

Dividing War Spoils:

Israel's Seizure, Confiscation and Sale of Palestinian Property

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Introduction

1. There has been nothing like it in the pages of history books. A foreign minority, descending upon a national majority of a country, fortified by colonial political, military and financial support and a hostile ideology, emptying the country of its people, seizing all their land and property, obliterating their landscape, history and memory, claiming that this crime is an act of divine intervention, and persisting, unchecked by force of justice in committing this crime, according to the same plan for over 60 years with no end in sight, is unprecedented in the history of the world. This is the recent history of Palestine. The records of the United Nations, and before it, the League of Nations, contain a detailed chronicle this of long violent history.

2. When Allenby's British forces entered Palestine in 1917 to free its people from the yoke of Ottoman rule, the Jews in Palestine were a small community not exceeding 56,000 souls. The colonial alliance with Zionism led to the infamous Balfour Declaration in which one colonial power promised to give another country to a nascent colonial movement and facilitated its control of that country, which neither owns, behind the backs of the natural inhabitants of the country. That was in contravention of elementary principles of justice and, particularly, Article 22 of the Covenant of the League of Nations.

Under the British Mandate, the Jews managed to control only 5.5% of the country, but through immigration, they managed, by the end of the Mandate, to increase their number to about 600,000 persons (or 30% of the total population). About 20% of the immigrants (120,000) were enlisted soldiers, many of whom were WWII veterans.

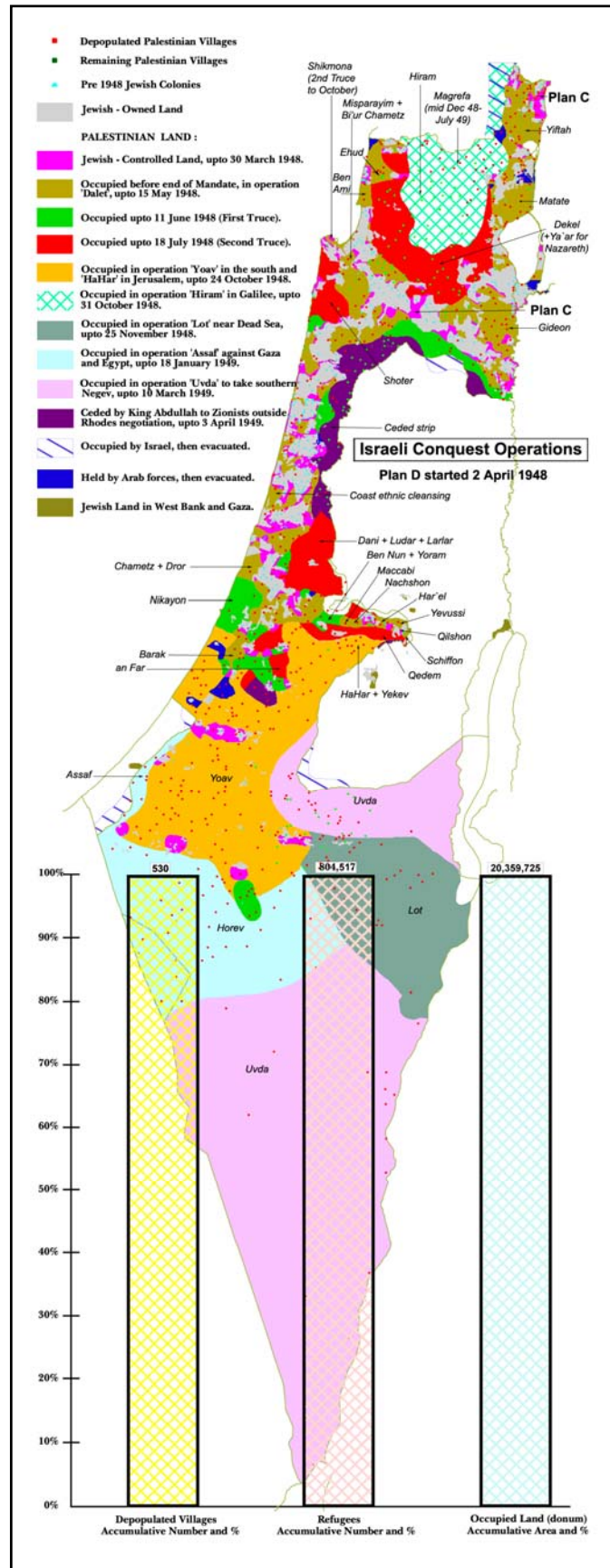
Al Nakba

3. By military force, the Jewish forces conquered 78% of Palestine in 1948 and depopulated 675 towns and villages, leaving only 15% of its Palestinian citizens under the rule of the Jewish

forces. This area of Palestine was called Israel. The expelled population makes up 6,320,000 people (2008) who are refugees since 1948. Their entire land and property have been confiscated by the Israeli authorities under a pseudo-legal formulation. See **Map 1** for the stages of the Israeli conquest of Palestine in 1948.

Map 1: Land Conquest up to April 1949 (Final Phase).

The Israelis occupied Naqab till Aqaba Gulf after signing armistice agreement with Egypt. They also took a big slice from the West Bank by threats to Jordan. They widened the corridor to Jerusalem; this corridor is part of the Arab state in the Partition Plan. They signed armistice agreements with Egypt, Lebanon, Jordan and Syria. Thus ended 1948 war with 78% of Palestine land in Israeli hands, of which 24% is beyond the limit of the Partition Plan. The occupied area is 14 times the area of Jewish land at the end of the Mandate and 45 times the land they held at the beginning of the Mandate.



Arab Palestine Land under Israeli Rule

4. According to the British Mandate records the Jewish ownership of land in Palestine at the end of the Mandate is 1,490,000 donums (donum = 1000 sq. meters). This is 5.5% of Palestine or 7% of Israel's area (20,250,000 d.). Thus 93% of Israel is Palestinian land in which Palestinians lived for centuries. They held the land under Islamic law, under various classifications of ownership, but all were intended for the welfare of the people (*umma*). **Table 1** shows Palestinian Arab and Jewish ownership in all of Palestine. **Table 2** shows Palestinian ownership at the onset of Israeli conquest in 1948.

Table 1: Ownership of Land in Palestine according to Official Fiscal Records			
Category of land (Fiscal categories)	Arabs & other non-Jews	Jews	Total
Urban	76,662	70,111	146,773
Citrus	145,572	141,188	286,760
Bananas	2,300	1,430	3,730
Rural built-on area	36,851	42,330	79,181
Plantations	1,079,788	95,514	1,175,302
Cereal land (taxable)	5,503,183	814,102	6,317,285
Cereal land (not taxable)	900,294	51,049	951,343
Uncultivable	16,925,805	298,523	17,224,328
Total Area	24,670,455	1,514,247	26,184,702
Roads, railways, rivers and lakes			135,803
TOTAL (donums)			26,320,505
Source: <i>Survey of Palestine</i> , Dec 1945 and Jan 1946, reprint, Institute of Palestine Studies, Washington., Vol. 2, Table 2, p.566, based on fiscal records. Jewish land is slightly different from legally registered land. Area in donums.			

Premeditated Plan of Confiscation

5. In preparation for the eventual conquest of Palestine, in accordance with operation "Plan Dalet", the Haganah, the pre-state Jewish militia, created the Commission for Arab Property in Villages, before the operation started. The name was changed to the Hagana's Department of Arab Affairs.¹ After the fall of major Palestine cities e.g. Haifa, Tiberias, Safad, Jaffa, in accordance with Plan Dalet, military committees were created in April 1948 to take over Arab property.² There was "considerable looting and burgling".³

¹ Fischbach, Michael R. *Records of Dispossession: Palestinian Refugee Property and the Arab Israeli Conflict*, New York: Columbia University Press, 2003, p. 15.

² Ibid, pp. 15-16.

³ Ibid, p. 17; Ben Gurion, not unaware of this, recorded in his War Diary, (10 February 1948, robbing the Arabs; 1 May, complete looting of Wadi Nisnas, Haifa; 17 June, looting in Jerusalem; 15 July, the terrible question of looting

Table 2: Scope of Palestinian Arab Land in Israel according to Hadawi, Kubursi and UNCCP (Berncastle)

S. No.	Region	Type of Land	Area ⁽¹⁾	Area ⁽²⁾
			(donums)	(donums)
1	Northern and Central Palestine	Urban	112,000	
		Citrus and banana (tax categories 1-3)	132,849	121,184
		Village built-up area (tax category 4)	21,160	14,602
		Cultivable (tax categories 5-8)	471,672	303,750
		Cultivable (tax categories 9-13)	2,937,683	2,113,183
		Cultivable (tax categories 14-15)	444,541	201,495
		Uncultivable	2,377,946	1,431,798
		Roads, etc.	83,161	
		Sub-total	6,581,012	4,186,012
2	Beer Sheba District	Cultivable		1,834,849
		Uncultivable		10,303,110
		Sub-total	12,450,000	12,137,959
3	Jerusalem	Sub-total		5,736
	Palestine 1948	GRAND TOTAL	19,031,012	16,329,707

Sources:

(1) Sami Hadawi, *Palestinian Rights and Losses in 1948. A Comprehensive Study. Part V: An Economic Assessment of total Palestinian Losses* written by Dr. Atef Kubursi, Saqi Books, London, 1988, p.113.

