

The Denied Inheritance: Palestinian Land Ownership in Beer Sheba

Salman Abu Sitta

Founder and President, Palestine Land Society, London
Paper presented to the International Fact Finding Mission
Initiated by RCUV, Beer Sheba

Father: This land was Arab land before you are born. The fields and villages were theirs. But you do not see many of them now. There are only flourishing Jewish colonies where they used to be....because a great miracle happened to us...

Daughter: How can one take land which belongs to someone else, cultivating that land and living off it?

— There is nothing difficult about that. All you need is force. Once you have power you can.

— But is there no law? Are there no courts in Israel?

— Of course there are. But they only held up matters very briefly. The Arabs did go to our courts and asked for their land back from those who stole it. And the judges decided that yes, the Arabs are the legal owners of the fields they have tilled for generations.

— Well then, if that is the decision of the judges... we are a law-abiding nation.

— No, my dear, it is not quite like that. If the law decides against the thief, and the thief is very powerful, then he makes another law supporting his view.

The father is Maariv founder and first editor, Dr. Israel Carlebach. This exchange was published in Maariv, 25th December 1953.

1. INTRODUCTION

1.1 The Original Sin

It is impossible to examine the Palestinian land ownership in Israel outside the context of the general Palestine-Israel conflict. This question is not a domestic, municipal or local dispute, common in other countries. This is an integral component of the Zionist invasion of Palestine in 1948 which was preceded by massive Jewish immigration to Palestine under the British Mandate.

While the Allied powers promised the Arabs their freedom and independence after they together defeat the Turkish domination in WWI, they secretly conspired to divide Arab countries between them. One result of this conspiracy had a lasting devastating effect.

The colonial alliance between the British and the Zionists gave birth to Balfour Declaration¹ in which Britain promised to "view with favour the establishment in Palestine of a national home for the Jewish people"; a home, not a state; in, not of Palestine.

Under the British umbrella, the Zionists managed to bring in to Palestine legal and illegal immigrants and to form, train and equip an army of 65,000 -120,000 soldiers (20% of Jewish community), in 1948/49 led by officers of WWII experience.²

¹ Henry Cattan, *The Palestine Question*. 2nd Edition. London: Saqi Books, 2000, pp. 13-15. Also see, Sami Hadawi, *Bitter Harvest: A Modern History of Palestine*, Scorpion Publishing Ltd., London, 1989; W. Khalidi (ed.), *From Haven to Conquest: Readings in Zionism and the Palestine Problem until 1948*. 2nd Edition. Washington, DC: The Institute of Palestine Studies, 1982. For an analysis of the Balfour Declaration and international law see, Henry Cattan, *Palestine and International Law*. London: Longman, 1973; Francis A. Boyle, *Palestine, Palestinians and International Law*. Atlanta: Clarity Press Inc., 2003; W.T. Mallison, *The Legal Problems Concerning the Judicial Status and Political Activities of the Zionist Organization/Jewish Agency*. Monograph No.14. Beirut: Institute for Palestine Studies, 1968; W.T. Mallison and S.V. Mallison, *The Palestine Problem in International Law and World Order*. Essex: Longman, 1986; and, Musa Mazzawi, *Palestine and the Law*. Reading: Ithaca, 1997.

Although the Jews owned only 5.5% of Palestine under the umbrella of British protection, they managed to occupy by military force 78% of Palestine in 1948, on which the state of Israel was established.

That was the largest, planned, comprehensive and still continuous (62 years later) ethnic cleansing operation in modern history. As a result, 675 Palestinian towns and villages were totally depopulated. Its inhabitants are still homeless and are refugees till this day. Israel was declared on this part of Palestine (78%), of which 93% is Palestinian land.³ In 1967, Israel conquered what is left of Palestine in the West Bank and Gaza and parts of Egypt, Syria and later Lebanon.

1.2 The Master Plan

Today 70% of all Palestinians (10.6 million in 2008) are refugees expelled from their homes in Palestine in what is Israel today. If we add those displaced in 1967, fully 81% of all Palestinians are removed from their homes and not allowed to return. The remainder of Palestinians lives under brutal and discriminatory Israeli rule.

That a foreign immigrant minority descends upon a natural majority of a country, armed by a pre-meditated plan, supported by Western colonial powers through providing arms, money and political backing, dispossesses its people, empties its land, erases its physical and historical landscape is unprecedented in history. No wonder it has been the cause of continuous wars since its inception. This is the longest war (92 years and counting) against a defenseless people.

The Zionist master plan of ethnic cleansing against Palestinians has three objectives:⁴

1. The land: To conquer it, confiscate it and deny its original ownership.
2. The people: To kill them in massacres, to expel them, to chase them in exile or to make their life unbearable under occupation or siege in order to force them to leave.
3. The identity: To erase physical signs of Palestinian presence (destruction of villages, monuments, holy sites), to change maps and delete Arabic names and replace them with Hebrew names, and to erase their mention in history and geography books.

In spite of these great odds, the Palestinians are still here and resisting. They obviously did not disappear. Thus we have a strange stalemate of asymmetrical war between Palestine and Israel. Neither did win squarely. The battle still rages on.

1.3 The Role of the Law

The legal effort to pursue the restoration of Palestinian rights would have to use (i) Israeli Law and (ii) International Law.

² *All That Remains, The Palestinian Villages Occupied and Depopulated by Israel in 1948*. Walid Khalidi (ed.) Washington, DC: Institute of Palestine Studies, p. 575. Benny Morris, *The Birth of the Palestinian Refugee Problem Revisited*. Cambridge: Cambridge University Press, 2004. See also

Table 1, Amitzur Ilan, *The Origins of the Arab-Israeli Arms Race: Arms, Embargo, Military Power and Decision in 1948 Palestine War*. Oxford: McMillan and St. Antony's College, 1996, p. 61. The table shows 66.7 percent of the population in the 15-44 year bracket. Estimate of 62 percent in 16-50 bracket. Taking half for males and multiplying by the Jewish population gives 185,000 able-bodied Jewish males. By January 1949 the Jewish fighting force numbered 120,000, including 32,000 front-line troops. The number of 120,000 is cited in David Ben Gurion, *War Diary, 1947-49*. [Arabic]. Washington, DC: Institute for Palestine Studies, 1993, pp. 778-782; Elias Sanbar, *Palestine 1948*. [Arabic]. Beirut: Arab Society for Studies and Publishing, 1987, p. 14.

³ Salman Abu Sitta, *The Atlas of Palestine 1948*, London: Palestine Land Society, 2005.

⁴ The subject of ethnic cleansing, known politely as Transfer, has always been an integral component of the Zionist policy since Herzl. See, e.g., Nur Masalha, *Expulsion of the Palestinians: The Concept of Transfer in Zionist Political Thought, 1882-1948*. Washington, DC: Institute of Palestine Studies, Washington DC, 1992; Nur Masalha, *A Land without a People: Israel, Transfer and the Palestinians*. London: Faber and Faber, 1997; Nur Masalha, *The Politics of Denial: Israel and the Palestinian Refugee Problem*. London: Pluto Press, 2003; and, Nur Masalha, *An Israeli Plan to Transfer Galilee's Christians to South America: Yosef Weitz and 'Operation Yohanan' 1949-1953*, Center for Middle Eastern and Islamic Studies, University of Durham, Occasional Paper No.55, 1996.

The Israeli law is the law of the conqueror to deprive the vanquished of his rights. Thus, there is a major obstacle in appealing to a law which is designed, through a pseudo-legal web of law formulation, to confiscate the property of the Palestinians. This formulation has the double objective of taking Palestinian land and making them homeless, so they may eventually leave. Even when a court decision repeatedly affirmed the right of the Palestinians who are Israeli citizens, such as in Iqrit and Bir'im, to return to their homes, the government of Israel blocked the enforcement of this decision since 1951.

Take the celebrated case of the Advisory Opinion of the International Court of Justice (ICJ) given on 9th July 2004 and endorsed by the UN General Assembly. It stated that the West Bank and Gaza are “occupied territories” and that the Apartheid Wall is “illegal” and must be demolished and compensation be paid to Palestinian farmers. The Israeli High Court of Justice did not recognize this Advisory Opinion of the highest court in the world, and merely yielded to petitions to slightly change the course of the Wall to ‘alleviate’ some of the occurring damages.

While the pursuit of rights through Israeli courts is still necessary, to keep up the pressure and to expose the injustice to the world, it will not create tangible results and may give the false impression of procedural justice being pursued.

The international law, in the form of several dozens of UN General Assembly and Security Council resolutions, has already confirmed the Palestinian right to repossess their lands and to return to their homes over 130 times in 62 years. A resolution of particular importance to property affirmed regularly is, for example, Resolution A/RES/52/62 “Palestine refugees’ property and their revenues” of 10 December 1997, which states:

- Requests the Secretary-General to take all appropriate steps, in consultation with the United Nations Conciliation Commission for Palestine, for the protection of Arab property, assets and property rights in Israel and to preserve and modernize the existing records of the Commission,
- Calls upon all the parties concerned to provide the Secretary-General with any pertinent information in their possession concerning Arab property, assets and property rights in Israel that would assist him in the implementation of the present resolution;

This resolution and others like it affirmed also the entitlement of Palestinians to the revenues from their property since 1948.

The problem of course is that Western colonial powers, which created Israel in the first place, blocked any implementation of these resolutions and vetoed any resolution which called for Israel’s sanctions.

No resolution is spared from Western blocking, including the Humanitarian Law based on the 4th Geneva Convention. It will be recalled that no serious action was taken against Israel for its recent massacres and destruction in Gaza in December 2008- January 2009. Many of the victims are refugees from Beer Sheba.

When it comes to expanding or threatening Western colonial interest any where in the world, the UN resolutions, even those of doubtful legality, have been hastily enforced by Nato forces, such as in Iraq, Bosnia, Kuwait, and Afghanistan, to name a few.

1.4 The Voice of Justice

However a new world force is now growing. Through the proliferation of NGO’s, the wider use of internet and its derivatives, and the immediate dispatch of news through satellite stations, facts cannot be easily

hidden and injustices are frequently exposed. This put a partial lid on Israeli government propaganda and myth propagation which have been the staple of Zionist effort feeding western audience for decades.

A further manifestation of this new force is the growing impact of Boycott, Disinvestment and Sanctions (BDS) campaign to which many European and few American universities and unions have responded positively. A similar campaign was waged against South Africa's Apartheid policy, which helped to dismantle the system.

The road to justice is not easy but it must be taken. For silence is complicity in crime. In our world today, a crime, complicity in it or the failure to stop it by any means available, will not escape notice and perpetrators will be brought to justice however long it takes.

2. THE OTTOMAN PERIOD

2.1 Islamic Law

It is ironic that a Palestinian has to prove his origins, domicile and property in Palestine to a Polish or Latvian Jew who arrived to the shores of Palestine in the middle of the night from a smuggler's ship. That is what is required of Palestinians today. However, the facts speak for themselves; they are beyond dispute.

Ownership of land in Islam rests ultimately with the *umma* (Islamic nation), as God's trustee. Caliph Omar I (634- 44) acted upon this principle, although the principle of communal ownership for the benefit of the whole people was known in Byzantine Syria and Egypt. The Ottomans adopted and developed the same Islamic principle into a refined set of state laws.

In the words of Halil Inalcik, an authority on Ottoman history,⁵

“The underlying argument always was that such lands belonged to God, or to the imam as His trustee, who represented the Islamic community, it was his duty to see that such lands were administered in the way that would best serve the interests of the community and Islamic state, ‘Din u Dawla’.

The principle was applied in a two-tier system: (1) *rakaba*, ownership rested with the Caliph, imam, Sultan or state, (2) *tasarruf, manfa'a*, usufruct. While the first was always held by the state, the second was granted to a member(s) of the community, *ra'iya*, in a manner close to independent ownership in that the land in question may be inherited. Most of the lands, over 90% of arable land in the Ottoman empire, was considered state land (*miri*). The rest had been removed from this domain by a special dispensation from the Sultan. The underlying aim was to put all land for the use of the community as cultivators of the land and a source of income tax for the general benefit of *al umma*. Accordingly, foreigners were not allowed to own land. Late in the nineteenth century, under intense European pressure, the Ottoman laws restricting the sale of land to non-Muslims were relaxed. But these sales were insignificant.

For over 14 centuries, the land was cultivated under these Islamic rules. Beer Sheba land was no exception. It was cultivated where possible according to rainfall and taxes were paid. There was no question that such land was not *mewat*.

⁵ Halil Inalcik with Donald Quataert (ed.), *An Economic and Social History of the Ottoman Empire 1300-1914*. Cambridge: Cambridge University Press, 1994, p. 104.

2.2 Ottoman Tax Register of 1596

We have one of the earliest Ottoman documents to prove this, namely *Dafteri-Mufassel* of 1596, one of the earliest Ottoman Tax Registers. **Table 1** shows sites in Beer Sheba Sub-District which grew wheat, barley and summer crops (e.g. maize, melon) and paid taxes accordingly. The remarkable fact is that the names of these sites are the still same until 1948, before the ethnic cleansing of Palestine. The value of tax of these sites is the same or sometimes longer than a typical Gaza coastal village.

