

Israel's Land Laws as a Legal-Political Tool

Confiscating and Appropriating Palestinian Arab Lands
and Creating Physical and Legal Barriers in order
to Prevent Future Property Restitution

Working Paper No. 7

December 2004

Usama Halabi
Advocate (LL.M)



BADIL Resource Center
for Palestinian Residency & Refugee Rights

Usama Halabi, has been a Law Researcher and Advocate in Jerusalem since 1987. He serves on the Board of '*Adalah: The Legal Center for Arab Minority Rights in Israel*' and is a founding member of the '*Arab Cultural Association*' in Nazareth, where he served on the Board until 2001. Mr. Halabi received his law degree from Hebrew University. He holds an MA in Law specializing in national discrimination in Israeli law and a second MA in International Legal Studies from the American University in Washington, DC.

This Paper was prepared for the BADIL Expert Forum, "Housing and Property Restitution in Durable Solutions for Palestinian Refugees," 2-5 October 2003, University of Geneva/IUED, Geneva, Switzerland.

BADIL working papers provide a means for BADIL staff, partners, experts, practitioners, and interns to publish research relevant to durable solutions for Palestinian refugees and IDPs in the framework of a just and durable solution of the Palestinian/Arab-Israeli conflict. Working papers do not necessarily reflect the views of BADIL.

ISSN: 1728-1660

BADIL Resource Center
for Palestinian Residency & Refugee Rights

P.O. Box 728, Bethlehem, Palestine
Tel-Fax: 970-2-274-7346
Email: info@badil.org
Website: www.badil.org

I. Introduction

This paper deals with the land and settlement policy which has been adopted and implemented by the Israeli authorities within the 1948 borders of Israel.¹ The main task of this paper is to review legal methods used by Israeli governments aiming to achieve state/Jewish control over the land of historic Palestine, through creating physical barriers (i.e. establishing Jewish settlements), and legal barriers (i.e. enacting laws and regulations additional to existing Mandatory Laws to ensure that “redeemed” lands remain in Jewish hands). These methods aim to prevent the possibility of future property restitution to Palestinian refugees, ‘absentees’, or even displaced Arab citizens living within Israel.²

A second objective of this paper is to demonstrate that the “land laws” that have been used by the Israeli authorities to achieve the aforementioned goals, reflect the Zionist approach towards Palestine and the Palestinians expressed in such slogans as: “a land without a people for a people without a land” and “redeeming the nation's (i.e. Jewish) land and water” etc.

II. The Palestinians: From land owners to “refugees”, “absentees”, and “displaced persons”

Various legal methods have been used since 1948 by the Israeli authorities to confiscate and appropriate Palestinian lands and properties, and to transfer them to Jewish possession and common ownership (known as “Israel lands”), to ensure building up the “national Jewish home”, and to ensure future control of the lands within Israel for the benefit of the Jewish people / the Jewish citizens. A brief review of those methods follows:

(1) *Jewish ‘national’ institutions as a cover for discrimination against Arab citizens of the Jewish state*

Following the establishment of Israel, the new government permitted and actively encouraged pre-state Jewish ‘national’ institutions to play a key role in the development of the new Jewish state. Powerful Zionist institutions such as the Jewish Agency (JA), the World Zionist Organization (WZO) and the Jewish National Fund (JNF) were given quasi-governmental status. The latter, which has “specialized” in buying and taking over private Palestinian land, acted before 1948 as a private foreign company based in Britain. However, the JNF has become a private Israeli company since 1953 according to a special law enacted by the Knesset known as the *Israel National Fund Law of 1953*.³ According to its memorandum the JNF acts within any area under the jurisdiction of the Government of Israel and for the benefit of Jews only⁴, and in the case of the dissolution of the JNF, all its property will be transferred to the Israeli Government.⁵ It is estimated that the JNF owns around 13 percent of the lands in Israel.⁶ In addition to the JNF Law, in 1953 the Israeli Parliament (Knesset) enacted the *World Zionist Organization and the Jewish Agency (Status) Law*.⁷ According to Article 4 of this law, these two “national organizations” have

¹ As to the “root causes of dispossession” and the seizure of control of Palestinian Arab lands by “Zionist colonization associations” before 1948 see, Terry M. Rempel, “Palestinian Refugees, Property and Housing Losses - An Overview,” Paper Prepared for BADIL Expert Seminar, Geneva, 2-5 October 2003, at 4-7.