(2) Berncastle' final report entitled "Valuation of Abandoned Arab Land in Israel", UNSA DAG 13-3, UNCCP in J.M. Berncastle, *Land Specialist/Box 35/1951/Reports*, Refugee Office. This is quoted by Michael R. Fischbach, *Records of Dispossession, Palestinian Refugee Property and the Arab-Israeli Conflict*, Columbia University Press, New York, 2003, p.121.

6. With the tremendous increase in the area of the conquered territory and the movable property in it, the newly-formed Israel Provisional Government created in May 1948 a six member

and rape...etc., See Ben Gurion, David, "War Diary, 1947-1949", (Arabic Translation), Institute for Palestine Studies, 1993. In the words of the Jewish writer Moshe Simlansky, "The (Jewish) people were gripped by a frenzy of looting; individuals, groups, men, women and children. They descended like vultures on the spoils: doors, windows, clothes, tiles..."; See Segev, Tom, "The First Israelis – 1949", (Arabic Trans), Beirut, Institute for Palestine Studies, 1986, p. 88. But the biggest prize was Lydda and Ramla whose 60,000 inhabitants were expelled at gunpoint. The IDF loaded 1800 trucks from Lydda alone (Segev p. 85). "An officer took his 5th Battalion to Al-Ramla for looting" – (Ben Gurion War Diary, 15 July). Ben Gurion visited the two conquered towns and was shown the spoils. He noted in his Diary on 20th July, "I saw fabulous wealth, we must save it before it is too late". The competition among government bodies, and individual looters for the possessions of the expelled Palestinians was great. High-ranking Mapai leaders, it was claimed, received "90% of abandoned property", (Segev, p. 98). Jon Kimche wrote: "[t]he Irgun practice of looting Arab homes and shops was soon explained away and later justified.... It was perhaps natural, though it was certainly detestable, that before long, the rest of the Jewish soldiers of the Haganah and the Palmach should join in the orgy of looting and wanton destruction". Kimche, Jon, *Seven Fallen Pillars: The Middle East 1945-1952*, New York: Praeger, 1953, n. 32, p. 234.

Ministerial Committee for Arab (the word was later removed and replaced by ‘Abandoned’) Properties.⁴

7. By August 1948, hundreds of thousand of refugees were expelled from their homes, carrying their young and old, in the summer heat, to escape massacres and seek temporary safety. Their plight became a public international issue. Count Folk Bernadotte, the newly appointed UN mediator, was shocked to see the masses of humanity wandering in a daze.

He wrote:⁵

It would be an offence against the principles of elemental justice if these innocent victims of the conflict were denied the right to return to their homes, while Jewish immigrants flow into Palestine, and, indeed, at least offer the threat of permanent replacement of the Arab refugees who had been rooted in the land for centuries.

8. There was a strong international call to allow the refugees to return to their homes. The provisional government of Israel implemented several measures to deny the refugees their right of return: (1) Military: expulsion of inhabitants and killing those who tried to return (“infiltrators”), (2) Political: worldwide campaign that refugee return is a security threat to Israel’s existence, (3) Physical: destruction of homes, burning crops and poisoning wells, (4) Propaganda: campaign among refugees that there is nothing to return to, and in western circles that expulsion is a population exchange, (5) Replacement: bringing new immigrants to fill the evacuated homes, (6) Legal: seizure of Palestinian property through a convoluted pseudo-legal laws. In what follows we shall deal with the last item (6).

Seizure of Palestinian Property

9. On July 15, 1948, a mere two days after the expulsion of 70,000 inhabitants of Lydda and Ramle and looting of their property, the Minister of Finance was appointed as the head of the so-called “Custodian of Abandoned (read: Refugee) Property. The Ministry of Agriculture was allowed to “lease” refugee land to new settlers in Kibbutzim. On August 20, 1948, the Ministerial Committee decided to expropriate their property. On the basis of JNF previously prepared plan, 120,000 donums were immediately confiscated in order to settle new settlers.

⁴ Fischbach, note 1, p. 17.

⁵ UN Doc A/648, 1948.

10. The legal formulation at this stage was under intense consideration. The conquered land and the expulsion of the inhabitants were running a foot. The situation on the ground was changing rapidly. The fear of international pressure to force the return of the refugees was considered real. All this required a careful legal treatment of confiscation which could be justified.

11. The first law passed by the Knesset was the “*Abandoned Property Ordinance*” of June 21, 1948, and was retroactively valid on May 16, 1948, just two days after declaring the state of Israel.⁶

12. Three days later, a second law defined the “*Abandoned Area*” to mean any conquered area or place, whether by force, surrender or flight of inhabitants. This included areas which were not ‘abandoned’ or deserted, even areas where inhabitants remained. The law allows Israel to seize everything on the land, buildings and contents, crops, cattle, supplies and all else. The Minister of Finance is authorized to confiscate any of these assets at will.

13. A third law put the confiscated land into use. The “*Emergency Regulations for the Cultivation of Fallow Land and the Use of Unexploited Water Resources*” of October 11, 1948 allowed the Minister of Agriculture, retroactively to the expulsion date of the village to allocate its land to Jewish settlers for their use. Moreover, the law allowed the Minister to determine if any land was uncultivated (because the owner-farmer had been expelled) and therefore his land was defined as a “wasteland”, to be used for 35 months by the settlers, later extended to five years.

14. All this formulation culminated in the *Emergency Regulations (Absentees’ Property)* of December 2, 1948. As Fischbach noted,⁷

These regulations shifted the legal definition of what constituted abandoned land from the land itself to its owners: instead of declaring land to be “abandoned”, owners were now declared “absentees” whose property could be seized by the state.

⁶ Fischbach, note 1, p. 19.

⁷ Fischbach, note 1, p. 21.

The Absentees' Property Law

15. With Israel's failure to comply with the conditions for its UN membership to comply with resolution 181 (Partition Plan) and resolution 194 (return of the refugees) and its subsequent failure in the Lausanne negotiations supervised by UN Conciliation Commission for Palestine (UNCCP), to allow the return of the refugees, Israel found itself free to formulate a comprehensive law for the seizure of Palestinian property. Thus the Absentees' Property Law of March 14, 1950 was promulgated.⁸

16. It is the most fundamental settler's law created for the seizure of Palestinian land. The definition of "Absentees" was designed to include all Palestinians who were expelled or fled to escape the terror of massacres. By expulsion and massacres, Israel created the condition termed as "Absentee". It referred to the owner of the property to be seized, not the property itself. This is a transition from the earlier description of 'property' itself as being 'Arab' to a new description: 'Abandoned'. Since the property is now seized, what remained was to isolate the owner from his property by declaring him "Absent".

17. This term is so convoluted that it, not only describes the Palestinian refugees who were expelled to Arab areas, but those who remained in the area occupied by Israel. They were given the oxymoron term of "Present Absentees". As Don Peretz pointed out:⁹

Every Arab in Palestine who had left his town or village after November 29, 1947, was liable to be classified as an absentee under the [Absentee's Property] regulations. All Arabs who held property in the New City of Acre, regardless of the fact that they may never have travelled farther than the few meters to

⁸ Jiriys, Sabri, Palestine Year book of International Law (PYIL), Vol. II, 1985 pp. 18-36. (Definition of Absentee). The Absentees' Property Law of 5710/1950 (4 Laws of Israel) states in Article 1 (b) that "absentee" means:

- (1) a person who, at any time during the period between 29th November, 1947 and the day on which a declaration is published, under section 9 (d) of the Law and Administration Ordinance, 1948, that the state of emergency declared by the Provisional Council of State on the 19th May, 1948 has ceased to exist, was a legal owner of any property situated in the area of Israel or enjoyed or held it, whether by himself or through another, and who, at any time during the said period-
 - (i) Was a national or citizen of the Lebanon, Egypt, Syria, Saudi Arabia, Trans-Jordan, Iraq or the Yemen, or
 - (ii) Was in one of these countries or in any part of Palestine outside the area of Israel, or
 - (iii) Was a Palestinian citizen and left his ordinary place of residence in Palestine
 - (a) for a place outside Palestine before the 1st September, 1948; or
 - (b) for a place in Palestine held at the time by forces which sought to prevent the establishment of the State of Israel or which fought against it after its establishment.

⁹ Don Peretz, *Israel and the Palestine Arabs*, Washington: Middle East Institute, 1958, p. 152.

the Old City, were classified as absentees. Any individual who may have gone to Beirut and Bethlehem for a one-day visit, during the latter days of the Mandate, was automatically an absentee.