S.No.	Reference	Name in 1596 Register	Coordinates PGR	Land Owners pre 1948	1596 Population (No. of Families)	Wheat (Ocga)	Barley (Ocga)	Summer Crops (Ocga)
	Col. 1	Col. 3	Col. 5		Col. 11	Col. 14	Col. 15	Col. 16
1	P 275	Ma'in	093-082	Ma'in Abu-Sitta, Ghawali, Terabin	80	1250	4200	1450
2	Z45	Nakhrur	095-097	Abu Khamash, Ghawali Terabin	69	5000	2100	474
3	M 22	Kh. Sha'arta	117-106	Abu Thabet, Jubarat	6	3740	1820	480
4	Z54	Kh. Ju'atheni	116-093	Galazin, Beni Ukba, Bdinat, Tayaha	43	6250	2940	2184
5	P 292	Jadida	124-109	Al Walayda, Jubarat	12	4750	1260	
6	P 293	Kh. Ajlan	123-108	Abu Rawwa', Jubarat	10	750	840	
7	Z 59	Kh. Furt/ Furatiya	131-111	Al-Ra'i, Abul Udous, Jubarat	22	1250	1120	500
8	Z 74	Sihan	105-095	Al Wuheidat, Tarabin	11	3500	4200	528
9	Z 78	Idra	113-088	Al-Sani, Qudeirat, Tayaha	59	2500	1400	1500
10	Z 120	Al Baha	110-093	Franji, Tayaha	15	1000	980	
11	Z 121	Rasm Al Gharbi	108-093	Atawneh, Tayaha	35	2500	560	1000
12	Z 122	Rasm Al Sharqi	109-093	Atawneh, Tayaha	43	3750	1680	2085
13	Z 127	Salga	094-085	Abu Mugheisib, Terabin	63	2500	4200	1700
14	Z 130	Umm Al Kais	120-109	Bin Rafi', Jubarat	44	1000	280	400
15	Z 154	Tei Jamma	098-088	Al Zray'i, Terabin and Hanajera	32	2500	2660	180
16	Z 114	Barjaliya	097-095	Al Wuheidat, Tarabin	12	500	700	480
17	Z 180	Kh. Ammoudiya	122-094	Beli, Atawneh, Tayaha	16	2500	1400	500
18	Z 99	Suq Mazin	090-086	Al Smeeri, Hanajira	19	1000	980	1620
19	M 6	'Urban Tawayif Bani 'Attiyya	various	Tayaha				
20	M 7	'Urban Tawayif Bani 'Ata	various	Tayaha				
21	M 8	'Urban Bani Hutaym	various	Jubarat				
22	M 9	'Urban Bani Sawalima	various	Jubarat				
23	M 10	'Urban Jaram		Terabin				
24	M 21	Burayr	115-108	Just east of Burayr: Abu Thabet, Jubarat	210	9000	12600	4070
26	Z194	Abasan	087-081	Just east: Ghawali, Najamat, Terabin	28	2500	6300	1000
27	Z199	Muharraga	113-097	Just east: Abu Shunnar, Beni Okbeh, Tayaha	83	6000	2100	356
25	Z33	Bayt Jirja	110-112	Gaza Sub-District Village: for comparison only	85	7500	4200	6300

Notes:

1. The above are selected sites in Beer Sheba Sub-District which had been identified in 1596 Register. Other listed sites in the same district were not identified because of Turkish spelling.
 2. Sites in Gaza Sub-District (of Gaza District) were not included in this table except one for comparison.
 3. The Ottoman Tax Register listed all above (in pt. 1,2) under "Liwa Gazzeh", roughly equivalent to Mandate Gaza District.
 4. The Ottoman Tax Register of 'Urban (Tribes) of Jaram, Beni Ata, Beni Htalm, Beni Sawalima in Liwa Gazzeh are without defined location.
 5. Column numbers refer to original Register. Columns 14, 15, 16 give Tax Assessment for agricultural produce of cultivated land in Ocgas.
 6. PGR = Palestine Grid Reference.
- Source: W.D Hutteroth, Kamal Abdulfattah, Historical Geography of Palestine, Transjordan and Southern Syria in the Late 16th Century, Erlangen: Erlanger Geographische Arbeiten, 1977

Table 1: Beer Sheba Villages/Tribes cited in the *Dafteri-Mufassal* Tax Register of 1596

2.3 Turkish Land Registration

At no time, whether before the promulgation of the Ottoman Land Code of 1858 or after, did the Turks challenge the land ownership of Palestinians in Beer Sheba.

Three hundreds years after the *Dafteri Mufassel*, at about the end of the 19th century, we have further confirmation that the Turkish authorities recognized the land ownership in Beer Sheba.

On 4 May 1891, upon orders from the Ministry of Interior in Istanbul, the Gaza District Council (which the British split into two sub-districts: Gaza and Beer Sheba for the same region: *Bilad Gazzeh*) decided to "register these lands in the Gaza District of Jerusalem *Mutassarefiyat* and cultivated by 'urban (tribes) at the Land Registry (*tapu*) since absence of this registration may cause conflict and inter-fighting".

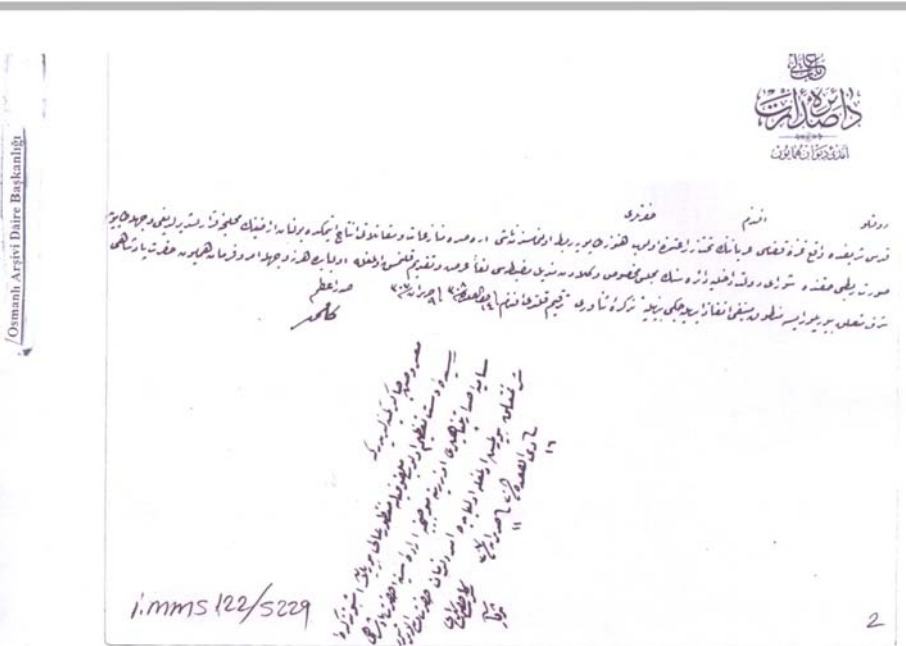
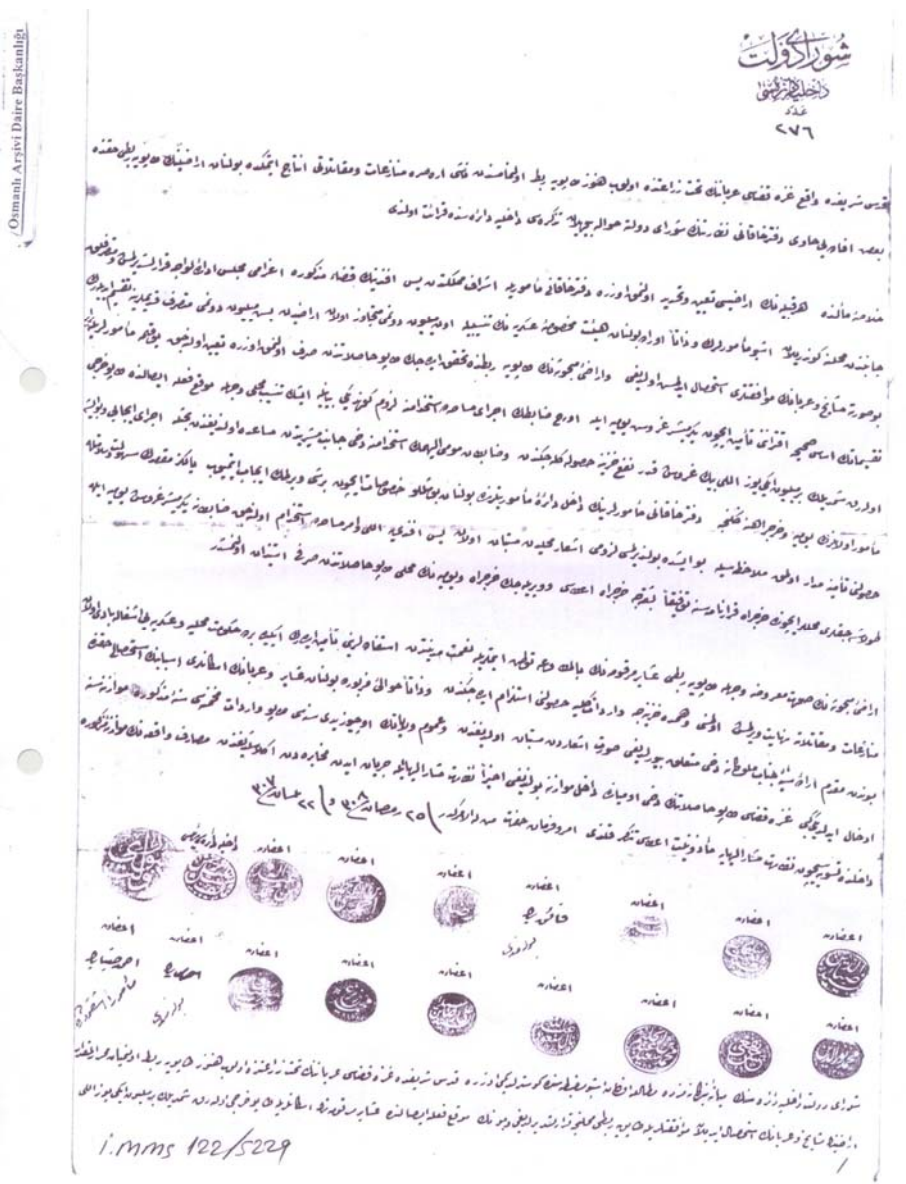
The council sent a five-member committee of notables together with official surveyors "to delimit and record the lands of each tribe... The officials sent by the *Mutassarefiyat* delineated 5 million donums out of lands exceeding 10 million donums [of the District] among its ancient holders with the approval of the Special Military Committee. Then the approval of the sheikhs was obtained." The Turkish document goes on to say that 3 survey officers were needed to plot demarcation points on "proper basis". See Fig. 1.

Fig 1. Turkish Document on the Registration of Beer Sheba Land to its Holders, IMMS. 122/5229 dated 4 May 1891.

The boundaries of individual ownership of the land in most of Palestine, including Beer Sheba, was known and acknowledged by Custom Law (*al 'urf wa al 'ada*).

The principle is of course well known. One definition is: "law generated by social precedent and acceptance as distinct from institutional law..."⁶ In other words, it is an observed legal practice and the relevant actors consider it to be law.

⁶ Eddie Durie, Custom Law, (1994).4.



2.4 Sharia Court in Jerusalem

On this basis tracts of land were bought, sold, inherited and taxes paid for. The town site of Beer Sheba itself was “purchased”, not confiscated, from al Mohamadiyeen, Azazema, in 1900. If the land was *mawat* or state land, this would not be needed.

A proof of this may be found in two documents registered at Sharia Court in Jerusalem, in the period 1906-1910. The first of these two documents deals with appointing a power of attorney to do the transaction of the ownership of a tract of land in Abu Sdeir (PGR 121-078) “whose borders are known, requiring no description or delimitation as well-known to all”, and the second in Khirbet Muleih (PGR 116 - 078) “judged by District Council to be the property of Sheikh Ismail”. These locations are deep into Beer Sheba district and roughly correspond to sites in the 1596 Tax Register. See Figs. 2,3. (For location see Fig 7 which follows.)

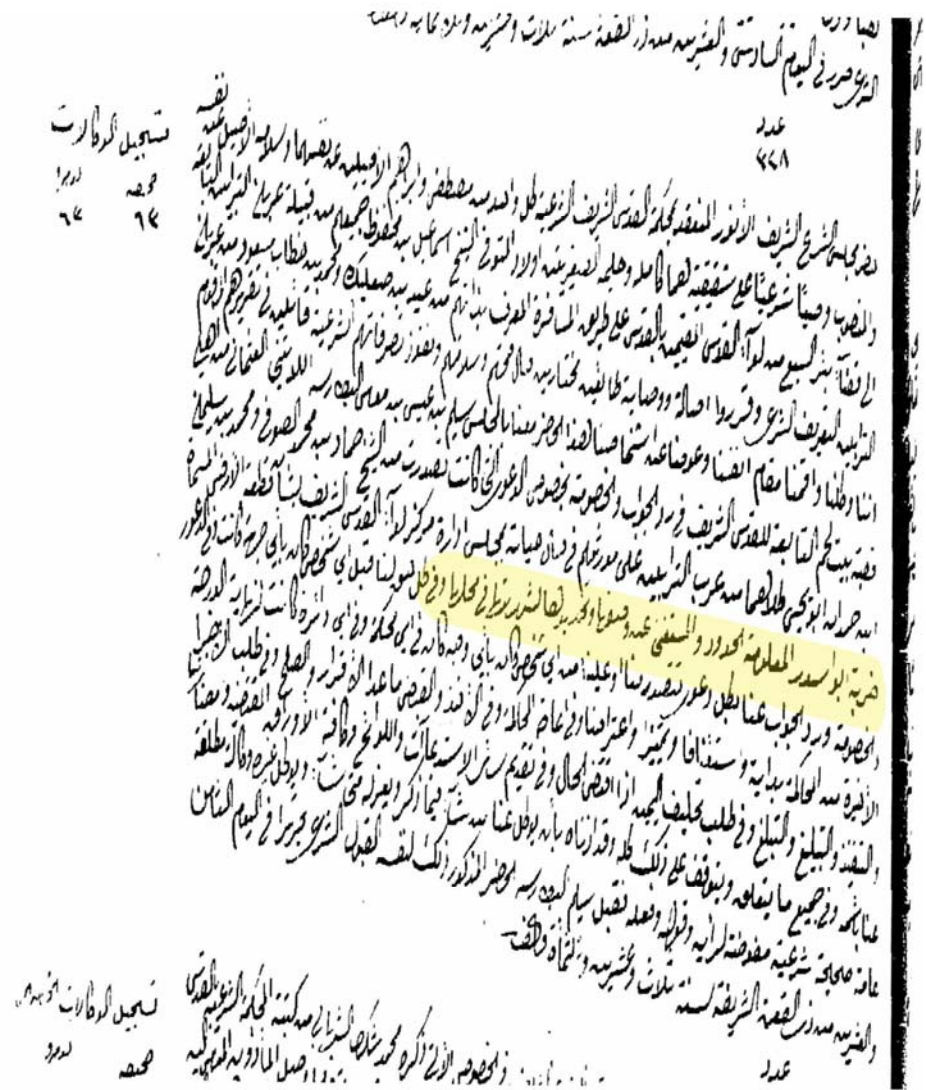


Fig. 2 Power of Attorney regarding Abu Sdeir Land in Beer Sheba in the Ottoman Period