² A chart of the main “land laws” in Israel, showing how legislation has been used to control the lands in Israel and to retain in Jewish hands, is attached as “annex A”.

³ *Sefer Hahukim* [Laws of Israel], No. 130, at 34.

⁴ See, Article 3(a) of the JNF memorandum.

⁵ See, Article 6 of the JNF memorandum.

⁶ Dave Kretzmer, *The Legal Status of The Arabs in Israel*. Boulder: Westview Press, 1990.

⁷ *Sefer Hahukim* [Laws of Israel], *supra* note 3 at 2.

been recognized by the state of Israel as allowed “to continue acting in Israel to develop the state and it is inhabitants, and to settle immigrants from the diaspora ...”.

(2) *Destruction of Palestinian villages and creation of ‘closed military areas’*

After forcibly expelling Palestinians inhabitants, the Israeli authorities destroyed almost 80 percent of Palestinian towns and villages. Later, most of the destroyed/evacuated villages were deemed “closed military areas”. Such a declaration was made according to Article 125 of the *1945 Defence (Emergency) Regulations*, created by the British mandate and reactivated by Israel.⁸ The aim of declaring a village a “closed military area” has been to prevent its inhabitants from returning, and thus lose actual possession of their lands. Moreover, not actually living or farming the land created one of the conditions needed by other laws⁹ to validate the take over of lands and transfer, in the main, to the Development Authority¹⁰, and also to the possession of the Minister of Agriculture according to the *Emergency Regulations (Exploitation of Uncultivated Land)*, 1948.¹¹ Furthermore, the Israeli authorities issued the *Emergency Regulations (Security Zones)* in 1949 which empowered the Minister of Defense to declare most areas close to the northern border with Lebanon and the eastern border with Jordan (in the Triangle area) as a “security zone” and thus deny entry or exit to any person and even expel him/her from the declared zone. The Minister of Defense has used his power according to these Regulations to deny entry and even expel inhabitants of Palestinian villages located within the “security zone”, such as in the case of Iqrit¹² and Ghabsiyyeh in the Galilee.

It is worth noting here, that by 5 November 1948, 700,000 refugees were expelled from 443 towns and villages, and “[by] 20 of July 1949 over 800,000 Palestinians were expelled from 531 towns and villages, in addition to 130,000 from 662 secondary small villages and hamlets, making total of 935,000 refugees”.¹³

(3) *The broad definition of “Absentee”*

Using the *1948 Emergency Regulations Concerning Absentee Property*¹⁴ and later the *1950 Absentees’ Property Law*¹⁵, the Israeli authorities have declared the largest number of Palestinians possible as “absentees”, confiscating their private lands as “absentee's property”. The extensive use of these regulations and law, and the all inclusive definition of “absentee”¹⁶, created the problem of the “present

⁸ *Palestine Gazette*, No. 1442 (1945), Supplement 2, at 1055.

⁹ Mainly the *1953 Land Acquisition (Validity of Acts and Compensation) Law*, which will be discussed below.

¹⁰ Created by the *1950 Development Authority (Transfer of Property) Law*. The village of Iqrit lost 15,600 dunums according to this law. HCJ 141/81 *Committee of Iqrit V. the Government of Israel* 1981 P.D. 36(1), at 129. To understand better the interrelationship between the different “land laws” see, annex “A” to this paper.

¹¹ *Official Gazette*, No. 37 (1948), Annex B, at 3.

¹² HCJ 239/51 *Dawood V. Committee for Security Zones*, P. D (Supreme Court Rulings), 6(1), at 229.

¹³ Salman Abu Sitta, *From Refugees to Citizens At Home*. London: Palestinian Land Society & Palestinian Return Centre, 2001, at 7-8.

¹⁴ *Official Gazette*, No. 37, *supra* note 11, at 59.

¹⁵ *Sefer Hahukim* [Laws of Israel], 1950, at 86.