18. The Absentees may be a company, a society, a charity or any grouping. Absentees include non-Palestinian Arabs or non-Arabs if not Jews. Absentees could be Britons or Canadians who were property owners residing in Palestine, but these cases were treated differently and compensation was paid for them, if not of Arab extraction. Jews from Arab countries who owned property in Palestine (technically Absentees) recovered their property when they immigrated to Israel.¹⁰

19. The law required any one in possession of Absentee property to notify the Israeli authorities. The law prohibited a Palestinian refugee outside Israel to sell or hand over his property to someone remaining in Israel. But it validated the actions which the authorities deemed to have dealt with absentee property in “good faith”. This unexpected leniency allowed collaborators to acquire/purchase/hold power of attorney for the property of refugees’ land and pass it on to the Custodian in a legally approved manner.¹¹

20. The law did not only allow Israel to seize the property in the first phase, i.e. the years 1948-1954, but allowed it to do so at any time later. Take the case of a man who had property and remained in Israel, and had two sons, one remained with him, the second son was on educational, medical or business trip in the specified period of the law and was not allowed to return. When the man dies, Israel inherits the property of the second son who is declared Absentee.

21. The law appointed a Custodianship Council for Absentees property, presided by the Custodian of Absentees’ Property. He has control over 93% of Israel’s area, wrenched from Palestinian hands in the Israeli conquest of 1948/49.

22. Although the Absentees Law did not care to verify the legal ownership of the seized land and immovable property on it, it covered this eventuality by creating new laws to make sure any land on which Palestinians lived, used or controlled in Palestine, such as communal lands, hills,

¹⁰ Fischbach, note 1, pp. 24-25.

¹¹ Fischbach, note 1, p. 26

seasonally cultivated land or grazing land shall be seized by Israel. What was important was the seizure of the property, not the identity of its owner, who is banished away from his property.

Confiscation under any Name

23. The Emergency Regulations (Cultivations of Waste [Uncultivated] Lands, Extension of Validity) Ordinance of 1949 empowered the Minister of Agriculture to seize ‘uncultivated’ land if he “is not satisfied that the owner of the land has begun or is about to begin or will continue to cultivate the land”. The law does not allow for the case when the expelled owner was not allowed to return to cultivate his land. It leaves to the Minister’s discretion to decide if a land is a “waste” land, regardless of the reason.

24. If the owner is in Israel, he may be prevented from cultivating his land by declaring it a “closed area.” Art. 125 of the Defense (Emergency) Regulations of 1945, created by the British Mandate and extended by Israel to this day, primarily applied against its Arab citizens, empowers the Military Governor to declare specified areas “closed areas”. This was very effective in preventing farmers who remained in Israel from returning to their fields. They are, however, offered the option to renounce their property and receive “compensation” riddled with fees, charges and costs.

25. If that fails, there is another device, namely to declare the land in question a “Security Zone”. The Emergency Regulations (Security Zones) Extension of Validity No. 2 of 1949 empowered the Minister of Defense to declare all or part of a strip of land extending 10 km north, and 25 k south, of the 31st parallel, along the whole frontier, a “Security Zone”. Under these regulations, nearly half of Galilee, the Little Triangle, and whole Southern Palestine, in which there are many Arab villages, may be declared a “Security Zone”.¹² Security Zone means that anyone who does not habitually live there is forbidden to enter without a permit. Those who live there may be expelled and must leave within 14 days.

¹² Jiryis, *The Palestine Yearbook of International Law (PYIL)* note 8, p. 23. See also Bisharat, George E., *Land, Law and Legitimacy in Israel and the Occupied Territories*, *The American University Law Review*, Vol. 43, pp.467-591, 1994. A detailed legal examination of Palestinian property seizure up to 1973 is given by: Boling, Gail J., “Absentees Property” *Laws and Israel’s Confiscation of Palestinian Property: A Violation of UN General Assembly Resolution 194 and International Law*, *The Palestine Yearbook of International Law*, Vol. XI, 2000/2001, pp. 73-130, Kluwer Law International, 2003.

26. Still there are more tools for land seizure. The Emergency Land Requisition (Regulation) Law of 1949 is designed to secure the evacuation of houses, buildings and premises to provide accommodation for the new Jewish immigrants. According to Article 3 of the Law, the “competent authorities can issue a “housing order” to seize any property if needed “for the defense of the state, public security, the maintenance of essential supplies or essential public services, the absorption of immigrants or the rehabilitation of ex-soldiers or war invalids”.¹³

27. To seal the various actions of land seizure under these laws, it was decreed that all acts of land seizure before the promulgation of these laws are valid even if they took place before or contrary to these laws. The Land Acquisition (Validation of Acts and Compensation) Law of March 10, 1953 was enacted to bestow legality on all previous seizure of the land.

28. The powers conferred on the Israeli authorities by this Law were very extensive, and enabled them to ratify any act of illegal expropriation of any property, for the Law stipulates that, if the Minister of Finance issues a certificate signed by himself, in which he declares that a property is one to which three stipulated conditions apply, such a certificate, by the mere fact of its being signed by the Minister of Finance, even if its contents are not true, is enough to alienate the ownership of any land and transfer it to the Development Authority. (See paras 33 and 34).

Confiscation Orders Issued

29. During the first few years (1953/1954) after the Law was passed, the Minister of Finance in fact issued hundreds of certificates that were published in the Israeli Official Gazette, for the confiscation of 1,336,371 donums of the land of 332 Arab villages.¹⁴ See **Table 3** and **Map 2** for summary of land confiscation in this period. The land was evidently regarded as absentees’ property. This area included land that was the property of villages whose inhabitants remained in Israel.

30. If compensation is paid, it would be based on the low price of January 1, 1950. There would be charges and expenses which would make the net compensation a paltry sum.

¹³ Jiryis, Ibid, p. 25.

¹⁴ Details were compiled by Adalah www.adalah.org/eng/pressreleases/pr.php?file=09_06_22.

Serial No.	District Name	No. of mentioned Towns/Villages	No. of confiscated Built Up Areas	Area Confiscated (Donums)
1	Safad	32	23	44,216.15
2	Acre	28	11	150,028.14
3	Haifa	32	21	61,431.60
4	Tiberias	19	11	8,622.30
5	Nazareth	11	3	89,906.88
6	Beisan	9	0	9,789.97
7	Jenin	7	0	101,723.06
8	Tulkarm	41	0	141,020.00
9	Nablus	0	0	-
10	Jaffa	28	0	75,119.88
11	Ramleh	56	0	150,585.80
12	Ramallah	0	0	-
13	Jerusalem	18	0	104,474.10
14	Gaza	47	0	57,607.58
15	Hebron	4	0	50,693.45
16	Beer Sheba	0	0	291,152.80
	Total confiscated	332	69	1,336,371.70

Source: Updated Adalah compilation of data at:
[http://www.adalah.org/features/land/Letter_re_Absentee_Property_English\[1\].doc](http://www.adalah.org/features/land/Letter_re_Absentee_Property_English[1].doc)
 See also an earlier version of data in: Jiryis, Sabri, *The Arabs in Israel*,
 New York: Monthly Review Press, 1976, Table 5, pp. 292 – 296.

31. The Islamic trust overseeing religious buildings, farmland and property bequeathed for charitable purposes, *wakf*, was confiscated by the Custodian of the Absentees Property, probably on the assumption that ‘God is absent’, as local people quipped. *Wakf* property amounts to one tenth of the land in Palestine. The Custodian, however, returned most land belonging to the Christian churches. In contrast, Israel divided Islamic *wakf* into two categories:

- (i) “religious” *wakf*, e.g. mosques, cemeteries, and
- (ii) “secular” *wakf*, e.g. shops, houses, fields. The Custodian “sold” the secular” *wakf* to the Development Authority and the Jewish National Fund (JNF).¹⁵

A New Diversion

32. So far the seizure of Palestinian land did not imply revoking or annulling the title deed of the

¹⁵ Cook, Jonathan, “Disappearing Palestine: Israel’s Experiments in Human Despair”, London, Zed Books, 2008, footnote 60, p. 255-256. See also Dumper, Michael, *Islam and Israel: Muslim Religious Endowment and the Jewish State*, Washington DC: The Institute of Palestine Studies, 1994, p. 36.

