

*Written submission to the 23<sup>rd</sup> Human Rights Council Session, 27 May-14 June.*

*Written statement submitted by Badil Resource Center for Palestinian Residency and Refugee Rights, a non-governmental organization with special consultative status.*

*Contact:*

*Amjad Alqasis*

*BADIL Legal Advocacy Programme Coordinator*

[Amjad@BADIL.ORG](mailto:Amjad@BADIL.ORG)

## **Land Confiscation by means of declaring land as state land**

Land confiscation is pursued through a manipulation of the relevant land laws in place in the occupied Palestinian territory. For example, the declaration of land as ‘state land’ is a prime method of land confiscation. As Abu Kishk writes: “during the Mandate, the British government suggested that all uncultivable land should be registered in the name of the High Commissioner of Palestine, under the provision that the said land be utilized for the good of the community.”<sup>i</sup>

After 1948, Israel ‘inherited’ all the land that was registered in the High Commissioner’s name from the British government, which thus became Israeli state land.<sup>ii</sup> After 1967, Israel also claimed all the ‘state land’ that Jordan had designated as such under its rule in the West Bank. This was achieved through the application of a 1967-adopted military order, the Order Concerning Government Property (No. 59).<sup>iii</sup> This defines state land as property that, on the “relevant date” (7 June 1967, the day Israel occupied the West Bank), belonged to an enemy state and/or corporation of which an enemy state had control or rights or that was registered at that time in its name.<sup>iv</sup> Furthermore, the Order bestows administration of state land to the Custodian who is appointed by the Israeli Military Commander and empowered, “to take possession of government property and to take any measure he deems necessary to that end”.<sup>v</sup> The Order also allows for the custodian to deem any lands as state lands, even if they are retroactively shown not to be state lands, provided he held “good faith” that they were state lands.<sup>vi</sup> This Order was since amended.

Parallel to that in 1968 the Israeli military commander passed the Order concerning Land and Water Settlement (Judea and Samaria) (No. 291) – an order which forbade any further land settlement/registration for Palestinians and put a halt to any settlements, or registrations which were at that time being processed. Historically, land registration in the West Bank has been low for a number of reasons: most importantly efforts to avoid taxation and traditionally the non-importance of registration to exercise land rights. Since Israel stopped almost any form of registration in 1968, only 33% of all West Bank land has been registered.<sup>vii</sup>

Following the 11 November 1979 verdict of the Elon Moreh Case, the government issued a decision, “to expand the settlement in Judea, Samaria, the Jordan Valley, the Gaza Strip and the Golan Heights by adding population to the existing communities and by establishing new communities on state-owned land”.<sup>viii</sup> The term ‘state land’ was not defined therein, however, the settlement enterprise actually expanded following this measure, with approximately “ninety percent” of the settlements established on land declared as state land.<sup>ix</sup>

Establishing illegal Israeli settlements on state land was achieved through a manipulation of the previous laws already in place. To begin with, Israel conducted a survey to ascertain which land fell under the ‘state land’ criteria as designated so by the Jordanian and previous legal systems. Initial investigations discovered that approximately 527,000 dunums (527 km<sup>2</sup>) of such land existed as registered by the Jordanian Government.<sup>x</sup> Following further investigation of Ottoman and British state lands it was revealed that an additional 160,000 dunums (160 km<sup>2</sup>) were eligible for declaration.

In 1969 a provision was added to the Order Concerning Government Property stating that, “if the Custodian confirms in a written document with his signature that a given property is government

property, that property will be considered government property unless proven otherwise”.<sup>xi</sup> This transferred the burden of proof from the State to the individual.

In 1984, the military commander amended the Order Concerning Government Property to expand the types of land that could fall under its control. The amendment defines government property as, “property that on the relevant date or thereafter belongs, is registered in the name of or is imparted to an enemy state or a corporation in which an enemy state has rights”.<sup>xii</sup> The use of the word “thereafter” offers scope to expand upon a previously static definition of state land.