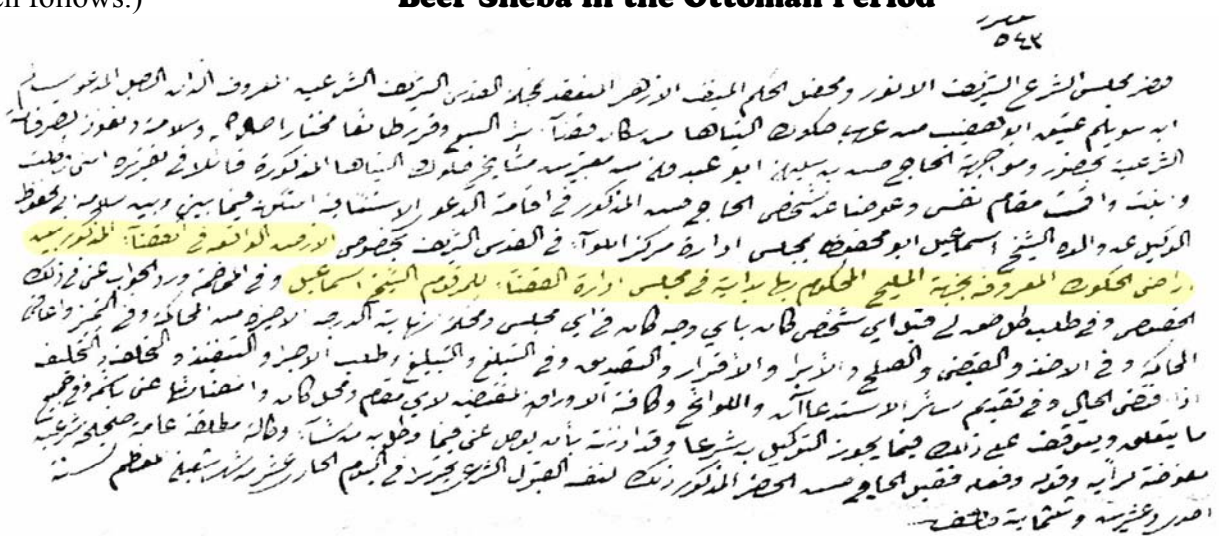


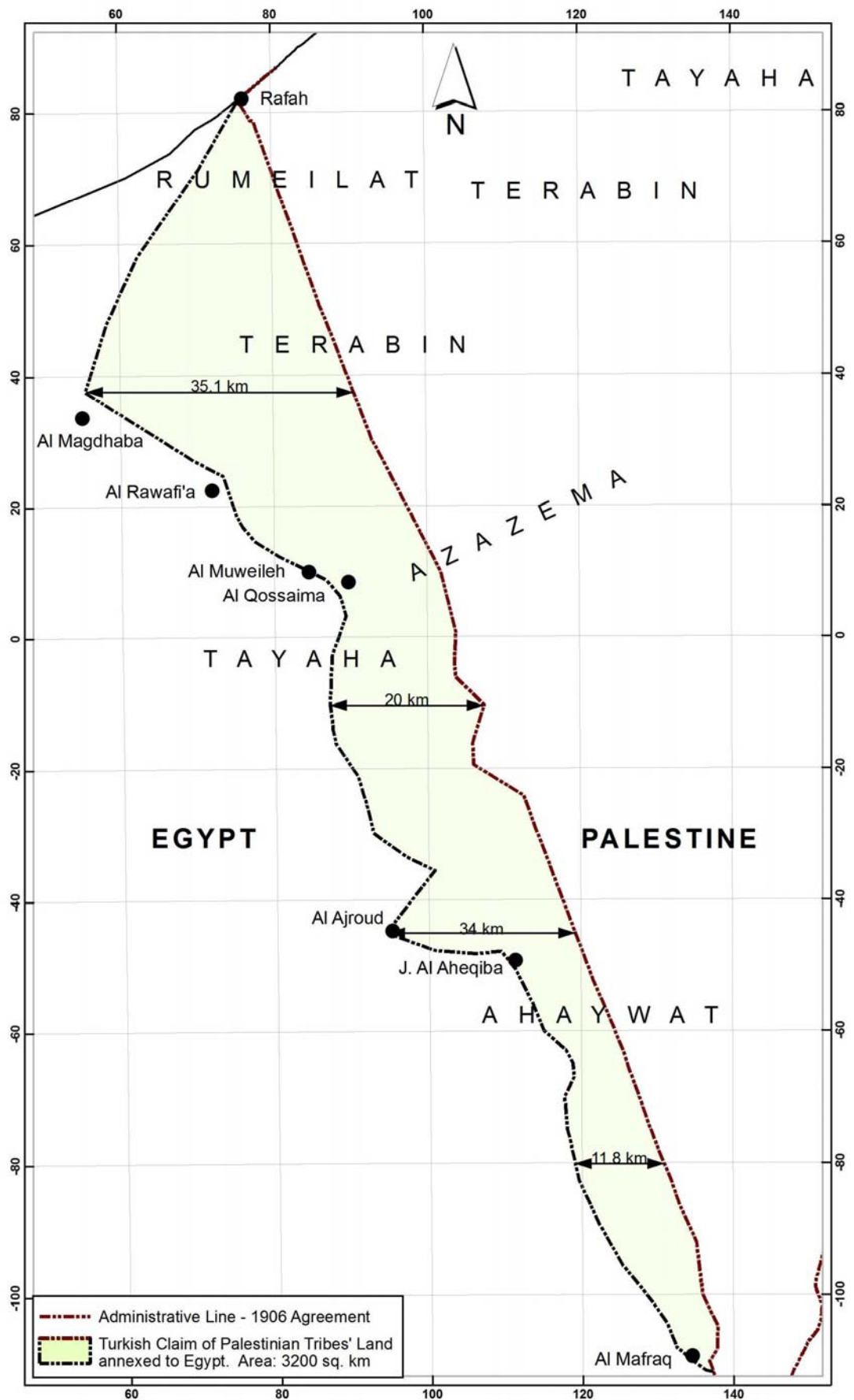
Fig. 3 Power of Attorney regarding Khirbet Imleih Land in Beer Sheba in the Ottoman Period.

2.5 Egyptian – Turkish Documents

Palestine, a Turkish Dominion, was threatened by British invasion from Egypt which British forces occupied in 1882. In 1906, the Administrative Line Agreement between Egypt and Palestine was signed, limiting access between the two countries. This line annexed Palestinian land to Sinai, under the pressure of British gun-boat diplomacy. See Fig. 4.

Fig. 4
Palestinian Tribal Land annexed to Egypt.

Notes: The land of Palestinian tribes extended into Egypt. Cultivation was developed around water resources. In Beer Sheba proper and annexed land in Sinai, the inhabitants bought and sold their land and paid tax to the *Qaimmaqam* of Beer Sheba who also solved disputes about land ownership. The 1906 Administrative Line Agreement respected all these rights in Art. 6, 8.



The Turks presented proof to the British-led Egyptian government that the tribes of Beer Sheba (*'urban*) paid taxes to the *Qaimmaqam* of Beer Sheba, in order to prove that this territory and land ownership in it belong to its inhabitants in Palestine, not Egypt.⁷

In the following 10 years, the British threat to Palestine became ominous. The Turks mended fences with Palestinian citizens in Beer Sheba. They bestowed honours on the Sheikhs (see Fig. 5) and sought and obtained their support in the Turkish campaign on Suez Canal in 1914/1915.



Fig. 5 Akram Bey, Jerusalem *mutassaref* honours Beer Sheba Sheikhs, 1906-1908

Thus it may be concluded that during the Ottoman period (1517 – 1917), land ownership in Beer Sheba was recognized, its boundaries were known as per Custom Law; land was purchased and sold by individual owners; citizens paid taxes. There was never any ruling that their land, where they lived, was *mewat*.

⁷ See the British-led Egyptian government correspondence with London and Constantinople for several months, about the tribe's rights, property and reaction, the strength of Turkish forces in Palestine, the power of Sultan to intervene, the role of British fleet in the area. For details, see Patricia Toy (ed.), *Palestine Boundaries, 1833-1947*, Cambridge: Archive Editions, 1989, Vol.1, pp. 548-630.

The Turkish authorities embarked on a plan to survey Beer Sheba in detail, but the British threat from Egypt, culminating in the 1906 Administrative Line Agreement and finally WWI aborted these plans.

No authority challenged this concept from time immemorial, except Israel.

2.6 The European Return

The European re-discovery of the Holy Land confirmed this state of affairs.

When Napoleon ventured into Palestine in 1801, his seventy-nine savants left us the encyclopedic “*La Description de l’Egypte*” which included a detailed description of Arab clans all the way from Cairo to Damascus. In particular, his savants (and ‘Syrian’ dragomen) left us a list of clans in southern Palestine, their number, their homelands and the number of their cavalry.

Although Arab scholars wrote about Palestinian clans from the 10th century, and particularly through the description of *Dar al Haj al Masri and al Shami*, Napoleon record is probably the first modern European record of the inhabitants of Beer Sheba and Gaza. It was then called Gaza Country (*Bilad Ghazze*), Gaza being the capital of the southern half of Palestine.

The nineteenth century in Palestine was invariably recorded by European travellers, priests, spies and soldiers.

The reverend W. M. Thompson who visited the area, from Majdal in the north to Wadi Ghazze, in April 1856, exclaimed in his famous book “*The Land and the Book*”, when he scanned the horizon, “*wheat, wheat, an ocean of wheat*”.⁸ Just before the First World War, Gaza port was crowded with vessels carrying wheat for export. Beer Sheba was truly the bread basket of Palestine.

The head of the British Geological mission to Palestine, Hull, observed in 1883 when he visited the area, “*The extent of the ground here [near Beer Sheba town] cultivated, as well as on the way to Gaza, is immense and the crops of wheat, barley and maize vastly exceed the requirements of the population*”.⁹ He thought the territory looked like southern Italy.

In 1863, Victor Guérin, the French scholar who wrote 7 volumes and drew maps of all Palestine, observed the land ownership of each clan in Beer Sheba. On crossing the territory, he was challenged by each clan upon entering their land.¹⁰

But it was not until late 19th century and early twentieth when serious scholars and professional spies mapped and recorded the territory in greater detail. We have the voluminous work of the Austrian-Czech scholar, Alois Musil, unofficially the spy for the Hapsburg Empire, who documented the names, numbers and the lands for all clans, including those in Sinai, Syria and Hejaz.¹¹ Not to be outdone, the Germans sent

⁸ W. M. Thompson, *The Land and the Book*. London: Thomas Nelson, 1911, p. 556.

⁹ Edward Hull, *Mount Seir; Sinai and Western Palestine*. London: Richard Bentley and Son, 1885, p. 139.

¹⁰ Victor Guérin, *Description de la Palestine*. 7 Volumes. Amsterdam: Oriental Press, 1969. See Vol. II, pp. 178-290.

¹¹ Alois Musil, *Arabia Petraea*. 3 Volumes. Vienna: Kaiserliche Akademie der Wissenschaften, 1908.

their spy, the scholar, Baron Max von Oppenheim to do the same.¹² The French sent their local spy, who lived in Jerusalem, Father Jaussen of l'Ecole Biblique, to do the same. All these European spies were vying for a piece of the Ottoman cake.

It is ironic that the late comers were the winners. The British, who were stationed in Egypt since 1882, only lately surveyed the 'Negev' (a Hebrew word foreign to the Arabs, meaning south). The British officer-surveyor, Newcombe, a man who rose to prominence in the delimitation of the boundary between Palestine, Syria and Lebanon, produced an excellent map of 'Negev' in 1914, which was the main source of information for Allenby in his Campaign into Palestine in 1917.¹³

We cannot fail to mention the huge documentary work in 26 maps and 10 volumes of Palestine Exploration Fund, which started in 1871 and lasted 8 years, 4 years in the field and 4 years of writing in London. But the survey covered only one third of Beer Sheba district. It stopped at Wadi Ghazze in the south.¹⁴ Yet it showed the names and lands of the tribes.

We mention all these records to dispel the myth created by the Zionists to justify the confiscation of Beer Sheba land on the pretext that this land had no owners and that it was barren, fit only for the Zionists to acquire and develop.

3. THE MANDATE PERIOD

3.1 Before the Storm

Beer Sheba Sub-District, as delineated by Palestine Government of Palestine, is the largest district of Palestine, at 12,577,000 donums, or 62% of Israel today. The southern half of the district, south of 31° N, has rainfall of less than 100 mm/year, hence sustained agriculture is minimal. Apart from grazing, this southern half is rich in minerals and archeological sites dating back to the fourth century A.D. But the northern half is fertile. It is where 95% of population used to live and cultivate their land extensively. Only 5% live on grazing. The population of Beer Sheba district was about 675,000 in 1998. Israeli population estimates are considerably lower because they erroneously use the 1931 census figures, not upgraded to 1948. They also do not correct the 1931 figures for underestimation of females or absence of figures for some tribes.

The British Mandate government listed 77 official clans (*ashiras*) grouped into 7 major tribes, in addition to Beer Sheba town and about a dozen settlements around police stations. The major tribes are listed in **Table 2** in their homeland pre 1948 and after al Nakba in 1998. Their cultivated land and rainfall are shown in **Table 3**.

¹² Max von Oppenheim, *Die Beduinen*. Zurich: Georg Olms Verlag, 1983.

¹³ Newcombe surveyed the area with the help of local people from al Arish (for camel transport) and from Beer Sheba acting as guides and identifiers of place names. Staff from the Survey of Egypt accompanied him; hence place names were (wrongly) spelt following the Egyptian accent, not as pronounced by local Arabs. When compared with modern maps, errors in location were detected. In the same period the famed T.E. Lawrence and C. Leonard Woolley gathered intelligence in the area under the guise of archeological investigation. Their report was entitled "Wilderness of Zin", re-published recently (London: Stacey International, 2003).

¹⁴ See, *The Survey of Western Palestine, 1882-1888*, 10 vols. and maps, London: PEF and The Royal Geographical Society, reprinted by Archive Editions with PEF, 1998.