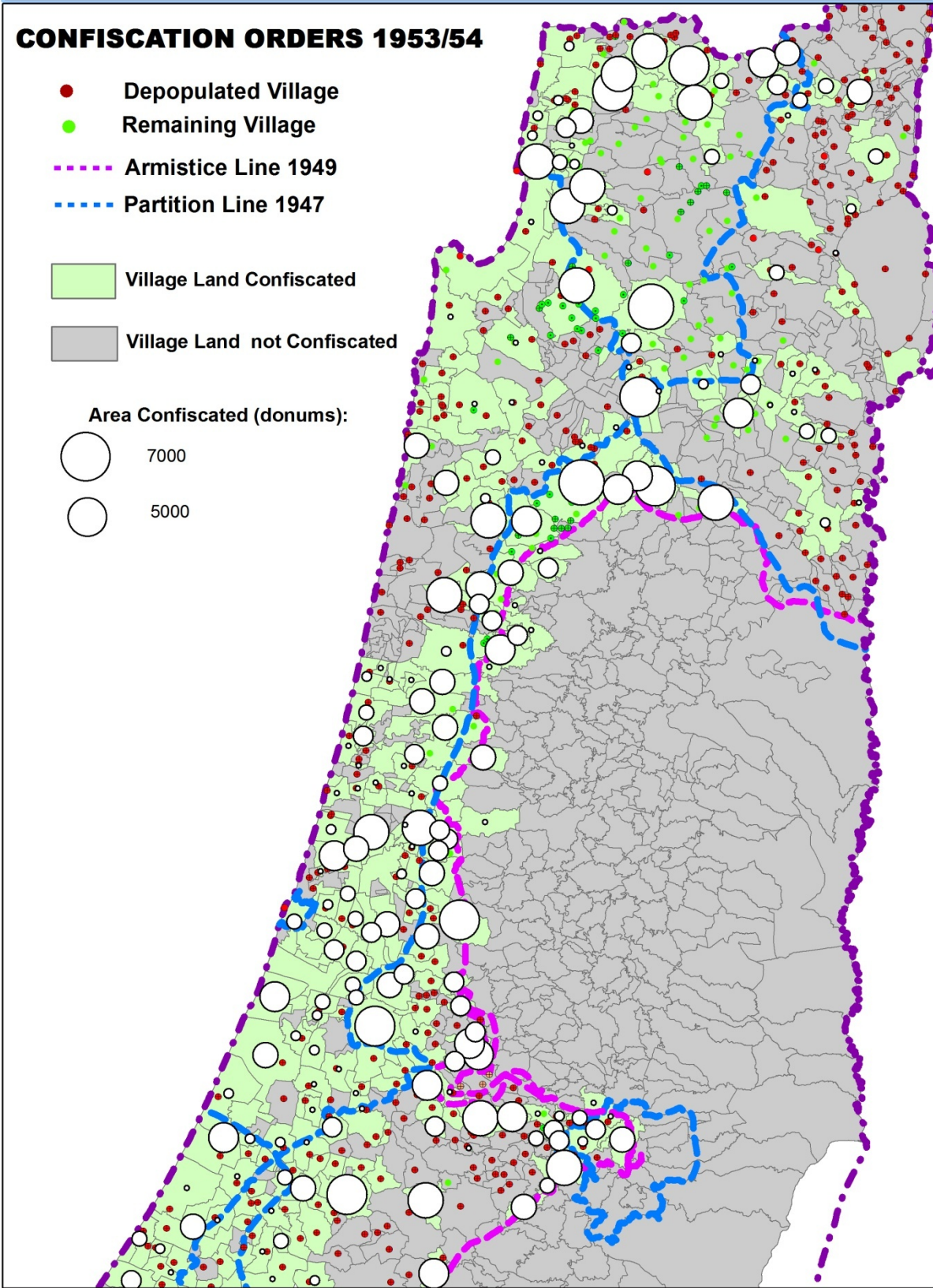
Map 2. Areas Confiscated by Israel in 1953/54

CONFISCATION ORDERS 1953/54

- Depopulated Village
- Remaining Village
- Armistice Line 1949
- Partition Line 1947

- Village Land Confiscated
- Village Land not Confiscated

- Area Confiscated (donums):
- 7000
- 5000



Source: Adalah Compiled Data www.adalah.org. See supra note 14.

original owner, forced to be “Absent”. New legal devices were invented to create a barrier between the land owner and land seized by Israel.

33. Significant among them were the Absentees’ Property Law and the Development Authority (Transfer of Property) Law, adopted in March and July 1950 respectively. As stated before, the former authorized the appointment of a Custodian of Absentees Property under whose control the abandoned properties were placed and who was broadly empowered to administer them. Effectively he was given the rights of an owner and was made liable to the absentees for the value (subsequently fixed by another statute) of their properties, but not for the return of the latter. Financial settlement was to be effected as part of a final Israeli-Arab peace agreement.

34. Since it had been decided that these lands should not fall into the hands of private owners, but should become a Jewish national property and since direct transfer to the government might “be interpreted as confiscation of the abandoned property”, the government resorted to a “sort of legal fiction” and under the Development Authority Law, set up an “independent body, separate, as it were, from the government with its own administration”, to which the Custodian of Absentee Property transferred the properties. The same law empowered the Development Authority to do virtually anything with them, including selling them. The latter however was restricted: (1) any sale required the consent of the government; and (2) sale of land could be effected only to (a) the state, (b) the JNF, (c) local authorities, if it was urban land and only if it had first been offered to and declined by the JNF, and (d) a proposed “institution for settling landless Arabs”. Such an institution was never established, and most of the abandoned lands were in due course sold to the state and the JNF.¹⁶

35. With the Development Authority established in July 1950 and under an agreement made in 1953, the Custodian transferred immovable property under his control to the Development Authority. This Authority was intended as a shield between the legal owners (the Absentees), and indeed the whole of the Palestinian community, and the Jewish settlers on this land, with the advantage that the settlers’ newly acquired title was “immunized from legal claims”.¹⁷

¹⁶ Lehn, Walter and Davis, Uri, *The Jewish National Fund*, London and New York : Kegan Paul font International, 1988, p. 131.

¹⁷ Abu Hussein, Hussein and McKay, Fiona, *Access Denied: Palestinian Land Rights in Israel*, London: Zed Books, 2003, p.72.

Land Confiscated by JNF

36. Following the passage of UN Resolution 194 of December 11, 1948, which endorsed the refugees' right of return, Ben Gurion entered into a fictitious sale agreement with JNF for the latter to "buy" refugees' land. The objective is to keep this land under an international (Jewish) organization, not under Israel government, to avoid international pressure to force the return of the refugees to their land.¹⁸

On January 27, 1949, the two sides finally concluded a major deal by which the JNF would 'purchase' 1 million donums of refugee land. See **Table 4**. However JNF's report to the 23rd congress of the WZO in 1951 stated the amount at 1,109,769 donums: 1,085,607 (rural) and 24,162 (urban).

Table 4: List of Refugee Land 'Sold' to JNF in January 1949 ("The First Million")	
Region	Dunams
Jerusalem corridor	2,000
Northern Negev desert	250,000
Coastal Plain	150,000
Sharon Plain	150,000
Sub TOTAL	552,000
Total Incl. Hula Basin and near Baysan	1,101,942
Source: Granott <i>Agrarian Reform</i> , pp. 107-111	

37. American Jews were crucial in providing funds with which the JNF could 'purchase' land. Between 1910 and mid-1948, American Jews donated, through United Jewish Appeal, a total of \$85,760,732. British, Canadian and South African Jews contributed a further \$9 million. An unlikely source of vital funding was provided by American banks. The Bank of America National Trust and Saving Association of San Francisco gave JNF a loan of \$15 million. The Bank of America provided the loan on June 9, 1949. It is unusual for a bank to extend a loan to a British entity (JNF) to establish settlements in a foreign country (Israel) on a land that neither JNF nor Israel legally own.¹⁹

¹⁸ For full details of this "sale" of refugees' land see the report: <http://www.plands.org/JNF%20Report1.pdf>;

¹⁹ The first US aid to Israel of \$100 million was granted as a loan through Export – Import Bank. For the history of UD aid to Israel, see: Jeremy M. Sharpe, *US Foreign Aid to Israel*, Washington: Congressional Research: The Library of Congress, January 5, 2006.

38. Execution of the deal with the state and the JNF’s usage of the land took some time. Between signing the deal on January 27, 1949 until March 31, 1954, the state had legally transferred only 35.9 percent of the land, or 396,149 donums. For its part, the JNF had put only 770,271 donums of the land it ‘bought’ in completely depopulated villages to use by the end of 1952.²⁰

39. A second sale was finalized on October 4, 1950 involving the transfer of an additional 1,271,734 donums by the Custodian of Absentee Property on behalf of the Development Authority to the JNF, 99.8 percent of which (1,271,480 donums) was rural land. Granott later placed the amount at 1,278,200 donums. See **Table 5**.

