

Annex I

Background of the Repatriation and Land Expropriation Schemes and the Laws Purporting to Justify Israel's Actions

In the early 1900s Zionist leaders recognized that Jewish ownership and control of land was necessary in order to create a Jewish state.¹ In 1901 the Zionist movement established the Jewish National Fund (JNF) specifically to acquire land in Palestine for Jewish settlement.² While the JNF was successful in acquiring some land prior to 1948, more land was needed to achieve the Zionist's goals.³ The 1948 military conflict provided the real opportunity to acquire more land.⁴ During the war the majority of Palestinians in what is now considered to be Israeli territory fled or were driven away by Israeli forces.⁵ During the 1947-1948 period at least 750,000⁶ Palestinians left what would become Israeli territory.⁷ Some of these Palestinians were expelled by psychological warfare, while most were expelled by military assault.⁸ The land left by the Palestinians constituted eighty percent of the land within Israeli jurisdiction at the end of the 1949 truce agreements.⁹ The Israeli government would not allow Palestinians to return.¹⁰ In fact, in July 1948 Israeli troops were authorized to shoot at refugees trying to return.¹¹ Israeli authorities destroyed Palestinian homes.¹² In addition, Israel created a formal scheme to acquire Palestinian land.¹³ Many new Jewish immigrants were settled in the homes or on the land acquired from the Palestinian refugees.¹⁴

Israel created a legal regime to justify its ban on repatriation and its land acquisition scheme. The combination of Israel's Law of Return and its Nationality Law purport to provide legal support for its ban on allowing Palestinians to return.¹⁵ Israel's

Law of Return of 1950 permits all Jews to enter and settle in Israel.¹⁶ Native Palestinian refugees, on the other hand, do not enjoy the privileged immigration rights granted by the Law of Return, but are de jure and de facto denationalized by Israel's Nationality Law.¹⁷ The *combination* of granting privileged immigration and citizenship rights to Jews and denationalizing the native Palestinian refugees through the Law of Return and the Nationality Law is overtly discriminatory. This legal regime has prevented the return of the overwhelming majority of Palestinians who were displaced following the 1948 conflict as well as many other Palestinian refugees displaced since then. These legal maneuvers were accompanied by actions to deter the return of Palestinians including shooting at refugees who attempted to return to their lands, uprooting or burning crops, damaging wells, and settling Jews in the refugees' land.¹⁸ The formal denial of the right to return in conjunction with these other actions has prevented the Palestinian refugees from returning to their original homelands.

Israel has not only used laws to justify its denial of the right to return, but has also used a variety of laws to justify its expropriation of Palestinian property. The Land (Acquisition for Public Purposes) Ordinance of 1943 that was passed by British authorities is the general land expropriation law used to acquire land for public purposes.¹⁹ "Public purpose" is anything the Minister of Finance certifies as a public purpose.²⁰ The public purposes the land has been used for are generally Jewish purposes.²¹ For example, in Nazareth 1200 dunums of land were confiscated and all but 80 of these were used to build Jewish housing.²²

In addition, Israel has used a variety of security and emergency laws to acquire Palestinian land. The Defense Regulations of 1945 allowed the Israeli Defense Minister to appoint military commanders over any areas.²³ Article 125 of the Regulations allows the military commander to declare an area closed, restricting anyone from entering or exiting the area.²⁴ This regulation was used to restrict Palestinians from returning to their homes.²⁵ Often these security laws were used in combination with other laws to ensure that the government could acquire the Palestinians' land.²⁶ For instance, the government passed the Emergency Regulations for the Exploitation of Uncultivated Lands (also known as the Cultivation of Waste Lands Ordinance) in 1949.²⁷ This law allowed the Minister of Agriculture to acquire land that was uncultivated.²⁸ This law was used in conjunction with the security laws.²⁹ Once an area was declared closed, the owners of the land were denied permission to enter, the area became uncultivated, and the lands were then taken by the government.³⁰ The Emergency Regulations (Security Zones) of 1949 was also applied in conjunction with the Cultivation of Waste Lands Ordinance to seize lands.³¹ The Minister of Defense could, according to the Emergency Regulations, declare a security zone in areas bordering Israel's frontiers.³² Once entry was barred the government could seize lands according to the Cultivation of Waste Lands Ordinance since they would become uncultivated.³³