#### *Declaration process*

The declaration (of state land) process is not anchored in the law or in military legislation, but rather in the procedures of the Israeli Civil Administration alone.<sup>xiii</sup> Among their requirements is that the Custodian must sign a certificate specifying the location of the land for declaration accompanied by a map demonstrating the plot’s total area.

Various petitions filed by Palestinians against the declaration process and against the appeals committee (whereby individuals can oppose declarations) failed before the Israeli Supreme Court.<sup>xiv</sup> The Court upheld the legality of the declaration mechanism and rejected the petitioners’ right to object: as they could not prove personal injury on non-private, ‘state land’.

In conclusion, Israel’s policy regarding the declaration of state lands is just one part of a wider strategy towards de-facto annexation of Area C of the West Bank within the occupied Palestinian territory; that is, to implement control over the maximum area of Palestinian land, whilst reducing the number of Palestinian residents to a minimum.

Within this context, the array of hardships faced by Palestinians are intentional products of the Israeli administration of the occupied Palestinian territory and should not be seen as isolated incidents. Rather, systemic discrimination of Palestinians by the occupying power seeks to increase the difficulty of life until they are left with little option but to relocate to other parts of the West Bank. This forced population transfer constitutes a direct contravention of multiple international laws including Article 49 of the Fourth Geneva Convention and Article 7 of the Rome Statute of the International Criminal Court. Nonetheless, the international community has allocated little attention to these contraventions and developed even fewer steps to satisfactorily redress the situation and uphold Palestinian rights. While such a status quo is maintained, the State of Israel will continue to erode Palestinians’ quality of life.

We, therefore, urge the Human Rights Council to:

- Condemn Israel’s practices and policies concerning the declaration of state land;
- Charge Israel’s acquisition of Palestinian land under whichever alleged reason or purpose as illegal and ensure that the international community will provide no form of recognition or support from Third States to the situation created by illegal acquisition of land;
- Investigate Israel’s policy of forced population transfer of the Palestinian people through direct and indirect means and practices, which possibly amount to international crimes (Art. 49 (1), Art. 147 of GCIV, Art. 85 of its additional protocol and Art. 7 of the Rome Statute);
- Study and address the root causes of the ongoing forcible displacement of Palestinians by Israel;
- Develop and implement effective mechanisms and measures to bring Israel into compliance with international law.

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- <sup>i</sup> Abu Kishk, B., “Arab Lands and Israeli Policy”, *Journal of Palestine Studies*, 11, no. 1 (Autumn 1981), pp. 124-135, at 127
- <sup>ii</sup> *Ibid.*
- <sup>iii</sup> Order Concerning Government Property (Judea and Samaria) (No. 59), 1967.
- <sup>iv</sup> Definitions article in the original version of the Order concerning Government Property, as published in *Collections of Proclamations, Orders and Appointments No. 5*, 15 November 1967, pp. 162 -165.
- <sup>v</sup> Article 2 of the Original Version of Order No. 59.
- <sup>vi</sup> *Ibid.*, Article 5.
- <sup>vii</sup> Land Registration Study for the Ministry of Planning – by Land Equity International, May 2007 p. 28.
- <sup>viii</sup> Government Decision No. 145 of 1 November 1979.
- <sup>ix</sup> Pliya Albeck, *Lands in Judea and Samaria* (in Hebrew) (lecture at Bet Hapraklit on 28 May 1985, Israel Bar Association), p. 5.
- <sup>x</sup> Meron Benvenisti and Shlomo Khayat, “The West Bank and Gaza Atlas”, p. 60; B’Tselem, “Land Grab Report”, p. 52.
- <sup>xi</sup> Order Concerning Government Property (Amendment No. 4) (Judea and Samaria) (No. 364) 1969, Article 2(c).
- <sup>xii</sup> Order Concerning Government Property (Amendment No. 7) (Judea and Samaria) (No. 1091) 1984.
- <sup>xiii</sup> Sfar, M., Schaeffer, E., et al., “A Guide to Housing Land and Property Law in Area C of the West Bank”, February 2012, p. 46.
- <sup>xiv</sup> See, for example: HJC 81/285, *Fadil Muhammad a-Nazar et al v. Commander of Judea and Samaria et al.*, *Piskei Din* 36 (1) 701.