities including safe drinking water. The position implied that it was not the government's responsibility to provide for communities that do not comply with the Building and Planning Law.

The second component of the case emphasized by the team was the lack of any justifiable, non-discriminatory public purpose in zoning the unrecognized villages as non-residential. The lawyer included maps of the zoning laws in Israel and explained the geographical outlay of and distances between the unrecognized villages and the government-approved, and indeed promoted, *mitzpis*. Many of the legal settlements are located between or adjacent to the unrecognized villages, demonstrating that there was no legitimate public purpose for the zoning law. The goal of this litigation strategy was to put the government in the position of explaining why it was in the public interest to make these Bedouin choose between their land, and their health and well-being.

In response, government counsel argued in its oral presentation that the authority to establish zoning schemes and the power of eminent domain are essential for any government to operate, and hence the zoning scheme was justifiable. In response to a juror's request for examples of intended public purposes for the land in question, counsel offered the examples of building a football field or airport as potential public purposes. In rebuttal, the litigation team explained to the jury that the unrecognized villages are all located on mountain slopes, where football fields and airports are not possible.

The third component of the team's case was to raise the question as to why children were suffering, and in one case, dying, of largely preventable diseases in a country having one of the world's best health care systems. The public health physician described the health status of the general population and

contrasted it to the much lower health status of the residents of Husseinyeh and other unrecognized villages. He then described WHO's emphasis on environmental hygiene and pointed out that Israel is a member of the European Regional office of WHO. In an appendix, he cited relevant literature on the importance of water and environmental hygiene and explained that, given the comparatively adequate income and education level of Husseinyeh residents, the provision of safe drinking water would bring substantial health improvements to the community, particularly to children and the elderly.

The government answered that Israel was not in violation of WHO standards because Husseinyeh residents had the option to relocate to settlements that would provide water and health services. The government further argued that it is the responsibility of individuals to come to available care, rather than the responsibility of the government to provide on-site primary health care clinics.

The team lawyer then described a fourth issue in the case designed to demonstrate both the government's breach of its duty to provide water, and its acknowledgement that it holds this duty. In 1989, before the outbreak of hepatitis A in Husseinyeh, the Ministry of Agriculture had announced in the Knesset (Israeli Parliament) and in writing to the head of the Follow-up Committee on Health in the Arab sector, that although water could not be supplied to illegal buildings, the government would provide a communal tap for each unrecognized village. Thus the Ministry of Agriculture had acknowledged the state's duty to provide water and had made a promise to do so. However, the National Water Company (Merokot) refused to install taps and supply water to these communities. The team lawyer quoted Merokot's written reply in the case of one village, Kammaneh, in which it justified the denial on three points: that the Jewish Agency had paid for the pipeline in question; that the line is intended to serve the needs of Jewish settlements only; and that drawing water from the line for Kammaneh was likely to result in quarrels between the Jewish settlements and the Bedouin in the area.

Following the outbreak of hepatitis A, the Ministry of Agriculture continued to give assurances that communal water taps would be provided. However, Merokot still refused. The team lawyer concluded this section with a quote from a letter from

the then-Advisor to the Prime Minister on Arab Affairs to a Knesset Member, in which the Advisor gave assurances that the Ministry of Agriculture would not provide water to the unrecognized villages, despite previous promises to do so. With these documents the team lawyer demonstrated that the Ministry of Agriculture was aware of his discretionary powers to provide water, aware of the health consequences of the denial of water, had promised to provide water taps, and had reneged on his promise.

The team lawyer also established the Minister of Interior's breach of his duties under international law. The Minister of Interior, who implements the Israeli Planning and Building Law of 1965, has discretionary power to order provision of drinking water to unrecognized villages. However, he refused to do so in order to carry out the government's resettlement policy. In this way, the Minister of Interior also breached the internationally recognized human right to choose one's place of residence.¹⁴

The government did not directly respond to this argument except to say that houses in unrecognized villages do not have building permits and therefore cannot receive water, according to the law.

In the last section of the brief the team offered alternatives that could provide unrecognized villages with drinking water, and thus better environmental hygiene and quality of life. Ultimately, for the well-being of these communities, the only solution would be one that enables the unrecognized villages to receive clean drinking water sufficient for health, pursuant to the human right to adequate water guaranteed under international law. The immediate provision of a communal tap in each village would not solve all of the problems, but would serve as an interim measure and bring significant improvements. The team clarified that even full domestic water supply is not itself a guarantee of good health, but, together with health education and services, and provision of other basic services, would create the basic conditions necessary for the enjoyment of health.

The team explained how provision of water points or piped water to homes could be on the same basis as water currently provided to recognized communities too small to comply with the standard procedure for water provision. The existing water networks often pass very close to unrecognized villages; tapping into existing lines is quite feasible and cost-efficient. Further-

more, the villages are concentrated in three small geographical areas.