While much Palestinian land was acquired under the above-mentioned laws, Israel acquired most of the Palestinian property under the Absentee Property Law and the Land Acquisition (Validation of Acts and Compensation) Law.³⁴ The Absentee Property Law's stated purpose was to protect the property of absentees and to facilitate the use of

this land for the development of the state.³⁵ This Absentee law vested **absentees'** property in a Custodian.³⁶ The law gives the Custodian the power to care for and use the property but gives no return rights to the individual.³⁷ While the custodian could return property, this rarely happened.³⁸ The law effectively defined as absentees all Palestinians who had left their villages for any reason after November 29, 1947, even if they later returned and even if they left only briefly to escape fighting or because of forced expulsion.³⁹ There was an exception for Jewish people who had left.⁴⁰ Once Palestinians were determined to be "absentees", they effectively lost their property.⁴¹ By considering "absentees" persons who left their homes after November 1947 the Custodian acquired one million dunums of land by 1950.⁴² While the Custodian may not generally sell land, the passage of the Land Acquisition Law permitted the Custodian to vest ownership in the acquired Palestinian lands in the Development Authority.⁴³ This gave an appearance of legality to the expropriation process.⁴⁴ All of the land held by the Custodian was transferred to the Development Authority.⁴⁵ The Development Authority according to the Transfer of Property Law was to ensure that ownership of the land remains in perpetuity in Jewish hands.⁴⁶ While the law did provide for compensation to be paid to any person whose land had been taken, those Palestinians who were outside of Israel were unable to benefit from this scheme.⁴⁷ Additionally, the amount of compensation was unreasonably low.⁴⁸ The compensation offered by the government was based on the value of the property in Israeli pounds as of January 1950 with three percent of the value **added** for the years thereafter.⁴⁹

The policies of the organizations that administer the confiscated land reflect Israel's overall goal of expanding Jewish land holdings and diminishing Palestinian land holdings. The Israel Lands Administration (ILA) is the government authority that manages the lands in the ownership of the Development Authority, the JNF (established by the World Zionist Organization) and the state itself.⁵⁰ Thus, this authority manages almost all Palestinian refugee land that has been confiscated under laws such as the Absentee Property Law. The Basic Land Law of Israel states that Israeli lands that the ILA manages shall not be transferred by sale or by any other manner.⁵¹ Since the ILA cannot sell lands, it leases the lands.⁵² As described above, the JNF's purpose is acquiring rights in land for settling Jews.⁵³ The JNF does not want land leased to non-Jews.⁵⁴ While the JNF land is now managed by the ILA, the policies of the ILA are decided by a council made up of JNF nominees.⁵⁵ Therefore, the JNF's stated goal of acquiring rights in land for Jews affects the ILA's administration of land. Additionally, all JNF land must be administered according to the JNF covenant.⁵⁶ Thus, JNF land may not be leased to non-Jews.⁵⁷ This is accomplished through lease agreements forbidding subletting or transfers to Arabs.⁵⁸ While non-JNF land can legally be leased to Arabs, institutional constraints generally restrict the amount of land transfers to Arabs.⁵⁹

The ILA limits the land available to Arabs and the freedom of use of Arab's lands through a variety of other methods. First, the ILA may assign ownership of land to the JNA.⁶⁰ Any land officially owned by the JNA must be owned in perpetuity by Jewish people and may not be sublet by non-Jews.⁶¹ Second, the ILA assigns large areas of Palestinian land to Jewish controlled councils that prevent Arab communities from

expanding.⁶² Additionally, zoning requirements restrict the use of Palestinian land.⁶³ Moreover, Palestinian communities are threatened by discriminatory development budgets and development plans.⁶⁴ Finally, Palestinian homes that are not built according to appropriate permits may be demolished.⁶⁵ This is a discriminatory policy since Jewish illegally built homes are not demolished.⁶⁶