أهالي قضاء بئر السبع قبل وبعد النكبة													
مسلسل	القبيلة	العشيرة	تاريخ النزوح	اتجاه النزوح	لاجئون في					اللاجئون المسجلون	مجموع اللاجئين	الباقون	المجموع ١٩٩٨
					الضفة	غزة	لبنان	سورية	الأردن				
Beer Sheba Population before and after al Nakba													
S. No	Tribe	Ashira	Date of Main Exodus	Direction of Exodus	West Bank	Gaza	Lebanon	Syria	Jordan	Registered Refugees	Total Refugees 1998	Remainng in Israel 1998	Total Population 1998
1	Tarabin	Al Sani		Displaced within Israel	65	2,448			7,575	10,087	11,386	951	12,337
2	Tarabin	Al Soufi		Displaced within Israel	8	10,737		1	1,886	12,633	10,970		10,970
3	Tarabin	Abu Athera	ca 1/11/48	Gaza Strip/Egypt	5	5,372			2,307	7,685	8,534		8,534
4	Tarabin	Abu Sousain	ca 1/11/48	Gaza Strip/Egypt	29	5,075		22	564	5,691	7,522		7,522
5	Tarabin	Al Ksar	ca 1/11/48	Gaza Strip/Egypt	8	5,564		8	2,343	7,924	11,245		11,245
6	Tarabin	Abu Suhaiban		Displaced within Israel	28	19,296			4,313	23,637	28,700		28,700
7	Tarabin	Abu Sittih	5-Dec-48	Gaza Strip	79	4,093			949	5,121	8,196		8,196
8	Tarabin	Abu Al Hussain	5-Dec-48	Gaza Strip		3,185	5		844	4,035	10,470		10,470
9	Tarabin	Abu Shalhoub	5-Dec-48	Gaza Strip	6	911			394	1,311	3,199		3,199
10	Tarabin	Abu Khatleh	5-Dec-48	Gaza Strip	2	495			1,498	1,995	2,449		2,449
11	Tarabin	Abu Bakrah	5-Dec-48	Gaza Strip		828			243	1,071	1,249		1,249
12	Tarabin	Abu Amrah	5-Dec-48	Gaza Strip	3	3,770			711	4,484	5,318		5,318
13	Tarabin	Al Zraiyeh	5-Dec-48	Gaza Strip	18	11,816	7		708	12,549	29,437		29,437
14	Tarabin	Al Omour	5-Dec-48	Gaza Strip	2	3,289			154	3,445	4,573		4,573
15	Tarabin	Nabaat		Gaza Strip/Egypt	17	2,677			471	3,164	17,542		17,542
16	Tarabin	Wuhaidat Tarab	5-Dec-48	Gaza Strip	177	2,236			3,107	5,520	5,847		5,847
17	Tarabin	Abu Mualliq	5-Dec-48	Gaza Strip		3,198			372	3,570	6,085		6,085
18	Tarabin	Abu Ghaliou		Displaced within Israel	29	35			8,929	8,993	12,157		12,157
19	Tarabin	Abu Yehya		Displaced within Israel					4,944	4,944	9,383		9,383
20	Tarabin	Abu Sualliq		Displaced within Israel	4				2,779	2,783	6,338	94	6,432
		Others			36	3,299			2,312	5,648		311	311
		Total Tarabin			518	88,324	12	31	47,402	136,287	200,600	1,356	201,956
21	Tayaha	Al Huzayil		Displaced within Israel	35	1,310			1,691	3,036		34,495	34,495
22	Tayaha	Al Assad		Displaced within Israel					46	46		1,286	1,286
23	Tayaha	Abu Abdoun		Displaced within Israel		109			1,400	1,509		363	363
24	Tayaha	Al Buraqiq			38	3,292			1,150	4,479	5,994		5,994
25	Tayaha	Beli			31	24			2,037	2,092	3,736		3,736
26	Tayaha	Abu Libbeh	20-Oct-48	Al Khalil	135	571			2,246	2,953	8,908		8,908
27	Tayaha	Abu Jugaim	21-Oct-48	Al Khalil	157	287			1,875	2,319	4,198		4,198
28	Tayaha	Abu Shunnar	22-Oct-48	Al Khalil	157	615			2,025	2,797	9,308		9,308
29	Tayaha	Shlalyeen		Displaced within Israel	326				4,341	4,668	7,953	89	8,042
30	Tayaha	Abu Rqayiq		Displaced within Israel		1,585			1,952	3,537		17,156	17,156
31	Tayaha	Al Sani		Displaced within Israel	337	1,136			5,077	6,549		5,251	5,251
32	Tayaha	Abu Kaff		Displaced within Israel	176	401			1,435	2,012	8,134	4,994	13,128
33	Tayaha	Al Assam		Displaced within Israel	6				323	329	13,492		16,646
34	Tayaha	Abu Rbafa			160				399	560		13,745	13,745
35	Tayaha	Abu Juwayed			53				1,526	1,579		2,468	2,468
36	Tayaha	Abu Grainat							556	556		3,940	3,940
37	Tayaha	Masamereh	20-Oct-48	Al Khalil	2,487				1,476	3,963	3,436		3,436
38	Tayaha	Sho'our	21-Oct-48	Al Khalil	1,335				883	2,217	3,348		3,348
39	Tayaha	Beni Okbeh		Displaced within Israel/Al Khalil	113	833			1,308	2,254		515	515
40	Tayaha	Atawneh		Displaced within Israel	151	2,715			2,349	5,215	10,606	4,081	14,687
41	Tayaha	Rawashdeh			31	1,041			658	1,730	2,786		2,786
42	Tayaha	Bdinat	20-Oct-48	Balqa, Jordan	576	305			2,862	3,743	3,986		3,986
43	Tayaha	Uroul				1,245			977	2,222	3,623		3,623
44	Tayaha	Galazin/Tayaha				764			150	914	2,049		2,049
45	Tayaha	Janabib							5	5	1,941	658	2,599
46	Tayaha	Gatatweh			123	6,147			981	7,251	6,285		6,285
		Others			377	7			4,102	4,487		2,496	2,496
		Total Tayaha			6,864	23,575	6	4	44,261	73,023	99,783	108,185	207,968
47	Hanajreh	Abu Middain	22-Dec-48	Gaza Strip	128	15,516			1,472	17,124	17,729		17,729
48	Hanajreh	Al Dhawahreh	22-Dec-48	Gaza Strip	22	2,165		4	181	2,372	5,760		5,760
49	Hanajreh	AL Smeeri	22-Dec-48	Gaza Strip	26				84	110	9,383		9,383
50	Hanajreh	Nseirat	22-Dec-48	Gaza Strip	207	4,406			148	4,761	13,794		13,794
		Others				4			17	21			
		Total Hanajreh			383	22,091	8	4	1,902	24,389	46,666		46,666
51	Jbarat	Abu Jaber	6-20/10/48	Gaza Strip/Al Khalil	162	114			2,297	2,573	5,023		5,023
52	Jbarat	Abu Al Udous	6-20/10/48	Gaza Strip/Al Khalil	399				4,716	5,115	8,822		8,822
53	Jbarat	Al Fukara	6-20/10/48	Gaza Strip/Al Khalil	64	65			1,998	2,125	4,885		4,885
54	Jbarat	Gakazin Jbarat	6-20/10/48	Gaza Strip/Al Khalil	57	1,187	6		433	1,683	3,798		3,798
55	Jbarat	Bin Sabbah	6-20/10/48	Gaza Strip/Al Khalil	100	35			1,678	1,813	2,824		2,824
56	Jbarat	Bin Ajjan	6-20/10/48	Gaza Strip/Al Khalil	1,361				4,189	5,550	7,771		7,771
57	Jbarat	Wuhaidat Jaba	6-20/10/48	Gaza Strip/Al Khalil	52				819	871	3,536		3,536
58	Jbarat	Al Nuwairi	6-20/10/48	Gaza Strip/Al Khalil	92				697	789	1,674		1,674
59	Jbarat	Abu Jraiban	6-20/10/48	Gaza Strip/Al Khalil	22	5			779	806	2,574		2,574
60	Jbarat	Al Diqs	6-20/10/48	Gaza Strip/Al Khalil	293	494			3,431	4,218	7,572		7,572
61	Jbarat	Bin Rifee	6-20/10/48	Gaza Strip/Al Khalil	39	1,474		19	2,085	3,616	6,047		6,047
62	Jbarat	Wulaydeh	6-20/10/48	Gaza Strip/Al Khalil		463			533	996	1,687		1,687
63	Jbarat	Abu Rawwaa	6-20/10/48	Gaza Strip/Al Khalil							1,412		1,412
		Others			200	1,014			1,519	2,733			
		Total Jbarat			2,782	3,664	19	24,741	32,889	55,625			55,625
64	Azazema	Mohamediyeen			453	533			3,140	4,126	24,814		24,814
65	Azazema	Subhiyeen		Displaced within Israel/Egypt	54	366		10	877	1,308	19,916		19,916
66	Azazema	Subalhat			15	13			231	258	2,824		2,824
67	Azazema	Zarabeh		Displaced within Israel/Egypt	135	190			702	1,028	5,360		5,360
68	Azazema	Faraheen		Displaced within Israel/Egypt	43				1,896	1,939	6,247		6,247
69	Azazema	Masoudiyeen		Displaced within Israel/Egypt	225	1,550			4,781	6,556	5,981		5,981
70	Azazema	Usaiyat		Azazema tribes were	17				53	70	8,546		8,546
71	Azazema	Sawakhneh		expelled (some returned)	131	1			2,489	2,621	14,306		14,306
72	Azazema	Murciat		several times in the period of 1949-1954.	22				154	176	4,910		4,910
73	Azazema	Saraheen							438	438	9,933		9,933
		Others			205	37			4,863	5,106		8,486	8,486
		Total Azazema			1,300	2,690	10	19,624	23,625	102,837	8,486		111,323
74	Saidiyen	Hamayteh	From May 50-	Maan, Jordan							1,924		1,924
75	Saidiyen	Rummaneh	to 1954	Maan, Jordan							1,699		1,699
76	Saidiyen	Malthaker	From May 50-	Maan, Jordan	6				37	44	2,336		2,336
77	Saidiyen	Rawaytheh	to 1954	Maan, Jordan					4	4	2,099		2,099
		Others							10	10			
		Total Saidiyen			6				51	57	8,058		8,058
		TOTAL TRIBES			11,854	140,344	27	65	137,981	290,271	513,569	118,027	631,596
		Beer Sheba town and PS			6,041	15,501	22	72	19,702	41,337	42,244		42,244
		Total Beer Sheba SD ex Hewat			17,895	155,845	48	137	157,683	331,608	555,813	118,027	673,840

Table 2: Beer Sheba Population in 1948, 1998.

CULTIVATED LAND AND RAINFALL 1948

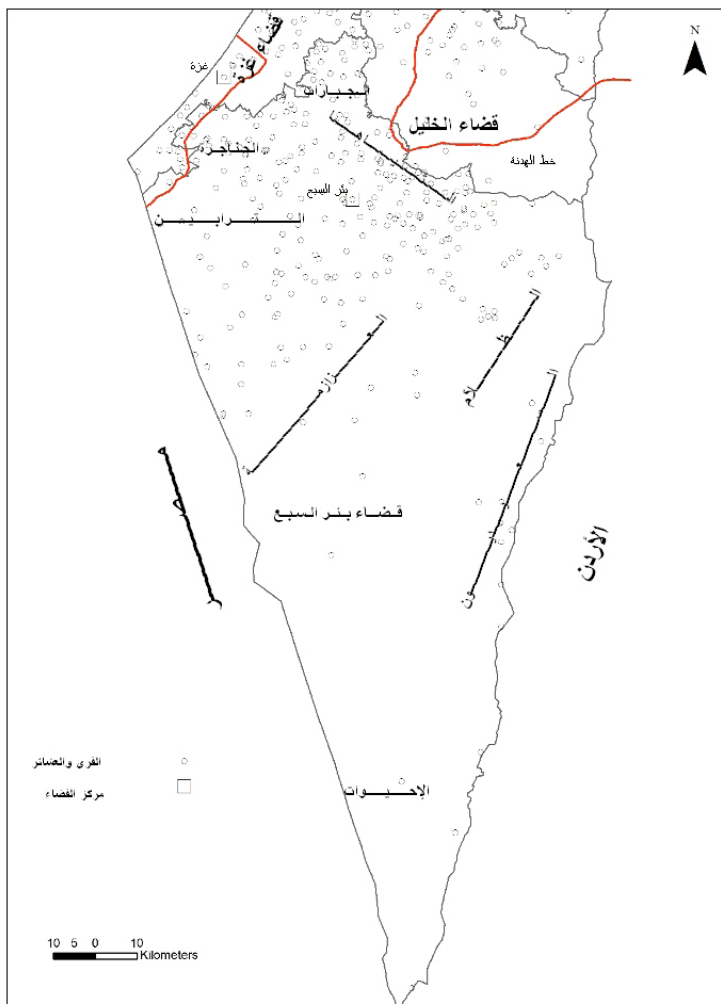
TRIBE by order of rainfall	LAND AREAS UNDER DIFFERENT CONDITIONS (donums)						
	Tribal Land	Cultivated Area	Crop: Rain:	Wheat Wet	Wheat/Barley Rainy	Barley Fair	Grazing Dry
			% Cultivated	Rain over 300mm/yr	Rain300-200	Rain200-100	Rain less 100
Hanajreh	78,325	78,325	100.0%	78,325			
Jbarat	379,175	379,175	100.0%	319,175	60,000		
Tarabin	1,362,475	1,089,980	80.0%	90,825	300,825	970,825	
Tayaha				48,325	507,500	64,175	
Zullam					198,325	636,675	630,825
TOTAL TAYAHA	2,085,825	1,543,511	74.0%	48,325	705,825	700,850	630,825
Azazema	5,700,000	427,500	7.5%			1,621,675	4,078,325
Saidiyeen	1,238,375						1,238,375
Ehewat	1,732,825						1,732,825
TOTAL	12,577,000	3,518,491	28.0%	536,650	1,066,650	3,293,350	7,680,350

Table 3: Cultivated Land in Beer Sheba pre-1948.

Fig. 6 shows the land holding of tribes pre-1948.

Fig. 6 Lands of Beer Sheba Tribes until 1948

Notes: This map is based on Aref Al-Aref, *History of Beer Sheba Tribes*, n.p., ca 1940 and on Survey of Palestine 1:100,000 sheets. Aref was the *Qaimmaqam* of Beer Sheba. Circles show location of tribes and their lands.



Figs. 7 (a, b) in the next 2 pages show details of the cultivated area, place names, wells, cisterns and land holders in the northern half of the district.

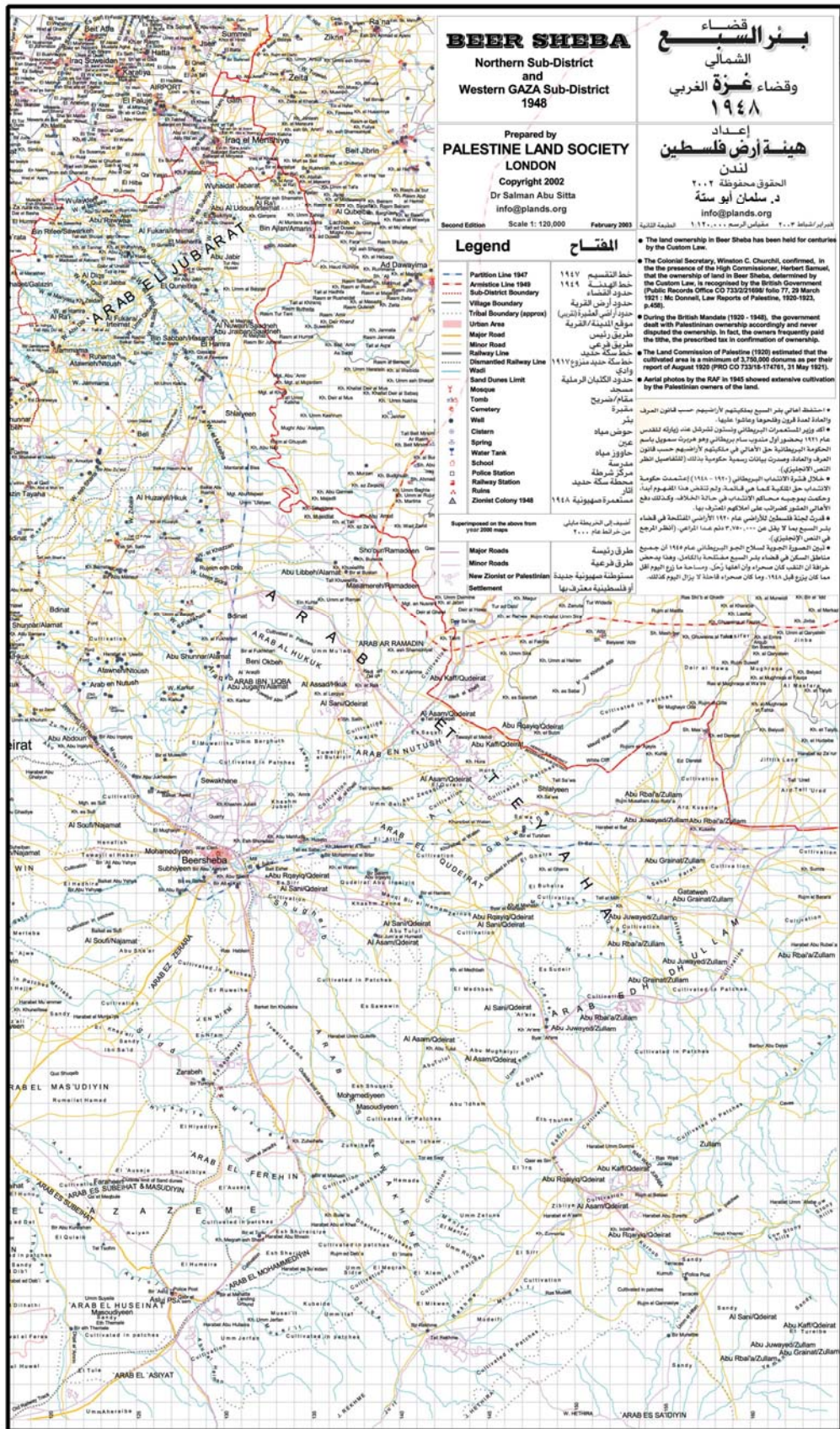


Fig.7b Beer Sheba Population Distribution pre 1948 in the Inhabited Upper Half of Beer Sheba Sub-District

Notes: Map is extracted from: Salman Abu Sitta, *The Atlas of Palestine 1948*, London, Palestine Land Society, 2005.