¹⁶ Article I (b) of the Absentee Property Law defines “absentee” as follows:

“(b) ‘absentee’ means —

(1) A person who, at any time during the period between the 16th Kislev, 5708 (29 November, 1947) and the day on which a declaration is published, under section 9(d) of the Law and Administration Ordinance, (5708—1948), that the state of emergency declared by the Provisional Council of State on the 10th of Iyar, 5708 (19th May, 1948) has ceased to exist, was the legal owner of any property situated in the area of Israel or enjoyed or held it, whether by himself or through another, and who, at any time during the said period —

absentees": (the Triangle) and the "displaced Palestinians" who have been banned from returning to their villages, despite the fact that they are Israeli citizens.

The Absentee Property Law provides that "absentee property" shall be administered by the Custodian for Absentee Property (the Custodian). Article 19(a) states that when the "absentee property" is land the Custodian is not allowed to sell it or otherwise transfer the ownership to a third party. However, the same article continues: "if a Development Authority will be established according to a Knesset Law, the Custodian will be allowed to sell the property to the said Development Authority with a price that should not be less than the official price". Six months after the enactment of the Absentee Property Law, such an authority was established by the *1950 Development Authority (Transfer of Property) Law of 1950*.¹⁷ It is estimated that as to 1959, the Custodian administered 3,250,000 dunums, most of which he transferred to the Development Authority.

(4) *Validating illegal acts of land acquisition*

To validate any prior illegal expropriations/taking over of lands between 1948 and 1953, the Israeli Parliament (Knesset) enacted the *1953 Land Acquisition (Validity of Acts and Compensation) Law*.¹⁸ The declared objective of this law was to "validate" retroactively the taking over of Arab owned lands for military purposes or for use by existing or newly established Jewish settlements. According to article 2 of this law the prior acquisition of land becomes legal if the Minister of Finance issues a written statement confirming that three cumulative conditions exist. The first condition is that the property concerned on 2 April 1952 was not in the possession of the owner. The second condition, is that the property was used or allocated for "important developing goals, for settlement or for security purposes". The third condition is that the property concerned is still needed for one of the aforementioned purposes. After signing such a statement, it will create solid proof that the acquisition of the land is legal, and the ownership of the concerned property will automatically be vested in the Development Authority.

(5) *Land expropriation for "public purposes"*

Further, the Israeli authorities have confiscated Arab lands for "public purposes" according to the *1943 Lands (Acquisition for Public Purposes) Ordinance*. This is a Mandatory Law which was reactivated by Israel. The law itself is neutral, however, its use has been discriminatory, as in many cases Arab lands were expropriated for "public purposes", but later used for the benefit of the Jewish public only. For example, 1,200 dunums expropriated in 1953 from Arab Nazareth, were claimed to be designated to build governmental offices. Later, it became clear that only 80 dunums were used to build the said offices, and

(i) Was a national or citizen of the Lebanon, Egypt, Syria, Saudi—Arabia, Trans—Jordan, Iraq or the Yemen, or

(ii) Was in one of these countries or in any part of Palestine outside the area of Israel or

(iii) Was a Palestinian citizen and left his ordinary place of residence in Palestine

(a) for a place outside Palestine before the 27th Av 5708 (1st September, 1948); or

(b) for a place in Palestine held at the time by forces which sought to prevent the establishing of the State of Israel or which fought against it after its establishment;

(2) A body of persons which, at any time during the period specified in paragraph (1), was a legal owner of any property situated in the area of Israel or enjoyed or held such property whether by itself or through another, and all the members, partners, shareholders directors or managers of which are absentees within the meaning of paragraph (1), or the management of the business of which is otherwise decisively controlled by such absentees, or all the capital of which is in the hands of such absentees;"

¹⁷ *Sefer Hahukim* [Laws of Israel], 1950, at 278.