The World Zionist Organization (the official body of the Zionist Movement) and the Jewish Agency also contribute to the discriminatory administration of land. The Jewish Agency was established to help administer Palestine and was initially the same as the World Zionist Organization (WZO).⁶⁷ Later, the Jewish Agency became a separate body, although its mandate was connected to that of the WZO.⁶⁸ The Jewish Agency (Status) Law of 1952 explained the functions of the WZO and the Jewish Agency.⁶⁹ The WZO was to further Zionist political goals while the Jewish Agency was to deal with immigration and social welfare.⁷⁰ However, both organizations were also authorized to continue to develop and settle land within Israel.⁷¹ The government of Israel even signed Covenants with both organizations and recognized that part of their function was the settlement and development of land.⁷² Additionally, numerous laws give these agencies the right to representation in various agencies addressing land issues.⁷³ Yet, according to their mandates, these agencies only assist Jewish people.⁷⁴ The Jewish Agency in particular is especially influential in land policies since it plans and funds new settlements.⁷⁵ The mandate of the Jewish Agency requires that it only assist the Jewish population.⁷⁶ Accordingly, settlements are established for Jews only.⁷⁷

It is clear from Israel's legal scheme that its policies regarding the inability of Palestinians to return to their original lands, the confiscation of Palestinian's lands, and the administration of the expropriated lands have become institutionalized.⁷⁸ These are not simply random events but rather are actions taken as part of a purposeful, well thought-out scheme. The government has created a legal format to try to justify its actions. Israel's actions, though, clearly violate the Covenant on Economic, Social and Cultural Rights as well as other international instruments.

¹ DAVID KRETZMER, *THE LEGAL STATUS OF ARABS IN ISRAEL* 49 (Westview Press 1990).

² *Id.* at 49.

³ George E. Bisharat, *Land, Law, and Legitimacy in Israel and the Occupied Territories*, 43 AM. U.L. REV. 467, 501-02 (1964).

⁴ Bisharat, *supra* note 3, at 503.

⁵ KRETZMER, *supra* note 1, at 50.

⁶ Some have said that Israel expelled more like 900,000 refugees from 530 towns and villages. See Salman Abu Sitta, *Special Report of Badil: Quantification of Land Confiscated inside the Green Line*, Annex to Follow-Up Information Submitted to the Committee for Economic, Social and Cultural Rights in November 2000, p. 50.

⁷ Andrew I. Killgone, *Israeli Tactics Drive Out Palestinians in 1948 and 1967*, at <http://www.washingtonreport.org/backissues/0390/9003017.htm> (last visited April 21, 2003).

⁸ Salman Abu Sitta, *Special Report of Badil: Quantification of Land Confiscated inside the Green Line*, Annex to Follow-Up Information Submitted to the Committee for Economic, Social and Cultural Rights in November 2000, p. 50.

⁹ Bisharat, *supra* note 3, at 503.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ KRETZMER, *supra* note 1, at 36.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Salman Abu Sitta, *Special Report of Badil: Quantification of Land Confiscated inside the Green Line*, Annex to Follow-Up Information Submitted to the Committee for Economic, Social and Cultural Rights in November 2000, p. 51-52.

¹⁹ KRETZMER, *supra* note 1, at 51.

²⁰ *Id.* at 52.

²¹ The Arab Association for Human Rights, *Land and Planning Policy in Israel*, at <http://www.arabhra.org/article26/factsheet2.htm> (last visited 29 March 2003).

²² *Id.*

²³ Bisharat, *supra* note 3, at 515; Defense (Emergency) Regulations, 1945, pt. I, § 6.

²⁴ Bisharat, *supra* note 3, at 516; Defense (Emergency) Regulations, § 125.

²⁵ Bisharat, *supra* note 3, at 516.

²⁶ *Id.*

²⁷ Bisharat, *supra* note 3, at 516; Emergency Regulations (Cultivation of Waste Lands-Extension of Validity Ordinance), 2 L. St. Israel 36 (1949).