As indicated earlier, the land ownership has always been held by Custom Law, on which basis individual plots were sold, inherited, mortgaged, rented, divided or taxes paid.

The Custom Law, hence land ownership, were recognized by the British government in the person of W.C. Churchill, Colonial Secretary and Herbert Samuel, the first High Commissioner of Palestine.¹⁵

Article 45 of the Palestine Order in Council confirmed that legal jurisdiction in Beer Sheba district would be governed by tribal custom. The government waived the Land Registry fees to facilitate acquiring title deeds. But the clans did not take up the offer as they saw no need for confirming land ownership on paper. They responded with what became a classic answer, “with this (pointing to their swords), we register”.

3.2 The Zionist Quest for Land

In order to facilitate the settlement of Jewish immigrants, the pro-Jewish British Mandate government created the Land Commission in August 1920 to examine the status and ownership of land in Palestine. Members of the Commission were an Arab (Faidi Alami), a Jew (M. Kalvarisky) and the Chairman was British (Albert Abramson). Kalvarisky was also the manager of the Jewish Colonization Association whose interest was in the acquisition of as much Palestinian land as possible, and therefore in estimating the cultivated land in Palestine as little as possible. The Commission’s Report¹⁶ essentially written by Kalvarisky, estimated that the cultivated land in Beer Sheba, on the basis of agricultural production and taxes, to be 2,829,880 donums (donum=1000m²) plus the major share of 1,059,000 d. – grazing land. The report uses double the commonly accepted yield/donum value, hence the real cultivated area should be double that calculated. Further, the cultivated area is estimated on the basis that the land is cultivated one year and left fallow for another year. While this may be acceptable for moderate rainfall, it is not so for light rainfall as in Beer Sheba where the fallow years may be one, two or three. Therefore the cultivated area in Beer Sheba is at least double this figure or about 5,500,000 d., according to this calculation.

As shown in Table 3, estimates for cultivated areas, based on rainfall isohytes (average for 1931 to 1960, Mandate and Israel figures), gave a minimum of 3,750,000 d. and a maximum of 5,500,000 d. plus about 750,000 d. for grazing. This is comparable to the total area which receives rainfall from above 300 to 100 mm/year. Areas for various rainfalls are by measurement: above 300 mm/year: 536,650 d; 300-200 mm/year: 1,066,650 d; 100-200 mm/year: 3,293,350 d. Total is about 5,000,000 d.

Thus, it is evident that the regularly cultivated land in Beer Sheba, and owned by its cultivators, is about 5,000,000 d of which 3,750,000 are annually cultivated.

3.3 Map and Grab

The Zionist colonial project tried to over-turn these facts in order to confiscate the land. While maps for Palestine were prepared for historical or military purposes, surveying after Balfour Declaration of November 2, 1917 was primarily intended to capture the country’s land assets by the Zionists.

During the British military administration (1917-1920), the Zionists took steps for the eventual take over of territory in Palestine. Chaim Weizmann headed the newly formed Zionist Commission for Palestine and

¹⁵ Public Records Office CO 733/2/21698/folio 77, 29 March 1921; McDonnell, Law Reports of Palestine, 1920-1923, p. 458.

In March 1921, Churchill met with leading Beer Sheba sheikhs, Sheikh Hussein Abu Sitta and Sheikh Freih Abu Middain, He assured them that their land ownership and Custom Law are respected. Taped interview with Sheikh Abu Sitta, July 1969, Amman).

¹⁶ Public Records Office CO 733/18-174761, May 31, 1921

appointed Herbert Samuel, the Jewish future High Commissioner for Palestine, as the head of its Advisory Committee.¹⁷

Weizmann urged the British to close Land Registry books to prevent rise in land prices and called for forming a Land Commission to examine land status in Palestine. The most urgent task was to possess as much land as possible, particularly the 'state land, waste land', 'abandoned' and uncultivated land,¹⁸ whose definition was left to interpretation.

When Samuel took his post as High Commissioner of Palestine under the Mandate, he assumed the authority of the Sultan, leader of the Islamic *umma*. But instead of applying his authority for the benefit of the Arab inhabitants of the country, he served the interest of Zionists. During his tenure (1920-1925) he issued dozens of ordinances changing or modifying land laws in order to enable Jews to possess land. He formed the Land Commission (previously mentioned) to evaluate available land for Jewish settlement. Most of the legislation he initiated was legally flawed as he had no authority to do so under the Mandate before Turkey signed the peace agreement in 1924, that is, one year before the end of his tenure.

Contrary to general practice in which country surveys started with topographical maps to describe the earth surface, there was great rush to produce cadastral maps. A survey department was hastily established using the services of highly experienced British colonial officials, particularly from Egypt. The aim, as Weizmann demanded, was to undertake "legal examination of the validity of all land title deeds in Palestine".¹⁹ Thus, the extent and ownership of private land, if proven beyond doubt, would be determined. All else would be subject to interpretation as 'state or waste land', open for Jewish settlement.

In July 1920, the survey started in Gaza. In October 1921, it established a baseline, 4730.6 m long, in the flat country of Imara, half-way between Khan Younis and Beer Sheba. Palestine local grid ("Palestine 1923 Grid") was established with the coordinates (100, 100) km assigned to Sheikh Ali al Muntar hill on the eastern outskirts of Gaza. In February 1921 a triangulation network system was established. By the end of 1946, triangulation was completed for Palestine from Khalasa in the south to el Khalisa in the north. The emphasis was always on the coastal plain and water resources and, in particular, on areas with Jewish land ownership.

The Zionist pressure on the British Mandate to start immediately land survey pertaining to ownership of land, rather than the basic topographical mapping, caused confusion and delayed the surveying project for almost 8 years. Finally the Australian Torrens system was adopted and the necessary ordinance ("the Land Settlement Ordinance") was promulgated in 1928. The British started applying this system but left Palestine in a hurry in May 1948 leaving the armed Jews to deal with the defenseless Palestinians.

The map of completed Land Settlement (of title), up to 1947, which covered only 20% of Palestine (5,243,042 d. as on 30 April 1947) corresponds very closely to the area in Palestine proposed to be the northern part of a Jewish state under the Partition Plan of 1947. In this area lies the Jewish-held land during the Mandate, which was about 5% of Palestine. As described earlier, the Partition Plan allocated 56% of Palestine to a Jewish state, which roughly covers the 'settled area'. (As it happened, Israel occupied in 1948 all the 'settled' area, Beer Sheba (*Naqab*) and Galilee, totalling 78% of Palestine). During the Mandate, the British saw no urgent need to complete Land Settlement in Galilee, West Bank and *Naqab* because it was predominantly Arab. After 1948, Israel used this accidental fact to show that no title existed

¹⁷ Don Gavish, *A Survey of Palestine under the British Mandate, 1920-1948*, Oxford: Routledge-Curzon, 2005, p. 33.

¹⁸ Don Gavish, *supra* note 17, p. 33

¹⁹ Don Gavish, *supra* note 17, p. 32.

for Arab owners in these areas. Israeli legislation created new criteria for settlement of title to deny Arab ownership and confiscate land. That was particularly applied in Beer Sheba.

When Britain decided to abandon its obligations in Palestine after WWII, without completing the Land Settlement, the British Mandate, by way of compensation, undertook an aerial survey in 1945-1946. Over 5000 aerial photos were taken mostly at a scale of 1:15,000, yet again with emphasis on the coastal areas with Jewish concentration, and less emphasis on the West Bank, Jordan River and Beer Sheba district. The populated northern half of Beer Sheba district was covered by this aerial survey. The photographs show intensive and close cultivation everywhere, which belies the Israeli myth that it was barren. **Figs 8, 9** show intensive cultivation in two locations in Beer Sheba district. This is a further proof that cultivation and land ownership have been maintained and recognized since 1596 at least.



Cultivation in El Ma'in (Nuran)

الزراعة في المعين قرب الشيخ نوران

Fig.8 Cultivation in Al Main 1945 (RAF photo)



Cultivation in Abu Ruqaiyiq (Futeis)

الزراعة في أبو رقييق (قلعة فطيس)

Fig.9 Cultivation in Qal'at Fteis (Abu Rqaiyiq) 1945 (RAF photo)

We now turn to the legal formulation initiated by the Zionists during the Mandate to alienate Arab land.

3.4 Killing the Live or Reviving *Mewat*?

Herbert Samuel and his legal secretary Norman Bentwich, known for their Zionist sympathies, reformulated Art 103 of the Ottoman Land Code, intended to revive *mewat* land, to do the opposite effect, to punish those who do.

Art. 103 of the Ottoman Land Code provided in its last paragraph that, if a person cultivated *mewat* without authorization, he should pay the *Tapu* value (*Bedl Misl*) and would be given a *Tapu* grant. In Palestine, the *Mewat Land Ordinance, 1921*, provides that, not only has the person who breaks up *mewat* without authorization no legal right to a *Tapu* grant, but that he is doing a wrongful act and will be treated as a trespasser.

This Ordinance repeals the last paragraph of the Art.103 of the Land Code and substitutes the following provision:-

“Any person who without obtaining the consent of the Administration breaks up or cultivates any waste land shall obtain no right to a title-deed for such land and further, will be liable to be prosecuted for trespass.”

An exception, however, made in the case of persons who had broken up *mewat* before the Ordinance, the Ordinance provides the following:-

“Any person who has already cultivated such waste land without obtaining authorization shall notify the Registrar of the Land Registry within two months of the publication of this Ordinance and apply for a title-deed.”

This last paragraph can only be interpreted as meaning that no claim to a title-deed on payment of *Bedl Misl* will be recognized unless the notification was given to the Registrar within the two months, i.e. before the 18th April, 1921. But, in fact, a more lenient view has been taken and it was the practice during the Mandate to make *Tapu* grants on payment of *Bedl Misl* to persons who can show that they broke up *mewat* and have revived the land before the Ordinance though without authorization to do so.²⁰

This practice of not enforcing this Ordinance, was confirmed by the last official report by the Government of Palestine, prepared for the Anglo-American Committee of Enquiry in 1947.

The official Survey of Palestine in its concluding report stated:

It is frequently difficult to assume that there was in the past no grant, and consequently it is not safe to assume that all the empty lands south of Beersheba or east of Hebron, for instance, are *mewat*.

.....
It is possible that there may be private claims to over 2000 square kilometers which are cultivated from time to time. The remainder may be considered to be either *mewat* or empty *miri*.²¹

This is not the only piece of evidence.

3.5 The British Late Action

The Land Transfer Regulations of 1940 were intended to prevent the alienation of Arab land to Jewish colonists in response to the White Paper of May 1939. The revolt and unrest of Palestinian population against the creeping Jewish control of Palestine led to creating 3 zones in Palestine under these regulations:

Zone A (16,680 sq. km): Transfer of *any* land, save to a Palestinian Arab, is prohibited. Thus Arab ownership in this zone is safeguarded by the government.

Zone B (8,348 sq. km): Transfer of *Arab* land, save to a Palestinian Arab, is prohibited.

Free Zone (1,292 sq. Km): No restrictions are imposed.

The whole Beer Sheba district lies in Zone A. **See Fig. 10.** Thus Palestinian Arab ownership in the district is assured under the British Mandate.

²⁰ F.M Goadby and Moses Dukhan, *The Land Law of Palestine*, Tel Aviv, Palestine, 1935, p. 64.

²¹ Survey of Palestine, Vol. I, Chapter VIII, para 77, 82, pp. 256-257.

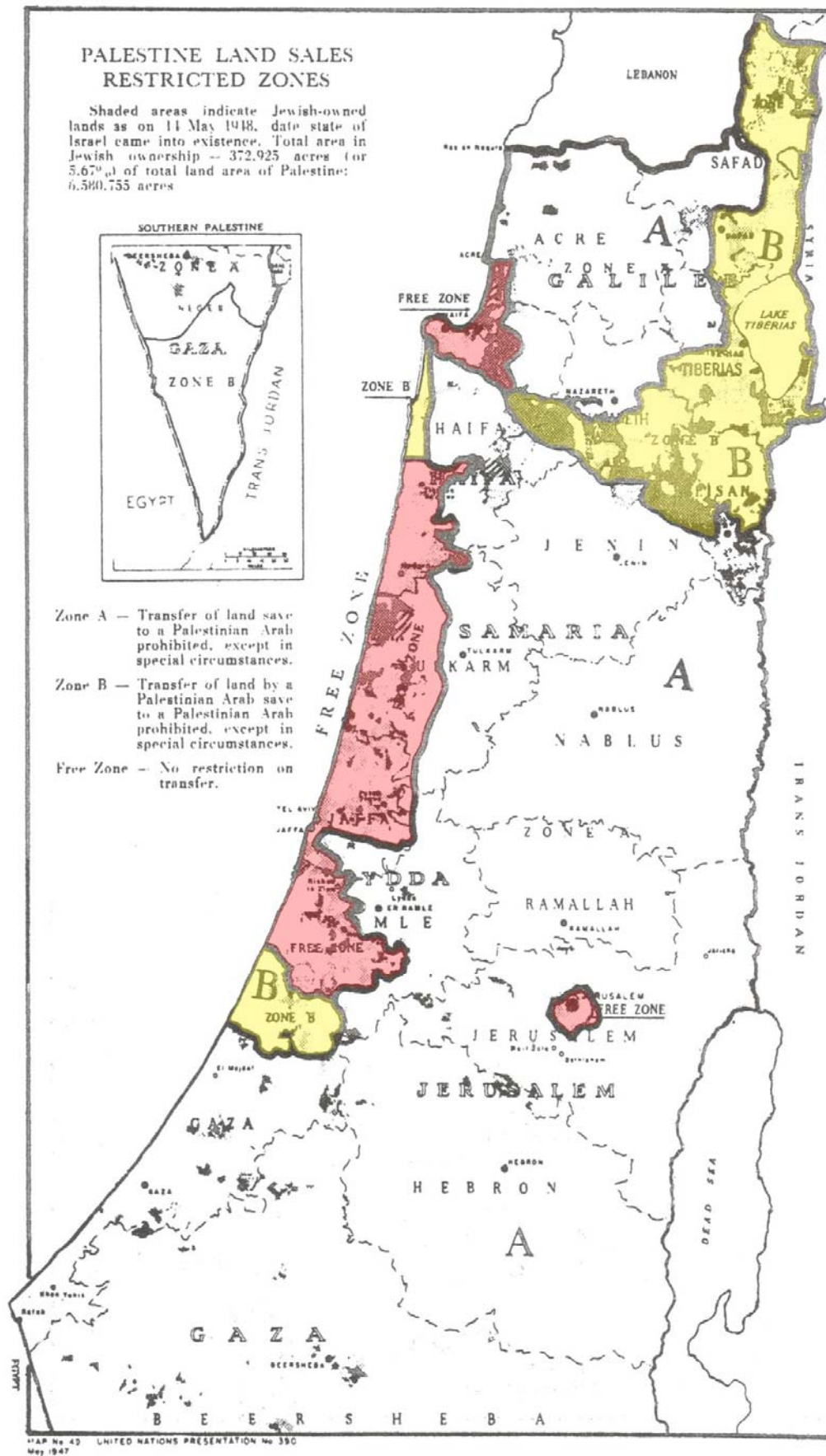


Fig. 10 Restricted Zones according to Land Transfer Regulations Ordinance of 1940

The Zionist attempts to avoid the application of the 1940 Transfer Regulations by fraud or deceit had been rebuffed by the Mandate authorities. For example, much land claimed by Jews in Beer Sheba was not legally registered. The fortnightly reports of the Beer Sheba District Commissioners to the High Commissioner in Jerusalem, forwarded to London, are replete with examples of Jewish fraud and illegal land dealings, particularly in the nineteen forties. A case in point is this excerpt from the Gaza Fortnightly Report No. 161, of 1-15 October 1945 from District Commissioner (Gaza) to Chief Secretary, Jerusalem:

“para 209: Protests have been raised at attempted ploughing by Jews of land in Asluj to which they have an extremely doubtful title. I am hearing a case under the Land Dispute (Possession) Ordinance, pending a decision by the Land Court. There are large areas in Beer Sheba sub-district which the Jews claim to have bought before the date of the Land Transfer Regulations but which are not registered in the Land Registry”.²²

In order not to be exposed, the Jews submitted to the following court session an undertaking to the District Commissioner not to plough the land in question. Otherwise the Court would have clearly ruled against them. The land was never registered in the Land Registry. Yet it appeared as ‘Jewish’ in maps prepared by Y. Weitz. Colonies were built on it after 1948.