Table 5: JNF-Usage of the “Second Million” Donums of Refugee Land ‘Purchased’ in 1950	
Usage	Donums
Completing construction of new settlements	500,000
Expanding existing settlements	500,000
Afforestation	160,000
Various agricultural purposes	100,000
Settlement housing	16,200
Urban housing	2,000
TOTAL	1,278,200
Source: Granott <i>Agrarian Reform</i> , pp. 108, 111	

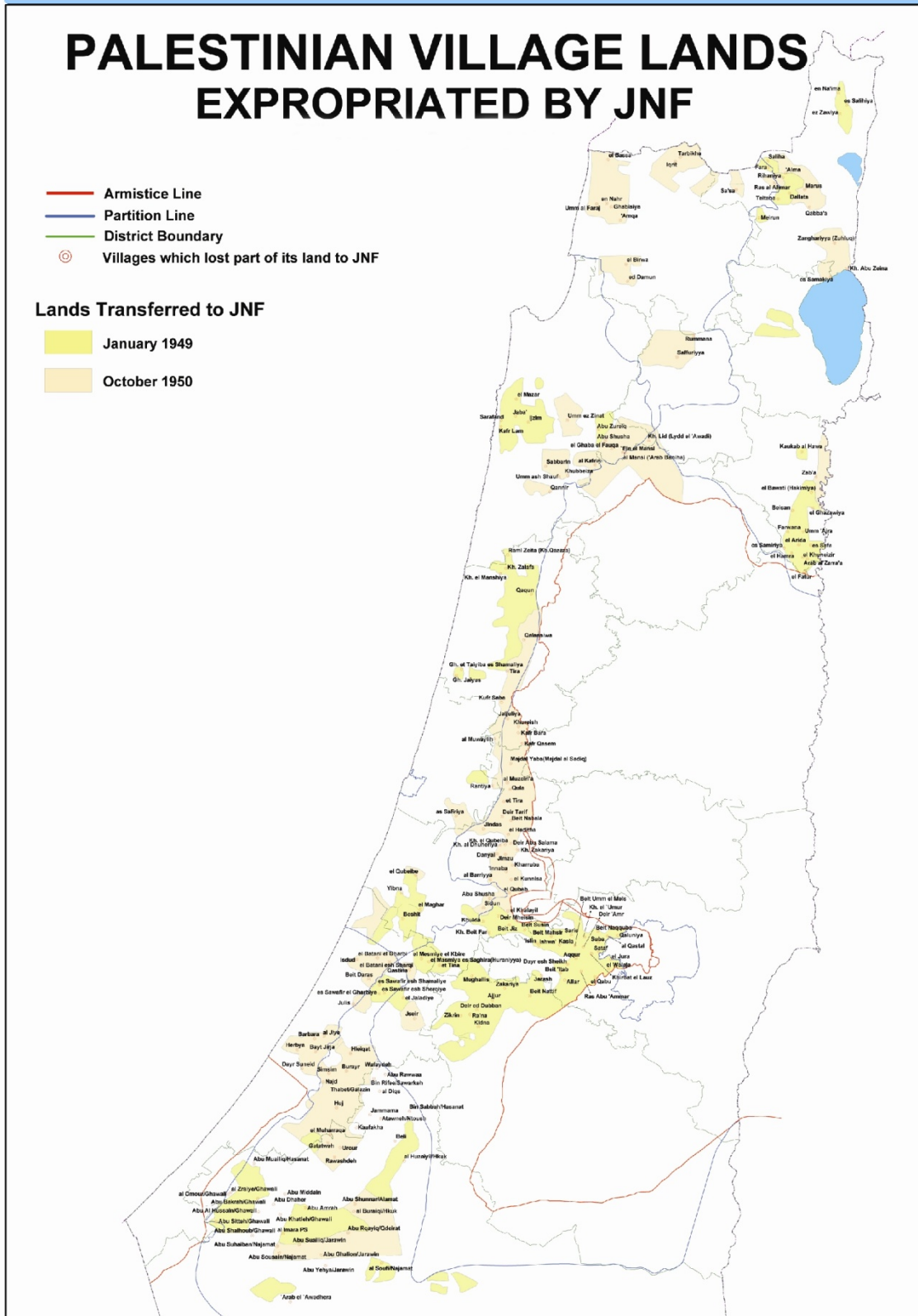
40. The amount of \$266 million was said to have been paid over a ten year period. There are persistent reports that the JNF never actually paid the amounts it owed under the two politically-motivated deals. This coincides with the underlying purpose of the deals.²¹

41. Map 3 shows the approximate location of the Palestinian land transferred to JNF through the fictitious sale agreement concluded in 1949 and 1950 with the Israeli government which seized the refugee property. **Map 4** shows the approximate location of the transferred land and the

²⁰ This triggered the confiscation order by the Minister of Finance of lands listed in Table 3 and Map 2 herein.

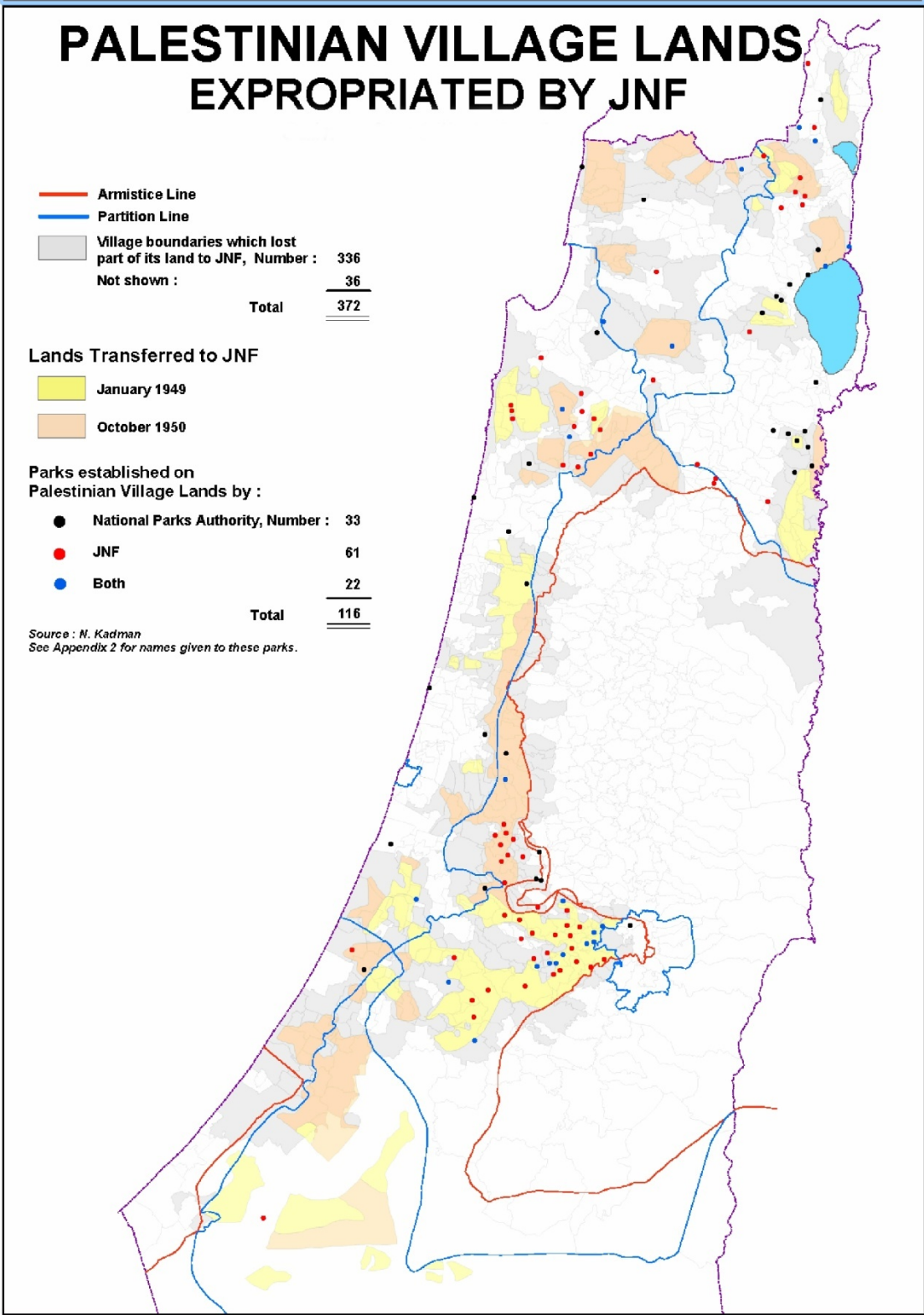
²¹ Evidence of this is quoted by Fischbach, p. 65: Granott, *Agrarian Reform*, pp. 108, 111; Lehn and Davis, *Jewish National Fund*, p. 132; FO 371/82257, Tel Aviv to Foreign Office, November 14, 1950; *Yediot Aharonot*, August 31, 1999 in: David Blougrund, *The Jewish National Fund*, Policy Study No. 49, Washington and Jerusalem: Institute for Advanced Strategic and Political Studies, 2001, p. 7.

Map 3: Approximate Location of Palestinian Land Expropriated by JNF in 1949 and 1950



Source: Arnon Golan, The Acquisition of Arab Land by Jewish Settlement in the War of Independence, Catedra (in Hebrew) Vol. 63, 1992 pp. 122-154.

Map 4: Affected Village Boundaries by Transfer of its Land to JNF and Location of Parks Planted on it



Source: Noga Kadman, "Erased from Space and Consciousness -Depopulated Palestinian Villages in the Israeli-Zionist Discourse" (Master's thesis in Peace and Development Studies), Dept of Peace and Development research, Goteborg University, November 2001.

location of about 100 JNF parks planted over it. The land of 372 depopulated Palestinian villages (5,687,342 donums) has been wholly or partially taken over by JNF. The number of the registered refugees from these villages amounts to 2,191,556 refugees (2005) in exile, or 54% of UN-registered refugees.