¹⁸ *Sefer Hahukim* [Laws of Israel], 1953, at 58.

the rest to build a few thousand residential units which became the nucleus of Jewish Upper Nazareth.¹⁹ Another 3,000 dunums of El-Battof plain (Galilee) were expropriated in 1965.²⁰ In addition, almost 5,100 dunums of the lands of B'aneh, Deir Al-Asad were expropriated in 1966, land on which the city of Carmi'el was later built.²¹

All lands taken according to the 1943 Ordinance have become part of the "state property" according to the *1951 State Property Law*²², which includes lands which were registered prior to 1948 in the name of the High Commissioner, "on behalf" of certain Arab villages.²³

(6) *Transfer of Arab lands to Jewish hands and creation of legal barriers to prevent future Palestinian land restitution*

Israeli authorities have used a two fold strategy to complete control of Palestinian land. Firstly to conquer land, not only by military means but also through "legal tools" i.e. laws and regulations, some created by the British Mandate and reactivated by the Israeli government, but most "Israeli made".²⁴ The second stage has been to quickly "pass" the confiscated Palestinian villages and private lands (either declared "absentee property" or "abandoned property") into Jewish hands, and prevent the retransfer of the "redeemed lands" to the hostile group, i.e. the Palestinian Arabs.

The first stage has been achieved through various legal tools. The main legal tool in this regard has been the *Absentees' Property Law*, according to which the Custodian of Absentees' Property has been authorised to transfer "absentee properties" to the Development Authority established by the *1950 Development Authority (Transfer of Property) Law*. The latter then transferred the possession of those properties to Amidar (a governmental company responsible for Jewish settlement) and the World Zionist Organization, and to new Jewish immigrants creating new Jewish settlements over former Palestinian villages and lands.²⁵

Other important legal tools used to achieve the "legal conquest" of the Palestinian land are the *1953 Land Acquisition (Validity of Acts and Compensation) Law* according to which the Minister of Finance has assigned ownership of expropriated lands to the Development Authority, and the *1943 Lands (Acquisition for Public Purposes) Ordinance* mentioned above.

In order to secure the land in the long term, the Israeli legislator ensured that all lands taken from the Palestinians become part of *Mikarki'eh Yesrael* [Israel Lands], which includes: a) lands owned and registered in the name of the state of Israel, b) lands owned and registered in the name of the Jewish National Fund, and, c) lands registered in the name of Development Authority. According to Article 1 of the *1960 Basic Law: Lands of Israel*²⁶ the ownership of "Israel lands" is not transferable through selling or any other way. This legislated land tenure system has ensured exclusive use by Jews of most of "Israel Lands" which are estimated to be at least 92 percent of the total lands in Israel.²⁷

¹⁹ See, H.C. of Justice 18/57 *Ahmad Kasem V. the Minister of Finance*, Supreme Court Rulings, Vol. 12, at 1986.

²⁰ Usama Halabi, "The Impact of the Jewishness of the State of Israel on the Status and Rights of The Arab Citizens," *Is Israel The State of All Its Citizens And "Absentees?"* Translated and edited by Nur Masalha. Nazareth: Galilee Center for Social Research, 1993, at 20.

²¹ Ian Lustik, *Arabs in the Jewish State*, (Haifa, Mefras, 1985), p. 46-47 (Hebrew).

²² Published in *Sefer Hahukim* (Laws of Israel), 1951, p. 52.

²³ See : article 1(4) of the Law.

²⁴ See: Abu Sitta, p. 12. For a detailed legal review and analyses see also John Quigley, *Palestine and Israel: a challenge to Justice*, Duke University Press, 1992.

²⁵ Halabi, p. 24.

²⁶ *Sefer Hahukim* [Laws of Israel], 1960, at 56.

²⁷ Ruth Kark, "Land and Settlement in the Land of Israel," *At the University* (Jerusalem, Hebrew), No. 3 (December 1989), at 30; Ian Lustick, *The Arabs in the Jewish State*. Austin: University of Texas Press, at 99.