The British Mandate did not ever consider Beer Sheba district as a State Land or State Domain. **Fig. 11** shows the State Land (Domain) in Palestine in 1947, just before the Mandate end, which clearly does not include Beer Sheba.

To conclude, just like the Ottoman authorities, the British Mandate recognized the individual ownership in Beer Sheba, did not consider this land to be *mewat* or State Land. The British did not also enforce the 1921 *mewat* ordinance created by Samuel.

4. AL NAKBA

4.1 The Aftermath:

In 1945, the Zionists had about half a dozen military outposts in Beer Sheba district, each was manned by 30 armed men, making a total of some 200 people. This is to be compared with over 100,000 Palestinian population.

Total land in Jewish possession, whatever its legal meaning was, did not exceed 60,000 donums. which is 0.5% of Beer Sheba district of 12,577,000 d. This negligible Jewish presence was forcefully expanded by the military occupation of the district in 1948 and committing massacres leading to the almost complete ethnic cleansing of the district.

²² *Political Diaries of the Arab World – Palestine and Jordan, 1945-1946*, Vol. 8, Archive Editions, Reading, UK, 2001, p. 228.

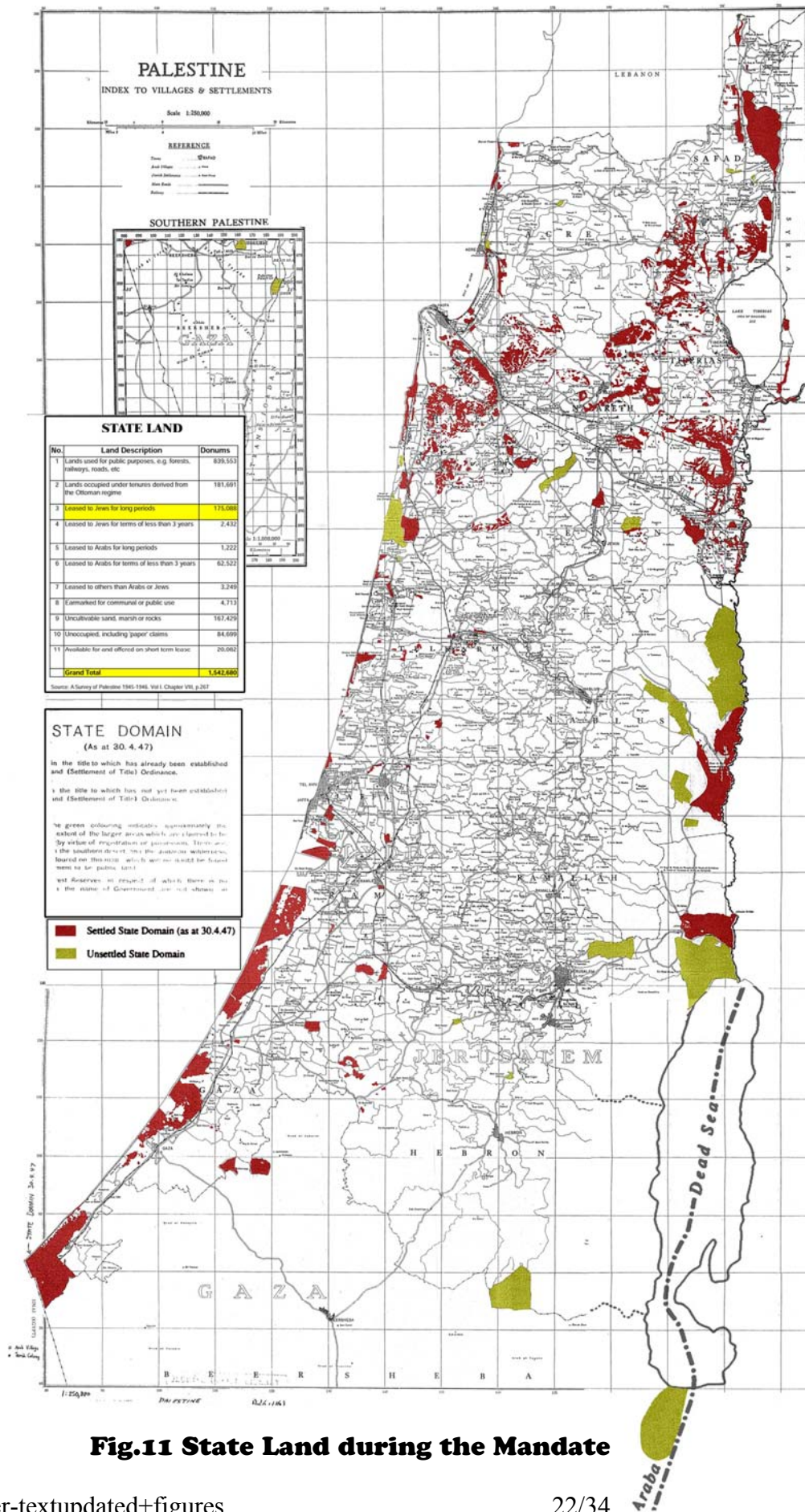


Fig.11 State Land during the Mandate

Using superior military force against a civilian population, with tanks, jeeps with mounted machine guns and aircraft, the Israelis occupied Beer Sheba town on 21 October 1948. From October to December 1948, they expelled almost all population to Gaza Strip, Al Khalil (Hebron) district then to Jordan, almost equally. Some went to Sinai. Details are already shown in Table 2.

Early in July 1948, many of Jubarat tribe were expelled but their total expulsion took place after Yoav operation which started in mid-October 1948. A small group went westwards to Gaza and eastwards to Hebron in the West Bank, but the absolute majority ended up in Jordan especially after 1967.

Terabin remained in their homes till November/ December 1948, when they were expelled towards Gaza in the Israeli operation which attacked Egypt and came close to al Arish. Today the majority of Terabin are refugees in Gaza with a considerable number in Jordan. About 1000 are in Israel.

Tayaha, including Dhullam, were split, almost half were expelled to Gaza and Jordan and half remained in Israel. They represented about 90% of Palestinians who remained in Beer Sheba. Remnants of other tribes made up the remaining 10%.

Al Hanajera, whose land straddle the railway line, leaving half of their land in Gaza and the other half in Beer Sheba, all moved to Gaza Strip after the main Israeli attack on Gaza Strip failed at the end of December 1948.

Al Azazema had a mixed fortune. Their land extends from Palestine to Egypt (Sinai). They were expelled to Sinai, then some returned and were expelled again in the period 1950- 1954. Sharon, commanding the infamous unit 101, massacred many members of al Azazema by land and air attack. Some fled to Egypt but returned.




Smaller tribes in the southern part of the district were expelled to Jordan through Wadi Arabeh. The files of the Arab Legion, then commanded by Glubb pasha, are filled with reports of their expulsion and mistreatment by the Israelis. About 12% remained in Israel, but they were displaced by Israel from their home-lands to north and east of Beer Sheba.

Upon its full occupation of Beer Sheba district, (the southern part of which was occupied after signing the Armistice Agreement with Egypt on 24 February 1949 and in violation of its terms), Israel started confiscation of the Palestinian land by pseudo-legal devices which have no substance in fact or in law.²³

The first act of confiscation took place at the end of 1948 when Ben Gurion felt that the international community will force his not-yet-recognized government to allow the expelled refugees to return home in accordance with the now-famous UN resolution 194. So he entered into a fictitious, and obviously illegal, “sale” of refugees’ land to Jewish National Fund, a Zionist multi-national corporation. This ‘sale’ involved strategically located land at the Armistice Line to prevent the return of the refugees. **See Fig. 12.**

²³ This subject of Beer Sheba situation in Israel was covered by several authors. See for example, *By All Means Possible: A Report on the Destruction by the State of Crops of Bedouin Citizens in the Naqab by Aerial Spraying with Chemicals*. Nazareth: Arab Association of Human Rights, July 2004, website: www.arabhra.org/NaqabReport_English.pdf. [last visited]; *Off the Map: Land and Housing Rights Violations in Israel's Unrecognized Bedouin Villages*, Human Rights Watch March 2008, Vol. 20, No. 5 (E); Alexandre (Sandy) Kedar, the Legal Transformation of Ethnic Geography: Israel; Law and the Palestinian Landholder 1948, 1967, *International Law and Politics*, Vol. 33, pp. 923-1000; Ronen Shamir, Suspended in Space: Bedouins under the Law of Israel, *Law and Society Review*, Vol. 30, Number 2 (1996), pp. 231-257; Sabri Jiryis, *The Arabs in Israel*, New York and London: Monthly Review Press, 1976; David Kretzmer, the Legal Status of the Arabs in Israel, Jerusalem: The Institute of Israeli – Arab Studies, 2002 (in Arabic).

PALESTINIAN VILLAGE LANDS EXPROPRIATED BY THE JNF

	Armistice Line	
	Partition Line	
	Village boundaries which lost part of its land to JNF, Number :	336
	Not shown :	36
	Total	<u><u>372</u></u>

Lands Transferred to JNF

	January 1949
	October 1950

Parks established on Palestinian Village Lands by :

	National Parks Authority, Number :	33
	JNF	61
	Both	22
	Total	<u><u>116</u></u>

Source : N. Kedron
See Appendix 2 for names given to these parks.

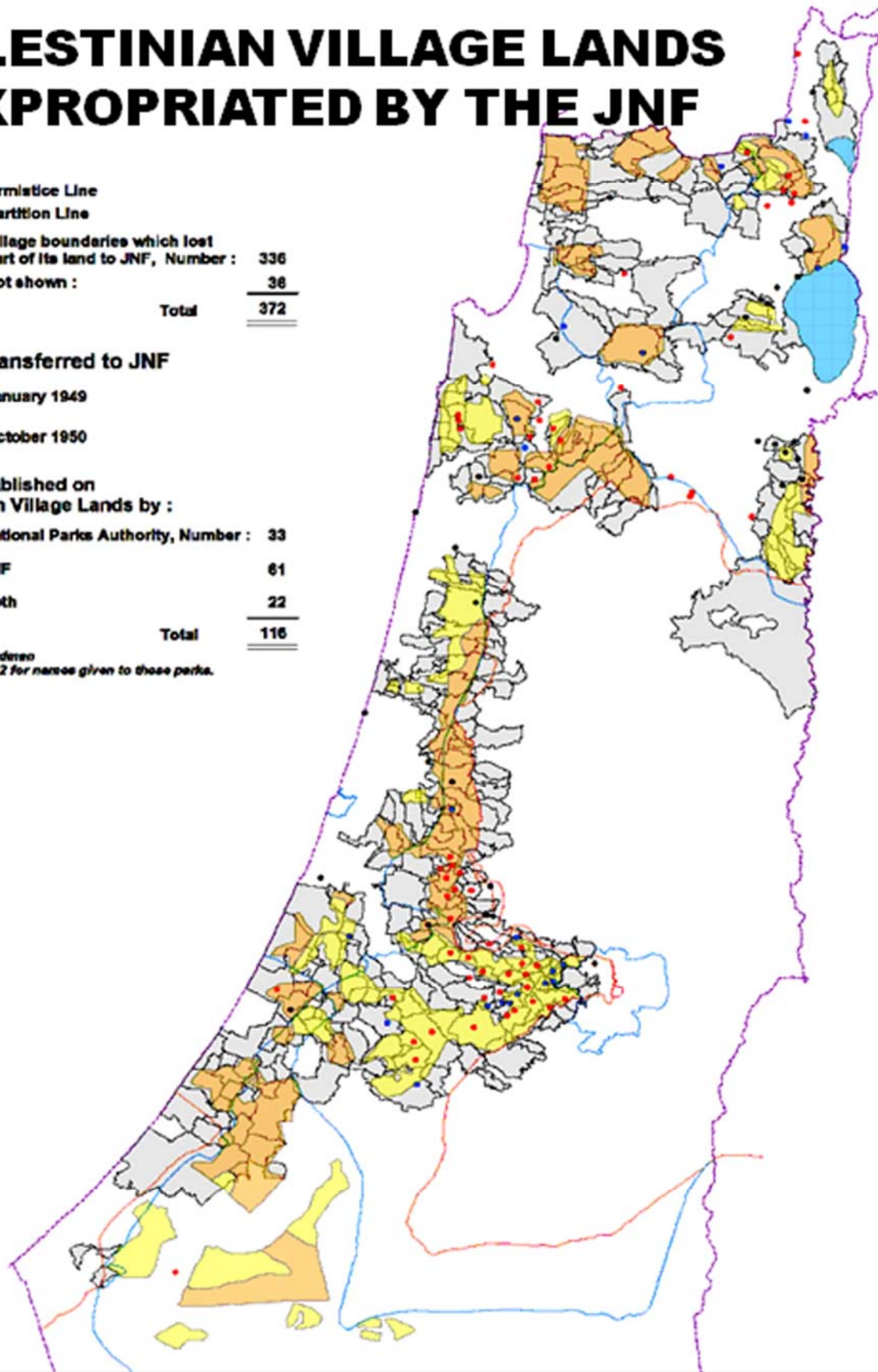


Fig.12 Beer Sheba Land confiscated by JNF in 1949, 1950.

As is well known, Israel took drastic measures after occupation of Beer Sheba district in 1948. It rounded-up all the remaining inhabitants from their land and put them in a reserve (*siyag*) north and north east of Beer Sheba town. The area of this *siyag* is 900,000 d. which is 7% of the district's area. In 1952, it confiscated 1,225,000 d. of land owned by its citizens as Present Absentees.

When Martial Law was lifted in 1966 and it was possible to leave the reserve, many owners submitted applications to repossess their land. Until 1979, 3,220 applications were made, none was recognized. Still, confiscation continued. In 1969, a law was passed that "all Mewat land is a state land" and that long-time possession does not confer ownership rights.