The Dispute between JNF and the State

42. In the first ten years of Palestine occupation (1950-1960), a legal quarrel ensued between the Jewish National Fund (JNF) and new Israeli government. JNF had been purchasing land in the Mandate period in the name of “the Jewish People.” Israel's government seized the Palestinian land and intended to acquire title to it in the name of the state in recognition of “the triumph of the Haganah and the flight of the Arabs”.²² The JNF maintained that such land should be turned over to “the Jewish people”, not the state, since the latter, given the prevailing shaky political and demographic conditions at the time, cannot give adequate guarantee of lasting Jewish ownership.

43. The dispute was settled by formulating, on July 25, 1960, the laws: Basic Law: Israel-Lands, Israel-Lands Law and Israel-Lands Administration Law. ‘Israel’ means Israel government, not the Jewish people. The JNF rules, of restricting transactions to Jews only, have been adopted by the state. Palestinian lands, whether acquired by JNF or seized by the state, would be administered by a single authority, Israel Land Administration (ILA), for the benefit of both parties under the old JNF rules of exclusive use by world Jewry.

44. Thus, ILA administers 93% of Israel’s area, which is predominantly Palestinian property. These lands are leased to Jewish tenants. None of these tenants has a title to the leased land. The original lease term was 49 years, renewable.

45. **Table 6** shows various estimates of lands under ILA control, which various from 18,754,000 to 19,508,000 donums, (the latter figure is posted on the official ILA website), which shows a steady increase of confiscated land. The total land held by JNF after land ‘sale’ is 3,124,000 donums but it is shown to be 3,570,000 donums (Ref: 2 in Table 6) and is frequently quoted as 13% of Israel’s area, or 2,633,000 d. This shows additional 446,000 or 491,000 donums

²² Lehn and Davis, op. cit, note 16, p. 108.

acquired by JNF by unexplained means, which could be another ‘sale’ of Palestinian land. Other than 750,000 donums owned by JNF during the Mandate, the rest of the land held by JNF is Palestinian.

Table 6: Palestinian and Jewish Land held by ILA				
S No.	Holder of Land Area (Sq. km)	Ref. 1	Ref. 2	Ref. 3
1.1	Privately held by Jews	801		
1.2	Total privately held (Arabs and Jews)	1,668	1,480	
2.1	JNF acquired – January 1949			1,102
2.2	JNF acquired - October 1950			1,272
2.3	Total JNF after 1948			2,633
2.4	Total JNF		3,570	
3	Development Authority (DA)			
4	Total State Land & DA	18,754	15,205	
5	Total under ILA	18,754	18,775	19,281
6	Total Area of Israel	20,422	20,255	
7	Year	1949	1962	2000
Notes:				
Ref 1: Abu Hussein, Hussein, <i>Access Denied: Palestinian Land Rights in Israel</i> , London: Zed Books, 2003, p. 135				
Ref 2: Lehn, Walter and Davis, Uri, <i>The Jewish National Fund</i> , Kegan Paul International, London and New York, 1988, p. 114.				
Ref. 3: ILA report 2000, quoted by Abu Hussein (Ref. 1), p. 150.				

46. The Basic Law: Israel Lands of July 19, 1960 overrules all other laws. Its aim is to legalize the seizure of Palestinian land, to prevent its possible sale at any time in the future and to prohibit its use by any non-Jewish entity. The Israel Land Law, which followed six days later, allowed the transfer of lands to the Development Authority or to other parties in exceptional circumstance, which were rarely invoked.

On the same day, the Land Administration Law of 1960 was passed. Its purpose is to administer all seized land on the same principles as JNF rules.

The Israel Land Council was formed to administer the land under Israel’s control. The council has 22 members, 10 of them from JNF. This Council supervises the function of ILA.

47. Such was the culmination of a 10-year dispute between JNF and the state. The agreement between the two was legalized in the “Covenant” signed on November 28, 1961, between JNF (Keren Kayemeth LeIsrael) and the State of Israel with the sanction of the World Zionist Organization.

The obvious result is that the seized refugee land is made available to any Jew around the world, even if he is not an Israeli citizen and not available for a Palestinian even if he is an Israeli citizen.

Capitalist Kibbutzim

48. An interesting development took place when new immigrants, mostly Oriental, traditionally engaged in monetary transactions and trade, did not take up agricultural pursuits willingly. They were not willing to be farmers “returning to the land” as Zionist ideology would have them do. They turned to their traditional occupations and leased the land allotted to them to Arab farmers to cultivate it for share of the crop or rent. The Arab farmers, who were expelled from their land but remained in Israel, were very willing to cultivate this land, which frequently was their own, by renting it or sharing its crops. Thus the Agricultural Settlement (Restriction on the use of Agricultural Land and Water) Law of 1967 was passed to prevent this practice.²³

49. The reluctance of the new Jewish immigrants, void of Zionist zeal, to take up agriculture and utilize the vast area of seized Palestinian land led to a decline in the Kibbutz movement. With the abject failure of the Kibbutz as an ideology and an economic engine, Kibbutz farmers were allowed to own and build on a portion of the land leased to them. In return for the use of ‘their’ land, they would be compensated generously for not less than 20% of the land value.

Ordinance 533, later replaced by 611, which was enacted when Sharon was Minister of Housing, gave the farmers the best deal. As Russian immigrants began pouring in, housing was needed, and it was convenient to direct them to the near empty Southern District and mainly Arab Northern District.

The Kibbutz farmers were given an extra incentive. They were allowed to buy back the rented land for 15% of the compensation value they received for it. They were thus transformed from bankrupt farmers with an outdated ideology to rich ‘farmers’ who owned a lot of real estate.

²³ Jiriys, Palestine Year book of International Law (PYIL), p. 34.

50. The sudden wealth of the farmers aroused criticism by old Zionists, such as the JNF, who insisted that Palestinian land should be the property of 'the Jewish People everywhere in perpetuity'. Sale to individuals, they say, may encourage some to sell land back to Arabs. In the late 1990's, Jewish extremists at Lydda terrorized a Jewish neighbor who sold his villa to a Palestinian Israeli family.

To resolve this dispute, a series of ordinances were passed (640 and 727) and finally a committee headed by Prof. Boaz Ronen was formed to determine the land percentage, the mechanism and procedure of selling Palestinian land leased by ILA to Kibbutz farmers. In June 1997, the recommendations of the committee were approved to the obvious pleasure of Sharon. As a result, 'ownership' of 600,000 apartments was transferred from the State Custodian to the tenants. The Israeli government, through the ILA, earned \$700 million in 1997 alone for its share in the proceedings.²⁴

51. In 1997, National Infrastructure Minister Sharon planned to build 50,000 housing units; 30,000 have been sold, 3,130 remained then unsold, the rest were at various stages of tendering. It is noteworthy that the first stage of construction was designed to break the Palestinian monolithic continuity in Israel by building around Arab towns such as Umm al Fahm, Nazareth, Shafa Amr and Taibeh.

Confiscation of Beer Sheba Land

52. On another front, Palestinian land seizure continued unabated. In one swoop, Israel confiscated 12,500 sq. km in Beer Sheba district with the exception of isolated tracts of land, on the pretext that these lands were uninhabited, uncultivated and were therefore *mewat* land according to the 1858 Ottoman Land Code. The 1969 Land Rights Settlement Ordinance defined all land in Beer Sheba district, in addition to other areas elsewhere, to be "state land". Thus, under this single Ordinance, more than 61% of Israel's area was seized by the state.²⁵

²⁴ This sale of a small portion of Palestinian land shows the fallacy of Israel's argument that the whole of Palestinian land and property are not worth more than \$300 million if compensation is to be paid

²⁵ Off the Map: Land and Housing Rights in Israel's Unrecognized Bedouin Villages, HRW report, Vol. 20, No. 5 (E), March 2008..

53. The occasion of signing Peace Treaty between Egypt and Israel in 1979 was another pretext to seize land in Beer Sheba district. The pretext was to relocate airbases, which were established in occupied Sinai, inside Beer Sheba District. The Negev Land Acquisition (Peace Treaty with Egypt) Law was passed by the Knesset in 1980 to fulfill this purpose.

Confiscation of West Bank Land

54. The Israeli occupation of the West Bank and Gaza in 1967 accelerated the confiscation of Palestinian land, not only within the 1949 Armistice Line, but also in the 1967 occupied land. The same convoluted process of land seizure through legal formulation has been used, this time through Military Orders.²⁶ The West Bank settlements including those in Jerusalem are a clear manifestation of land confiscation.²⁷ This confiscation is the subject of numerous political statements and media reports, but none of these succeeded in stopping these illegal settlements.