(7) Confiscation of Arab land continued following “Land Day” 1976

The Israeli policy of confiscating Arab lands and building new Jewish settlements continued even after the massive Arab protests on “Land Day” (1976), when six protestors were killed in the Galilee. Under the slogan *yishuv Hagalil* or “resettling the Galilee” (read: “Judaization of the Galilee”), tens of new settlements were built on high lands (*Metzpim*). In addition, thousands of dunums were seized from the Negev Bedouins according to the *1980 Land Acquisition in the Negev (Peace Treaty with Egypt) Law 1980*.²⁸ The main purpose of the policy has been to strengthen already existing Jewish cities and towns, and to achieve contiguity between Jewish built-up areas and fragmentation of Arab residential areas. This policy continues today. In September 2003 a new settlement plan was launched with the goal of building new neighbourhoods and strengthening 23 existing Jewish settlements in the upper Galilee.²⁹

III. Closing Remarks

The Palestinians living in Israel have suffered not only from the confiscation of their lands for the benefit of Jewish citizens, but also from a discriminatory policy in all fields including planning of their towns and villages. No real planning has been conducted in what Israel calls the “Arab sector”. The government has systematically failed to meet the development needs of the Arab villages, so “illegal (unlicensed) buildings” in these villages have become an inevitable phenomenon. Hundreds of Arab houses have been demolished simply for being built outside the Israeli defined legal boundaries of the Arab villages.

Finally, we should remember the interesting, but unsurprising, fact that not a single Arab village or town has been established or initiated by the Israeli government since the foundation of the state of Israel. On the contrary, tens of Arab villages are still “not recognized” by the Israeli Ministry of Interior and thus suffering lack of elementary services and infrastructures. Any expansion of the built up area of these “unrecognized villages” is likely to face demolition orders and government bulldozers. The destruction of two houses in the village of Umm-El-Sahali in 1998, and houses in Baqa al-Gharbiyya in August 2003 are just two of many examples.

In light of the above, it seems that any serious plan to enable/facilitate the return of Palestinian refugees and displaced persons to their homeland/original villages and/or to create a real possibility for property restitution, has to include proposed changes/amendments to Israeli land laws so that parts of “Israel lands” can again be transferable. Such legal changes are unlikely to happen as a result of Israeli good will. There must be real Palestinian and (mainly) international diplomatic efforts to push for a political-legal solution (within a peace agreement) to the Palestinian refugee problem, similar to the one reached in the case of Bosnia and Herzegovina. In the latter case, the Governments of Bosnia and Herzegovina and of the Republic of Serbia were obliged by the Dayton Peace Agreement (DPA), signed in Paris on December 1995 (Annex 7 to the Agreement), to change and repeal certain domestic legislation to enable the return of refugees to their place of origin, to claim back their properties or to be compensated for any property of which they were deprived in the course of hostilities that cannot be restored to them.³⁰ Yet, it is important to note here that “[o]nly after extensive negotiations with the International Community did the Federation (of Bosnia and Herzegovina U.H.) in April 1998 adopt property legislation geared toward returning property lost during the conflict”.³¹ Moreover, it seems that without the Peace Implementation Council, consisting of 55 countries and international organizations, created after the signing of the DPA in London, the efforts to bring the desired changes in domestic legislation in Bosnia and Herzegovina and in the

²⁸ *Sefer Hahukim* [Laws of Israel], 1980, at 979.

²⁹ *Ha'aretz* [Hebrew edition], 19 September 2003, at A 11.

³⁰ See, Paul Prettitore, “The Right to Housing and Property Restitution in Bosnia and Herzegovina: A Case Study”, Paper Prepared for BADIL Expert Seminar, Geneva, 2-5 October 2003, at 9-17.

³¹ *Id.*, at 9.

Republic of Serbia would have failed. Since the legislation enacted by the two states were not adequate, in 1999 the Office of the High Representative (established by Annex 10 of the DPA, and who takes the lead role of monitoring and fostering all aspects of civilian implementation) was forced to impose the appropriate legislation in each of the two states, “pursuant to his powers granted by the PIC in Bonn”.³²

Thus, although it is important to raise the right of the Palestinian refugees and displaced persons to return to their place of origin, and it is important to emphasize that it is a legal and a moral right, it is no less important to find the way to implement it. In this regard, the case of Bosnia and Herzegovina is an important relevant example to bear in mind and try to follow.

³² *Id.*, at 10.

Annex: "Redeeming the National (Jewish) Land"

Adv. Usama Halabi, (LL.M)