The cultivated area of the reserve (about 360,000 d.) was further reduced by more confiscation. Land was expropriated under the 1953 Land Acquisition (Validation and Compensation) Law and the 1980 Negev Land Acquisition (Peace Treaty with Egypt) Law. It is curious that the Peace Treaty with Egypt should be the excuse for land confiscation. Restoration of land to owners would be more in the spirit of peace.

Out of 12,577,000 d, Israel 'leases' 250,000 d. annually to the Palestinians for cultivation in addition to recognizing ownership of only 150,000 d. The 'lease' can be revoked any year; rendering cultivation a risky business. Granting the 'lease' is subject to coercion and frequently conditional on providing 'services' to the state.

In 1976, the "Green Patrol" was created to terrorize the population, confiscate animals, beat up women and children, destroy homes. Dubbed as "Black Patrol", they pull down houses, burn tents, plough over crops, uproot fruit and olive trees, spray crops with toxic material, demolish dams, shoot dogs and flocks and evict people from "state land". A soldier who killed an Arab a mother was imprisoned for 38 days. Despite overwhelming evidence of brutality, charges against Green Patrol are not upheld in court.

The purpose of all these measures is to confiscate land and gather the Palestinian population in residential centres (dormitories) to provide cheap labour for Jewish industries. Uprooting them from their land and depriving them from their livelihood (mostly agriculture) is meant to achieve this purpose.

Israel planned 7 townships (Rahat, Tel Sheva, Kessifa, Ar'ara, Shegib, Hura, Laqiya) on a total land area of 57,778 d. These are so-called "recognized villages". About 50% of the 130,000 (2002) Palestinian population of the district live there. These villages were intended to uproot people from their agricultural land and their means of living in agriculture.

The remaining 50% refused to be uprooted and remained in 40 "unrecognized villages". Just like their counterparts in the north of Palestine, these villages are not shown on Israel's maps, not connected to roads or provided electricity, water, health and education services. Because of distances, they have to travel miles for these services. They get no subsidies or economic support. The only provided 'service' is the brutality of the Green Patrol. Israel dumped toxic waste in Ramat Hovav, near Azazema clan, which caused several cases of blisters and cancerous growth. The dump is still there, although it was condemned by local and international environmental groups.

See **Fig 13** for the distribution of Palestinians in Beer Sheba (2002) in recognized and unrecognized villages.

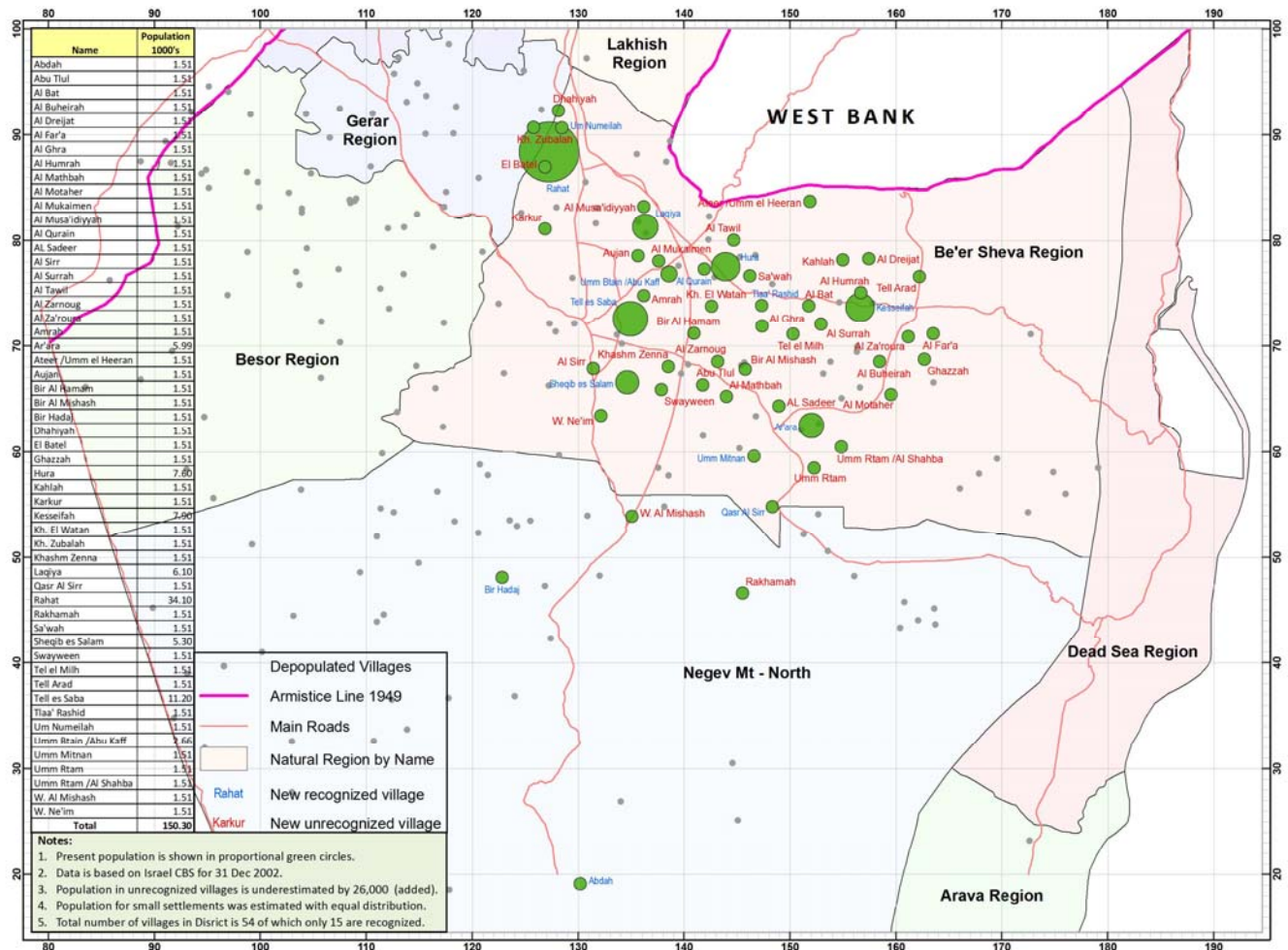


Fig.13 Palestinian Population Distribution in Beer Sheba

Continuing the policy of confiscation, uprooting and land alienation, Israel resorted to think-tanks such as Florsheimer Institute for Policy Studies. The Institute's report, by Y. David and A. Gonen, dated 16 August 1999, suggested a Master Plan for the acceleration of uprooting by encouraging Palestinians to abandon their land for improved land "settlement" terms. (Compensation ranges from \$4,000/donum, or \$16,000/acre for good cultivable land to \$1,000/d. for grazing land). This proposal refers only to the land 'eligible' for compensation and does not mention the land to be forfeited. It also refers to only 400 'eligible' applicants. Ownership claims submitted by the Palestinians cover 890,000 d. while only 224,000 d. of 'disputed' land are now in their possession. The report categorically denies the right of Palestinian ownership to their land but offers the proposal of compensation as a sign of good will. The report laments the misunderstanding that this "good will" and ingratitude it created and instead "it merely strengthened their belief that the land is theirs while in fact it is state land".

4.3 Sharon's Plan

Sharon's mortal enemy in Israel are its Palestinian citizens. His constant ambition was to dismember the Arab population in Galilee, the Little Triangle and the Negev.

Early in 2003, Sharon initiated a five-year plan, with a budget of \$100 million, to Judaize the Negev. This included a plan to establish 14 settlements, gave more power to the Green Patrol to erase the 40 unrecognized villages in which half the Palestinians in the district live. The first Jewish settlement was to be built in the land of Araqeeb village, the site of a massacre in 1948.

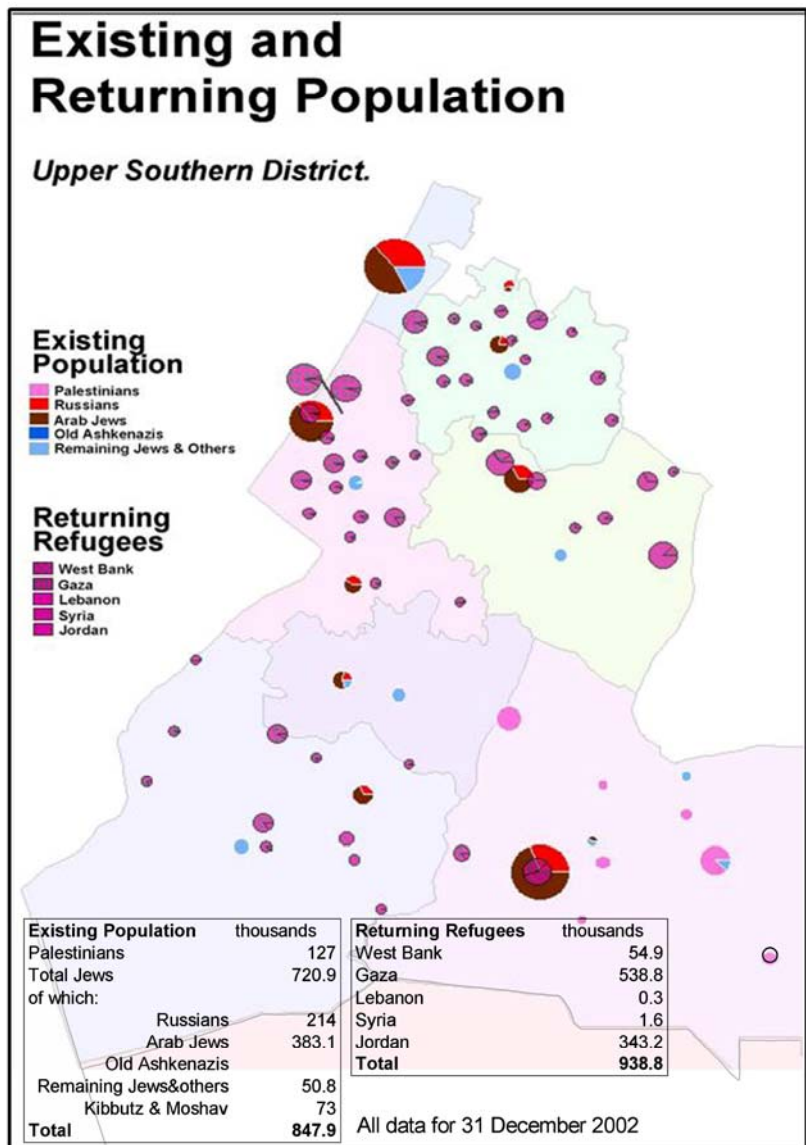
Spraying toxic on their crops, demolishing their modest houses and demolishing mosques (e.g. in Tell al Milh) were common occurrences which attracted a lot of attention by Human Rights NGO and little, if any, attention by the Israeli press.

Behind this policy lies the failure of the Zionist policy in Beer Sheba district. The often-touted slogan that Israel made the desert green, a promise never fulfilled, has met an abject failure. While the Palestinians before 1948, with their limited means and capital, depending on rain only, cultivated anywhere between 2 to 5 million donums, the Israelis with their huge capital, irrigated only 880,000 d. Their agricultural produce hardly competes with the produce of the limited agricultural land in Gaza with its salty water. What also irked Sharon was the failure of the so-called “development towns”. Jews of the Arab countries were brought in on the assumption that they are used to hot arid climate. This turned out to be a study of the failure of Zionist policies.

The Ashkenazi Kibbutz fare no better. There are no new recruits. Their population is aged, the remnants of the 1948 conquest. Although Jewish settlements of Beer Sheba district consume about half of the irrigation water, the value of their produce is negligible.

Jewish immigrants tend to congregate in the centre where city life is much more appealing. In contrast, only 73,000 rural Jews in Kibbutz and Moshav live in a vast area of 12,000 sq. km. That is 10% of Beer Sheba population had they not been ethnically cleansed in 1948. The remainder of about 800,000 Jewish Israelis in the district lives in 3 cities and a number of dysfunctioning “development towns”. Of those over 200,000 are recent Russian immigrants and double that number are Arab Jews at lower economic ladder. Meanwhile, the Palestinian citizens are denied the right to their property, their houses demolished, their crops destroyed and their villages unrecognized.

See **Fig 14** for distribution of Jewish colonists and refugees expelled from Beer Sheba.



**Fig.14 Jewish and Refugee Population
Distribution in Beer Sheba**

Looking at the big picture, the Palestinian population of Beer Sheba as they were in 1948 are today about three quarters of a million, about 15% remained in Israel and the rest are refugees. The refugees in Gaza are crammed at a density of 5000 persons/sq. km while those who dispossessed them roam their land at a density of 6 Jews/sq. km only.

The situation today in Beer Sheba is desperate. The Israeli practices led to thousands of confiscated donums. These hardships created very poor economic, social and educational conditions. Few examples will suffice. The largest Palestinian town in Beer Sheba, Rahat, is the poorest in Israel. In terms of education, the percentage of those students who completed secondary education is 10%, compared to 47% for Jewish students and, significantly, 44% for Palestinian refugees students. This shows that Palestinian refugees outside Israel, in spite of severe economic and political hardships, achieve levels of education comparable to Jewish students but Palestinian citizens of 'democratic Israel' fare much worse.

5. TERRA NULLIUS OR MEWAT

5.1 Hobson's Choice

In order to justify Palestine conquest, the Zionists invented the myth that: 'Palestine is a land without people. This is a variation on the notion that Palestine was *terra nullius*, land belonging to no one. Thus it is available for grab. The notion of *terra nullius* was common in the 17-19th centuries when colonial Europe was looking for new faraway territories, slave labour, natural resources and hidden treasures.

How could this apply to Palestine, the cradle of civilization, a land that is older in recorded history than many European countries? How could a country that has 1300 towns and villages, some of them 5000 years old, be called 'desolate' and 'barren'?

Yet this is what the Zionist delegation submitted to the 1919 Versailles Peace Conference. In this conference the victorious colonial powers met to divide the lands of the Arabs, their erstwhile allies to throw the yoke of Turkish rule, between Britain and France. The Zionists were present to implement Balfour's promise for them to have a foothold in Palestine. They incredibly submitted a Palestine map, hatched all over it, including most of 1300 towns and villages, with the word "grazing", thus implying that only nomads, who have no land or no attachment to it, are roaming the country intermittently. They also word used the word 'nomad', in a truly 'orientalist' mindset, to describe the Palestinian people. There is not an iota of evidence that 1948 Palestinians, including these in Beer Sheba, have not lived in their defined lands for hundreds of years. Of course there were migrations here and there, due to wars, plagues, conquests and famine but the bulk of the people remained, until the Israeli ethnic cleansing of 1948.

Grazing outside own territory was practiced by 5% of the population in Beer Sheba. The orientalist mentality confused the shepherds' pursuit of pastureland elsewhere, on behalf of all the tribe and interpreted it to be abandoning their homeland. Alois Musil and Max Von Oppenheim maps shows these pasture trips, much like trading trips, especially in Transjordan. But in no case did the tribe abandon their homeland. If they did, there would be no Jordan, Saudi Arabia or Kuwait today.