55. The International Court of Justice, the highest court in the world, in its Advisory Opinion of July 9, 2004 decided that the West Bank, including Jerusalem, is an occupied territory and that the [Apartheid] Wall must be dismantled and the owners of confiscated land compensated.²⁸ The UN General Assembly endorsed the Advisory Opinion and the Secretary General set up an office to measure and evaluate damages due to the construction of the Wall. But no tangible results were observed.

56. Unchecked, neither by international law, nor by pressure from USA and European governments, Israel went further than simply continuing its silent but steady confiscation of Palestinian land in the West Bank. An Israeli court issued a judgment that the Absentees' Law is applicable in the West Bank as it is in Israel of 1948. The Israeli court's decision "implies Israeli

²⁶ Raja Shehadeh, *The Occupiers' Law: Israel and the West Bank*, Washington: The Institute of Palestine Studies, 1985.

²⁷ See <http://ochaonline.un.org/>; <http://www.arij.org/>; <http://www.btselem.org/English/index.asp>

²⁸ The Court concluded that the areas occupied by Israel in 1967 were occupied territories under international law, Para 78. The Court ruled that the Hague Regulations of 1907, as well as the 4th Geneva Convention apply to the occupied territories. Contrary to Israel's longstanding position, the Court responded that human rights conventions apply both in peace time and armed conflict. These human rights instruments are: the International Covenant on Civil and Political Rights (CCPR), the International Covenant on Economic, Social and Cultural Rights (CESCR) and the Convention on the Rights of the Child (CRC). (From Commentary by Susan M. Akram and John Quigley). See the full text of the Advisory Opinion: Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 2004 ICJ Rep (9 July 2004), available at: <http://www.icj-cijwww/idoocket/imwp/imwpframe.htm>.

law applies to several Palestinian villages east of the 1967 borders, as well as applying to Israelis living in the disputed (*sic*) territory.... [which] means that Israel could confiscate land belonging to Palestinians who used to reside in the area [West Bank] and are now refugees, in accordance with the Absentees' Property Law.”²⁹

57. Israel went further; it openly and publicly confiscated land on Dead Sea shoreline. On June 28, 2009, the Land Registry Office at Ma'ale Adumim settlement in the West Bank published 12 public notices for the registration of 139,000 donums along the northern and western shores of the Dead Sea, within the West Bank, in the name of the Custodian of State Land of Israel. It opened the door for “objections” within 45 days. In practice, this opportunity to object is irrelevant as Israel considers this land to be “abandoned” as well as all ‘common’ land in the West Bank under the Mandate and the Jordanian rule. This will of course pre-empt any chance for Palestinians to recover sovereignty of a Palestine state over area C in the Oslo agreement. It also eliminates Palestinian rights in the exploitation of Dead Sea shores and minerals.³⁰

58. In June 2009, the old idea of land swap between JNF and ILA for the “state land” surfaced again. The principal idea is to swap land owned by JNF in the central district with the refugees’ land in Galilee and Beer Sheba classified as ‘state land’.³¹ The reason for this is the increased need for urban expansion in the central sector and diminishing interest in agricultural land which belongs to refugees.³² With this swap/sale, JNF would earn a big monetary return which it will use in the Judaization of Galilee and Beer Sheba. Bringing in new Jewish settlers to these areas requires confiscating more Palestinian land in Galilee and continuing to deny Palestinian ownership rights of land in Beer Sheba. It is clear therefore that not only the 1950’s confiscation of refugees’ land was a major loss, but that swap between two confiscating parties in Israel is a further loss to the Palestinian citizens of Israel.

²⁹ Haaretz, August 2, 2009, “Judge: Israeli Law applies in disputed West Bank Territory”.

³⁰ For more details, see www.arij.org/editor/case_studies/view.php?recordID=2006 .

³¹ Jerusalem Post, June 24, 2009, *Court puts JNF-ILA land-swap deal on hold*. The deal is about transfer of 70,000 donums under the name of JNF in the centre to the state which leads to “transfer of full and permanent ownership of the 290,000 homes to people who currently lease them”.

³² Werczberger, Elia and Borukbov, Eliyaha, *The Israel Land Authority: Relic or Necessity?*, Land Use Policy 16 (1999), 129-138, p. 133.

Wholesale Sale of the Refugees' Land

59. Now, a law allowing the wholesale of confiscated Palestinian land in Israel has now passed its third reading at the Knesset.³³ The law allows the 'privatization' of "state land"; in other words, selling refugees' land to private Jewish entities.³⁴

The confiscation and sale of Palestinian property to Jews is not limited to agricultural land of depopulated villages. Sales of individual refugees' homes in cities were announced, while the owners are in exile, unable to return and repossess their houses.³⁵

60. The frenzy of selling 1948 war spoils goes beyond the legal formulation and state decisions. There is a strong Israeli public drive to acquire Arab property and expel Palestinian citizens in Israel.³⁶ The whole Israeli community is imbued with a strong racist ideology which propels extremist leaders to seats of power.

61. The total sum of the value and losses of Palestinian property seized by Israel in 1948 has been estimated by Hadawi and Kubursi See **Table 7**. The value is upgraded herein to 1998, i.e. to the fiftieth anniversary of al Nakba. This table is not intended to solicit compensation. For it is clear that homeland is not for sale, as the history of Palestinians in the last 60 years shows. The purpose of this table is to show the magnitude of losses which are, other than the homeland itself, eligible for compensation according to Compensation Law and reparations for War Crimes.

³³ Akiva Eldar, *Land Reform and Mofaz Law*, Haaretz, August 3, 2009.

³⁴ Labour MK Option Pines-Paz, commented, "This is a continuation of the political thuggery of the [Netanyahu] government and the coalition". He was not defending the refugees' rights. He was referring to "the cynical use of power" to gain supporters.

³⁵ Take the case of Abdul Latif Kanafani, whose family house in 15 Al Burj Street, Haifa was put on sale. See Aljazeera.net, June 22, 2009, "Palestinian plots up for grabs". At least 282 homes have been sold in the past 2.5 years, Adalah, a Palestinian legal centre, stated. In May 2009, a one acre block in Jaffa was sold to a Jewish group.

³⁶ The notorious Avigdor Lieberman, the foreign minister and Ariel Atias, the housing minister, voiced extreme racist statements to this effect. See, for example, Jonathan cook, Loyalty Oath to keep Arabs Out, June 8, 2009, www.jkcook.net/Articles2/0396.htm.

Table 7: Estimate of Palestinian Property And Due Compensation according to Hadawi and Kubursi			
No.	Item	Description	Amount
			£Million (1948)
1	Individual Material Assets	Rural Land, Estimate based on various methods, including taxation, for 1945. Amount varies between £329-£436 million. The lower value is upgraded to 1948 and a rough estimate for Beer Sheba at £25 million is added	398.600 (min)
		Urban Probrerty. Adjusted by Hadawi from UN unrealistic values.	130.259
		Private Wealth Fifty percent of estimated value assuming that 50% was taken by the refugees.	66.8
		Agricultural Capital Includes cattle, Value adjusted of structures.	45.000 (min)
		Commercial Capital	45.9
		Financial Assets Net after Arab Bank paid out deposits and Israel returned £1.0 million.	12.5
		Industrial Capital.	11.4
		Restaurants and Hotels	10.5
		Vehicles and Equipment.	0.95
		SUB TOTAL 1	731.1
2	Public Material Assets	Transport (Roads, Ports, Airports, Railways) Assumed 50% of total, although Arabs where 2/3 majority and have paid for these longer than Jews.	12.100 (min)
		Quarries and Mines	NA
		Fisheries and Coasts	NA
		Water and Oil	NA
		Religious Places and Waqf	NA
		Public Services/Infrastructure.	NA
		SUB TOTAL 2 (excl. NA)	12.1
		SUB TOTAL 1 + 2 (excl. NA)	743.2

Table 7 cont'd.

Table 7 cont'd.

No.	Item	Description	Amount £	
			£Million (1948)	
3	Individual Non Material Assets	Personal security	NA	
		Family Dispersion	NA	
		Killed, Wounded, Imprisoned and Deported	NA	
		Torture and Ill-Treatment	NA	
		Suffering in Diaspora	NA	
		SUB TOTAL 3 (gross underestimate)	5,750 (min)	
4	Public Non Material Assets	Loss of Records and Documents	NA	
		Loss of Nationality and Identity	NA	
		Terrorism, Oppression and Discrimination	NA	
		Massacres	NA	
		Transfer of Population	NA	
		Denial of Living at home	NA	
		Note: War Crimes, Crimes against Humanity Crimes against Peace are not listed, should follow UN established practice.		
		TOTAL 1 – 4 (excl. NA)	748,950	
5	Human Capital	Loss of Human Capital i.e. loss of profit, unemployment, financial burden on relatives and neighbouring states, assumed as % of GDP for 1944, adjusted to 1949.	439,100	
6	Grand Total	Grand Total (1948)	£ million	1,188,050
		In US dollars, 1998 prices,	\$ million	562,048
<p>Sources: 1) Hadawi and Kubrusi, <i>Palestinian Rights & Losses in 1948:A Comprehensive Study</i>. London: Al Saqi Books, 1988. 2) Sayigh, Yusuf, <i>The Israeli Economy</i>. Cairo: The Institute Arab Studies, 1966 [in Arabic].</p>				

Restitution through Israeli Law

62. Confrontation of these grave violations of law and property rights can fall in two categories: (1) Israeli law and (2) International Law. Appealing to Israeli law is of limited value since this law is intentionally designed to seize, confiscate, use and sell Palestinian property to Jews only. The law itself cannot be challenged, only its application and interpretation. The international law however deals with violations by rogue states of human rights, Humanitarian Law, war crimes and Treaties.