²⁸ Bisharat, *supra* note 3, at 516.

²⁹ *Id.*

³⁰ Bisharat, *supra* note 3, at 516; Emergency Regulations (Cultivation of Waste Lands) (Extension of Validity Ordinance), § 4.

³¹ Bisharat, *supra* note 3, at 517; Emergency Regulations (Security Zones) (Extension of Validity) (No.2) Law 3 L. St. Israel 56 (1949).

³² Bisharat, *supra* note 3, at 517; Emergency Regulations (Security Zones) (Extension of Validity), § 1(a).

³³ Bisharat, *supra* note 3, at 517. It should be noted that some of the laws mentioned in this section are no longer in effect. *See* KRETZMER, *supra* note 1, at 54-55.

³⁴ KRETZMER, *supra* note 1, at 55-56; Absentees' Property Law, 4 L. St. Israel 68, § 4(a) (1949-1950); Land Acquisition (Validation of Acts and Compensation Law) (No. 25) 7 L. St. Israel 43-45 (1953).

³⁵ KRETZMER, *supra* note 2, at 55.

³⁶ *Id.* at 56.

³⁷ *Id.*

³⁸ Bisharat, *supra* note 3, at 513.

³⁹ *Id.*

⁴⁰ KRETZMER, *supra* note 1, at 57.

⁴¹ Bisharat, *supra* note 3, at 513.

⁴² *Id.* at 514.

⁴³ *Id.* 518; Land Acquisition (Validation of Acts and Compensation) Law (No. 25), 7 L. St. Israel 43-45 (1953).

⁴⁴ Salman Abu Sitta, *Selling Refugees Land*, in Action Alert: Protect Massive Israeli Sale of Refugee Lands, American Arab Discrimination Committee, at <http://www.adc.org/action/2000/5july2000.htm> (last visited April 5, 2003).

⁴⁵ KRETZMER, *supra* note 1, at 58; Bisharat, *supra* note 3, at 518.

⁴⁶ Salman Abu Sitta, *Special Report of Badil: Quantification of Land Confiscated inside the Green Line*, Annex to Follow-Up Information Submitted to the Committee for Economic, Social and Cultural Rights in November 2000, p. 53.

⁴⁷ Bisharat, *supra* note 3, at 519.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ KRETZMER, *supra* note 1, at 60-61.

⁵¹ *Id.* at 60.

⁵² *Id.* at 61.

⁵³ *Id.* at 62.

⁵⁴ *Id.*

⁵⁵ *Id.* at 63.

⁵⁶ *Id.* at 64.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at 64-66.

⁶⁰ The Arab Association for Human Rights, *Land and Planning Policy in Israel*, at <http://www.arabhra.org/article26/factsheet2.htm> (last visited 29 March 2003).

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ KRETZMER, *supra* note 1, at 91.

⁶⁸ *Id.* at 91-93.

⁶⁹ *Id.* at 92-93.

⁷⁰ *Id.* at 93.

⁷¹ *Id.*

⁷² *Id.* at 93-94.

⁷³ *Id.* at 94.

⁷⁴ *Id.* at 96.

⁷⁵ *Id.* at 94.

⁷⁶ *Id.* at 96.

⁷⁷ The Arab Association for Human Rights, *Land and Planning Policy in Israel*, at <http://www.arabhra.org/article26/factsheet2.htm> (last visited 29 March 2003).

⁷⁸ Israel has also acquired land in the occupied territories of the West Bank and Gaza Strip. After the 1967 war Israel began to make extensive land acquisitions in the occupied territories. Bisharat, *supra* note 3, at 526. Israel used various methods for acquiring land in the occupied territories, such as through Emergency Regulations and through Absentee Property laws. *Id.* at 533-35. Israel has demolished the land and homes of many Palestinians living in the occupied territories. While this submission focuses on the treatment of the land within Israel itself, Israel's land policies have also had an overwhelming effect on Palestinians in other areas.