As shown earlier, the Ottomans never considered Beer Sheba land, where 95% of the population lives, to be *mewat*, neither before or after 1858. Also, the British, in spite of the flawed legal formulation of the Zionist High Commissioner Herbert Samuel and the Zionist legal secretary, Norman Bentwich, never challenged the ownership of Beer Sheba. They collected taxes on cultivated land. Moreover, as the regular fortnightly reports of the District Commissioners indicate, they supplied tractors to improve productivity and supplied flour and fodder in drought years. They adjudicated disputes about individual land ownership. They registered land sales, when desired, including land sold to Jews who wanted a title deed to prove ownership in Palestine. They also refused to register Arab land sold to Jews in contravention with Land Transfer Regulation of 1940. They never classified these lands as State Domain.

5.2 Reviving the Dead Law

Israel maintains that Beer Sheba District is a 'state land', on the basis it is *mewat* land, according to the Ottoman Law of 1858 and thus it has no owners as the inhabitants were 'roaming nomads'. This claim is entirely false.

Mewat land means dead, uncultivated, vacant, according to the Ottoman Law.

Article 103 of the 1858 Ottoman Land Code specifies *mewat* land as (1) vacant (2) grazing land not possessed by any body (3) not assigned *ab antiquo* to the use of inhabitants and (4) land where no human voice can be heard from the edge of habitation, a distance estimated to be 1.5 miles (2.85 km). The latter is a distance travelled on a horse in about 40 minutes, in wilderness where no human being lives ordinarily.²⁴

It is clearly evident that such description does not fit in any way the populated and cultivated areas mentioned above. Indeed any casual observation of the district at the time would confirm this. There is a great deal of historical evidence, British Mandate documents, maps and aerial surveys, to prove it. Israel's claim that this is *mewat*, hence State Land, is farfetched and cannot constitute a serious legal claim. It can only be explained in the context of ethnic cleansing and land confiscation. This contradicts the Israeli position itself when it recognized Palestinian ownership rights if the same land was sold to Jews before 1948, and as such considered the Jewish ownership valid.

In reactivating or revoking the British Law, Israel considers itself a *successor state*. If this assumption refers to its military conquest outside the limits of the Partition Plan, then the inadmissibility of conquest and the Fourth Geneva Convention safeguard the sanctity of the property of the subjugated people. International law stipulates that, upon extending a new sovereignty on a territory, people and land go together, both stay protected. Expelling people and confiscating their land is not permissible. On the other hand, if this assumption refers to the UN Partition Plan resolution No. 181, which was the basis of Israel's declaration of independence in 1948, this resolution clearly stipulates that Arabs in the Jewish state (and vice versa) shall enjoy full civil and political rights, including ownership, without discrimination on any grounds and of course without expulsion.

²⁴ Referring to the original Turkish text with equivalent Arabic, Article 103, translated here into English, reads:

"The empty (*Khali*) places, such as rocky or stony areas, or lands where cultivable soil is scarce or grazing land not held by anyone with *tapu* or not assigned *ab antiquo* to the use of towns and villages or far from towns and villages such that a clear loud cry would not be heard from the edge of cultivation, is *mewat* land. Any one in need of a tract from this land can, free of charge, break up or dig a place with permission and make it a field on condition that its *raqaba* belongs to *Beit el Mal*. All the applicable legal rules of other agricultural areas will then apply to this land fully. But the person who had permission to dig [and cultivate] a place did not do so for 3 years without a good reason, the place is given to someone else. If someone digs one of these lands without permission and made it into a field, he will be charged *bedl mithl* (equivalent price) and land be allocated to him and granted title deed (*tapu*)."

From the original Turkish and Arabic: Ottoman Land Law, Beirut: Jesuit Fathers Press, 1873.

5.3 Resuscitating The Dead

In two excellent papers, Shamir²⁵ and Kedar²⁶ analyzed the anomalies of the Israeli claim that Beer Sheba land is *mewat*: The arguments put by Israeli Courts to show that Beer Sheba land is *mewat* as summarized by these two Israeli authors are as follows:

1. The voice criterion is not acceptable. What was needed is a “modern” or “objective” criterion.
2. The distance to *mewat* land should be greater than 1.5 miles (2.5 km). The distance is the criterion.
3. The distance is to be measured from a town or village.
4. Cultivated (*miri*) tract of land is not an acceptable point of measurement, as a town or village would be.
5. Similarly, a movable abode such as tents is not an acceptable reference, even if this cluster of tents includes a school or cemetery.
6. Also unacceptable is an inhabited area with amenities, houses and some cultivation around a government centre such as police or railway station.
7. Also unacceptable is measurements from an isolated house at the edge of a village.
8. An Arab tribe abode should prove existence before 1858, otherwise all cultivated land after 1858 will be classified *mewat* (the case of Arab Suead).
9. To prove that an area is not *mewat*, cultivation must cover at least 50% of the land.
10. Tax records are not proof of ownership.
11. RAF aerial photography (1945) is acceptable if it shows more than 50% cultivation, as certified by the government expert, provided that the holder possessed and cultivated the land for 20 years. That is, if land was cultivated in 1945 and shown so on aerial photos, it should be held and cultivated till 1965. (All Palestinian lands were confiscated according to Land Acquisition (Validation of Acts and Compensation) law, 1953. This makes this condition impossible to fulfill.)
12. The onus of proof of ownership lies with the holder – that is, he has no ownership rights unless he proves the opposite. His long history before the arrival of the Jewish immigrants does not count.

This is a surreal situation.

5.4 The Reward for Ethnic Cleansing

How could the material of building houses be a criterion? The building material is always derived from the surrounding environment. It is stone in the hilly country of Palestine, mud reinforced by hay in the coastal plain villages and a combination of mud and hair-tents in *al badia*. How can the natural selection of house-building material be the arbiter in owning, cultivating land and living off it?

If the pretext is that these houses are not “permanent” and movable, how could that explain the prefab units used by the Zionists in 1946 and 1947 to build 11 ‘isolated’ colonies? These prefab units were used to show the mission of UN Special Committee on Palestine, when visiting the area in 1947, that the Jews existed there and that they were entitled to annex 12,500,000 donums of Beer Sheba district in the Partition Plan.

The requirement that a measurement of the distance of 1.5 miles from a town or village, not from any other clear sign of cultivation and habitation, is simply a play on numbers.

²⁵ Shamir *supra* note 23.

²⁶ Kedar *supra* note 23.

Suppose that Beer Sheba population was living in small villages closely spaced adjacent to and stretching from fertile Gaza villages to the east. Would this not solve the proximity problem?

The number of inhabitants of Beer Sheba district in the 1800's was about 21,000 (8% of 275,000). Just before al Nakba, it was 100,000, an increase of over 5 times. They were grouped in 77 tribes located in 88 locations. (as was shown in Fig. 7) Thus the average size of a village/tribe is 1,250 persons. By many estimates they cultivated an area of 3,750,000 d., but not less than 2,500,000 d. In the first case, the average area per village is 43 km², giving a radius of 3.5 km between one village and another. In the second case, the radius is only 2.5 km, within the limit of the Ottoman Code.

This covers the whole north western part of Beer Sheba district. Since cultivation followed in practice water resources, i.e. wadis, wells and high rainfall, habitation clusters were much more closely packed to a smaller radius than 2.5 km. This habitation stretched continuously from the coastal villages of Gaza sub-district into the hinterland till east of Beer Sheba.

If ethnic Israeli cleansing of Palestinians in *al Nakba* of 1948 did not take place, Beer Sheba district population would be in 1998 650,000 and over three quarters of a million in 2008.. This means a string of villages can stretch from Gaza to east of Beer Sheba at a radius of 1.0 km each for a village size of 1,250 and a radius of 1.8 km each for a village size of 2,500. This qualifies squarely with the definition of cultivated land proximity according to the Ottoman Land Code.

The obvious conclusion is that the ethnic cleansing of 1948 was intended to rob the Palestinians of their land and make it sparsely populated or *terra nullius*. Without this ethnic cleansing, this robbery, and the pretext for it, would not be possible.

Kedar gave a penetrating analysis of these anomalies and questioned the logic of the Israeli Supreme Court in affirming the state of Israel's position that Arab claimed land was *mewat*.²⁷ This position was achieved by imposing impossible conditions to meet, some are invented, and some are bent beyond recognition, some are convoluted procedures based on willful intent.

Both Kedar²⁸ and Shamir²⁹ note that the British Mandate Supreme Court never adjudicated *mewat* cases against inhabitants and the Mandate authorities did not interfere in Bedouin land possession and instead helped the farmers in their agricultural work.

Israel's justification to confiscate Beer Sheba land by pseudo-legal means can run into difficulties. Shamir notes,³⁰

A double bind is completed: The lands were legally and justly registered as state property because the Bedouins did not hold lands in said period (they were rounded up and held elsewhere, yet this is rendered irrelevant). Alternatively, Bedouins may have been in said area but as invisible nomads who cannot prove any thing because the temporal signpost prevents them from doing so.

Shamir, quite rightly, points out that the orientalist mindset (eg. inhabitants are 'nomads', have no land ownership, no identity) is coupled with the physical plan to confiscate their land.

Shamir writes,³¹

²⁷ Kedar, *supra* note 23, p. 952 ff.

²⁸ Kedar, *supra* note 23, p. 952 .

²⁹ Shamir, *supra* note 32, p. 239-240.

³⁰ Shamir, *supra* note 23, p. 245.

³¹ Shamir, *supra* note 23, p. 232.

Two material practices are at the forefront of Israeli policies concerning the Negev: (a) mass transfer of the Negev's indigenous Bedouin population to planned townships and (b) a corresponding registration of the Negev lands as state property. A cultural vision complements these practices: The Negev is conceived as *vacuum domicilium* – an empty space that is yet to be redeemed.

It would have been unnecessary during the Ottoman and Mandate periods to rebut the Israeli contention that Beer Sheba land was *mewat*, because the subject did not arise. But at present we have a case of ethnic cleansing, still active since 1948.

6. THE LEGITIMACY OF THE OFFICIAL ISRAELI POSITION

6.1 The Hasbara

The Head of the Land Title Settlement Unit in the Southern District, Havatzeler Yahel, gives a summary of the standard Israeli position.³²

He boldly states, "Neither the Ottoman Empire nor the British Mandate recognized the ownership of *nomadic* Bedouin over land in the Negev" [emphasis added]. "Israeli Law...is based on earlier Ottoman and British Legislation".³³

He also used the population figure of 1931 census (65,000), instead of the 1948 figure. The racist tones are abounding in this paper indicating the prevalent attitude among Israeli officials. He writes, Negev 'residents' "feel they live on a different planet from the rest of Israel". Where they live is referred to as the "Wild South".³⁴ He also ridicules local and foreign NGO's defending their rights; these NGO's "share the belief that the illegal actions are justified and that the [Israeli] authorities will eventually accept the Bedouin demand..."³⁵

The Goldberg Report is less inflammatory but adheres to the same contention.³⁶ The Report again underestimates the 1948 population number, using the figure of 1931 census. The report is also based on the claim that:

- (i) The Ottomans never recognized the Bedouin ownership in Beer Sheba
- (ii) The population is "nomads"

On this basis, the Israeli government applies its law.

6.2 All Palestinian Land up for Grab

As stated in the Introduction, appealing to Israeli law will have limited effect. The Israeli policy of land confiscation applies to all Palestinian land, whether in Galilee, Beer Sheba, or in the 1967 occupied West Bank, even though land owners have certified title deeds. So it is immaterial if the land is claimed *mewat* or not.

³² Havatzelet Yahel, Land Disputes Between the Negev Bedouin and Israel, Israel Studies, Vol. II, No. 2, 2006, pp. 1-21

³³ Yahel, *supra* note 31, p. 2.

³⁴ Yahel, *supra* note 31, p. 4.

³⁵ Yahel, *supra* note 31, p. 9.

³⁶ The Recommendation of the Goldberg Commission Jerusalem, Dec. 2008 (Arabic Translation).

As 7% of Israel's area was controlled by Jews during the Mandate and 93% by Arab Palestinians, the massive land confiscation which took place, in 1949 and after, was transferred from the Custodian of Absentee (read: refugees) Property to the Development Authority to be, in the end, administered, with JNF original and confiscated land, by Israel Land Administration (ILA).

Now, there is a plan before the Knesset to allocate by "sale", these lands to Jewish individuals or corporate entities and to grant them title deeds. Thus the confiscated land is privatized, creating a new barrier between the dispossessed Palestinian original owner and the present Jewish landholder.

6.3 Adalah Intervention

In an important letter by Adalah, a Nazareth NGO defending the rights of Palestinian in Israel, to the Israeli Attorney General protested this action.³⁷ It argued that privatization is contrary to Israeli law itself, during early debates at the Knesset, when it was stated that the law's "backbone... is undoubtedly to protect the property of the absentees", not to confiscate it. As experience in the last 60 years has shown, confiscation has many forms; one of them is to claim the Palestinian land is *mewat*.

Adalah also argued that the Israeli government action is also contrary to international law, in particular Article 147 of the Fourth Geneva Convention which prohibits "destruction and appropriation of property".

Kretzmer also pointed out an important principle on which UN resolutions, for example Resolution A/RES/52/62 of 10 Dec 1997, previously mentioned, are based, namely that "although the Zionist movement succeeded in extending its sovereignty [on 78% of Palestine, or 20, 255 sq. km., now Israel], it did not acquire the ownership of this land".³⁸

To conclude, the legal basis of Israel confiscation of Arab Palestinian land is false, whether the land was designated by Israel to be: closed area, reserved for security reasons or public interest, public or State Land or *mewat*. The latter is by far the largest and least publicized.

This acquisition of land is pure land robbery in a thinly-veiled legal garb. The steps taken after creating Israeli laws, rounding up the people, moving them away from their land, demolishing their houses, burning their crops, killing their cattle, are all clear violation of international law.

6.4 What to do

The steps to rectify this situation by human rights groups and concerned parties could include the following:

1. Pursuing the matter before Israeli courts with corresponding media campaign, possibly with the help of supportive Jewish groups.
2. Mobilizing human rights NGO's all over the world to explain the plight of the Palestinians and to expose the Israeli policies abroad.
3. Gathering material support so that Palestinians can stay put, resist their uprooting and have a modicum of decent living on their land.
4. Supporting Boycott, Disinvestment, Sanctions (BDS) campaign, now growing in the western world with increasing success.

³⁷ http://www.adalah.org/eng/pressreleases/pr.php?file=09_06_22 , <http://english.aljazeera.net/programmes/insidestory/2009/06/2009623142649311>.

³⁸ Kretzmer, *supra* note 23, p. 62 (Arabic).

5. Presenting the Palestinians' case at all UN fora, including the General Assembly and UN agencies and pushing for resolutions with operative clauses.

6. Sending delegations from Beer Sheba citizens to American and European capitals to speak personally about their everyday experiences. This could be very effective.

7. Similarly, inviting delegations and high-profile personalities to spend a week in Beer Sheba district to see for themselves and report back to their constituencies.

As Western colonial powers failed to take action to uphold justice and continued to support Israel policies, then it is imperative that the world public opinion, especially in the western world, to be mobilized and encouraged to act. Its action, together with the steadfastness of the Palestinians, will provide a credible effort to expose injustice and restore justice.

After all, it was this world public opinion, which had been fed Israeli propaganda, that provided support for Israel's actions all these years. Now it should be the one which should reveal the truth and pursue justice. Nobody can be neutral about justice.