The team also presented an alternative Master Plan prepared by various academic experts in building and planning. Presented in 1990 to the authorities as an alternative to government policy, it showed how 52 of the unrecognized villages could be legalized and permitted to develop. The plan included a possible basis for the provision of clean drinking water and other services to the communities. The team urged the jury to direct the government to reconsider it.

In oral argument the government's counsel responded to these recommendations by concluding with a pledge to the jury, that the government of Israel would appoint a ministerial committee to re-evaluate the whole issue of the unrecognized villages and the government's planning policy towards these communities.

The Outcome

The jury of the IWT issued a written opinion based on the Universal Declaration of Human Rights, the 1972 Stockholm Declaration on the Human Environment, and guided by the IWT Declaration. The jury found insufficient evidence to determine that the Israeli Building and Planning Law of 1965 discriminated between Arabs and Jews. Furthermore, the jury stated that each government must have legal instruments that enable it to balance public and individual interests. However, the jury found that there was insufficient evidence that the alleged public interest required non-recognition of these communities or the denial of services:

The jury is unable to countenance any governmental action which uses the denial of water as a means of enforcing zoning or planning. These policies have a negative effect on the health of the populations in the 'unrecognized villages.' The jury deplores this denial of water of sufficient quantity and quality and recommends that the Israeli government:

- (i) use the discretionary powers which the Planning and Building Law offers and forthwith connect the villages concerned to the national water network.
- (ii) finds equitable alternative solutions to planning and zoning in co-operation with those affected.

The IWT judgment yielded substantial political leverage for

the plaintiffs. National and local press gave major coverage to the IWT verdict and the whole issue of unrecognized villages. This publicity, together with the confidence of these communities brought on by their victory, elevated the unrecognized villages to a major political issue during the Knesset elections of June 1992. Indeed, it was included in the agreement between the Labor Party and the Arab Knesset members in negotiations leading to the forming of the coalition.

The new Labor government issued instructions to connect all unrecognized villages to the water network. Several of the those villages since have been connected to the national water system, and pipes for water taps were laid in four villages in the summer of 1993. In addition, recognition has been promised to three unrecognized villages. Primary health services were established in four unrecognized villages by the Ministry of Health, and negotiations are currently underway for provision of primary health care to all of the unrecognized villages.

Summary

The objectives of litigating in the IWT were to obtain water for the unrecognized villages; to improve the government's commitment to health and environmental hygiene in these communities; to raise public awareness of the general living conditions in the unrecognized villages; and to challenge the government's policy of making these communities retroactively illegal to force these residents to leave their land.

The team met all of these objectives with varying degrees of success. The government is now placing communal taps in all unrecognized villages. The government has also assumed a limited role in providing primary health care services to the communities. Unfortunately, the government has not granted permission to install sewage disposal systems, and the issue of the illegal status of these communities has been overshadowed by other domestic and regional issues. Much work is to be done, as many health and other problems still exist in the unrecognized villages, and they remain illegal. Notwithstanding, from the point of view of the communities and the team of public health professionals, environmental engineer, and human rights lawyer, the time and effort invested in preparing and presenting the case to the IWT was fruitful in providing safe water.

References

1. Israeli Building and Planning Law, 1965.
2. Rassem Khamaysi, *Planning and Housing Policy in the Arab Sector in Israel* (1990).
3. Building and Planning Law, section 157(A), as amended (1981).
4. *Id.*, section 157(A)(E)(2).
5. See, e.g., *The Water Commissioner v. Simcha Perlmutter and Others*, C.A. 535/89 (1993). (Appellate court ordering the Water Commissioner to exercise its discretion to temporarily connect Ir Ovot settlement, even though the Kibbutz was in illegal possession of land belonging to the Israeli Land Authority. It stated that the right to water is linked to the purpose—agricultural or domestic use—for which it was required; so long as the respondents remain on the land, they were to receive water.)
6. Assurances were given by the Minister of Agriculture's office that solutions were being sought to the problem of providing a water point in each community. As early as March 1989, the Water Commissioner had agreed to allocate 5,000 cubic meters of drinking water to one of the unrecognized villages for that year. During 1990, there were repeated guarantees that a line would be opened. Then a letter from the Minister of Agriculture's office confirmed that the unrecognized villages would not be receiving water points. Correspondence is on file with the authors.
7. Building and Planning Law, (1965).
8. See, e.g., S.A. Esry et al, "Interventions for Control of Diarrhoeal Diseases Among Young Children: Improving Water Supplies and Excreta Disposal Facilities," *Bulletin of WHO* 63(4)(1985): 757-772.
9. Declaration, Second IWT, art. 1 (1992).
10. *Id.*, art. 2(1).
11. *Id.*, art. 2(2).
12. *Id.*, art. 6(1).
13. Statistical Abstract of Israel, 1993.
14. Universal Declaration of Human Rights (art. 13) and International Covenant on Civil and Political Rights (art. 12).