63. Adalah, The Legal Center for Arab Minority Rights in Israel, made several presentations to the numerous Israeli governments about these violations.³⁷

On May 19, 2009, in a letter³⁸ to the Attorney General in Israel, Adalah challenged the intention of ILA to sell the ownership rights of the Absentees' Property on the following basis:

1. The sale of these properties is illegal under Israeli law and it constitutes the final expropriation of the ownership rights of the Palestinian refugees to their properties. These properties are under the *temporary trust* of the Custodian for Absentees' Property.
2. The sale contradicts the Basic Law: Israel Lands 1960, Article 1, which prohibits the transfer of ownership of properties it defines as "Israel Lands", "either by sale or in any other manner".
3. The special purpose of the Absentees' Property Law, as per the Supreme Court ruling was "*to preserve the property of absentees, lest they become abandoned, for any one to grab*".³⁹
4. If the sale takes place, the new owners can act freely with the acquired Absentees' Property. This renders meaningless Art. 29 of the Absentees' Property Law which allows the Custodian to "release" the held property.⁴⁰

64. Further, Adalah challenged the swap deal between JNF and ILA in a letter to the Israeli Attorney General on the following basis:⁴¹

³⁷ See Adalah website: www.adalah.org.

³⁸ See Appendix 1. See also Adalah press statement of June 22, 2009, www.adalah.org/eng/pressreleases/pr.php?file=09_06_22

³⁹ Ibid, Para 11.

⁴⁰ Ibid, Para 18.

⁴¹ Adalah, 9 July 2009, see Appendix 2.

1. The application of JNF rules to other lands held by Israel will extend the discriminatory rules of JNF for the exclusive use of the Jews to all land, thereby discriminating against the non-Jewish population.
2. This application of JNF rules is contrary to the principle of equality according to the Supreme Court ruling.⁴²

65. Since most of the land to be transferred to JNF is in Beer Sheba district (*Negev*), the Palestinian population in the district protested this action which makes them homeless once again since 1948. The Regional Council for the Unrecognized Villages in al Naqab (RCUV) made a public statement against confiscating their land under the guise of JNF-ILA swap.⁴³

66. The problem is much wider than this. Israel classifies the whole of Beer Sheba district as *mawat, terra nullius*, desolate land where no one lives or owns any land; if there were some people living there, they are irrelevant nomads. Israel claims that neither the Ottomans nor the British Mandate recognized land ownership in Beer Sheba. This is false historically, factually and legally.

67. The Ottomans recognized ownership and collected taxes on cultivation in Beer Sheba as early as 1596.⁴⁴ Just before WWI, the Ottomans delineated 5 million donums of private ownership as evidenced by the Special Military Committee report of May 4, 1891.⁴⁵

68. The Turkish-Egyptian correspondence concerning the 1906 Agreement, defining the Administrative Line between Palestine and Egypt, contains documents proving ownership of Palestinians on both sides of the line.⁴⁶

69. The British Mandate also recognized land ownership in Beer Sheba.⁴⁷ Moreover, the Mandate's Land Transfer Regulations of 1940 prohibited Jewish purchase of land in Beer Sheba

⁴² Ibid, Paras 5, 6.

⁴³ Haaretz, July 7, 2009, *Bedouins slam proposed JNF land swap with state administration*.

⁴⁴ See: W.D Hutteroth, Kamal Abdulfattah, *Historical Geography of Palestine, Transjordan and Southern Syria in the Late 16th Century*, Erlangen: Erlanger Geographische Arbeiten, 1977.

⁴⁵ Turkish Archives, document IMMS 122/S229.

⁴⁶ 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.

(Zone A). The Mandate in its official maps also did not include Beer Sheba in areas designated as “State Domain”.

70. The British Mandate not only recognized Palestinian ownership in Beer Sheba but also refused, when approached, to register Jewish ownership contrary to Land Transfer Regulations of 1940.⁴⁸ The fortnightly reports of the District Commissioner of Beer Sheba in the 1940’s show government material support for Beer Sheba farmers to cultivate land they own and collected taxes from them.⁴⁹ Royal Air Force aerial photographs in 1945-1946 show extensive areas of cultivation. Thus the claim that this land is *mawat* is totally baseless.

Restitution through International Law

71. The International Law is very clear on the issue of the Palestinians property, whether owned by refugees or not. Resolution 194⁵⁰ stipulates the return of the refugees to their property and compensation for damages and losses.

Specifically, the UN General Assembly passed several resolutions entitled: “**Palestine refugees’ property and their revenues**”⁵¹ for the protection of their property. Each of these resolutions: “*Reaffirms that the Palestine Arab refugees are entitled to their property and to the income derived therefrom, in conformity with the principles of justice and equity*”. This is also based on

⁴⁷ 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.

⁴⁸ *Political Diaries of the Arab World – Palestine and Jordan, 1945-1946*, Vol. 8, Archive Editions, Reading, UK, 2001, p. 228.

⁴⁹ *Ibid*, Vol. 9, p. 472, paras 162, 163.

⁵⁰ A/RES/194 III of December 11, 1948. Para 11 states:

Resolves that that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible;

Instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations.

⁵¹ See, for example, A/RES 51/129 of 13 December 1996, A/RES/52/62 of 10 December 1997, A/RES 53/51/ of 3 December 1998.

the principle of the sanctity of private ownership which is not diminished by occupation, change of sovereignty or passage of time.

Resolution 181 prohibits the expropriation of property, especially if based on discriminatory grounds, as the case herein demonstrates. Expropriation for “public” interest is valid only if the “public” was not expelled and, when present, the “public” had adequate democratic representation to enable its representatives to make appropriate laws.

72. As Adalah noted in its letter to the Israeli Attorney General,⁵² the sale of absentees’ property constitutes, in practice, the final expropriation of this property from its owners, with the right of ownership being transferred to the buyers’, both (Jewish) citizens of the state and other Jews outside Israel. Such an action is contrary to Article 147 of the Fourth Geneva Convention, which stipulates that “*extensive appropriation*” of occupied territories property constitutes a “*grave breach*” of the Geneva Convention.

73. Moreover, Regulation 46 of the Regulations attached to the Hague Convention Respecting the Laws and Customs of War on Land of 1907⁵³ stipulates the need to respect the right of private property and explicitly prohibits the confiscation thereof: “Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. *Private property cannot be confiscated.*” [Emphasis added.]

74. The ruling in Case No. 10 of the US Military Tribunal at Nuremberg, *U.S. v. Alfried Krupp et al.* was the first to address the confiscation of property following the end of fighting in the Second World War. The court ruled, *inter alia*, that this confiscation constituted a violation of Article 46 of The Hague Regulations, which, as noted, prohibits the confiscation of private property.

⁵² See note 38.

⁵³ Convention (IV) Respecting the Laws and Customs of War on Land and its annex: Regulations Concerning the Laws and Customs of War on Land. The Hague, October 18, 1907.
<http://www.icrc.org/ihl.nsf/FULL/195?OpenDocumnt>.

75. A legal opinion on this question stated,⁵⁴

Israel's June 1948 focus on conquest as a legal criterion for property confiscation was clearly rooted in the antiquated doctrine of war booty, in which conquest alone was enough to justify seizing property. This policy violated the Hague Regulations and likely fell under the definition of 'plunder' used at Nuremberg.

76. As Kraetzmer⁵⁵ noted, neither Israel's occupation of Palestinian land in 1948, nor its Basic Law aforementioned, while declaring its sovereignty on the proscribed region, means that Israel holds a title deed or legal ownership of this land.

77. As Wortley noted,⁵⁶ for a state or authority to acquire title by expropriation, several conditions must be satisfied. The first of these conditions is the authority itself must be valid under international law. The provisional government of Israel was not recognized, except by very few states, and was not admitted to UN membership when it expropriated and 'sold' refugees' land to JNF in January 1949. Second, the purpose and method of expropriation must be legal under international law. It was not. As discussed earlier, it was 'plunder'. Third, expropriation must not be done for political or penal reasons. It obviously was. Also, the expropriation should be for *public* interest. The *public* was expelled and denied the right to return. Fourth, state succession rules give the successor state title to public property. But "[o]n numerous occasions in the past two years [1949-1950], the Israel Government have firmly refused to have themselves regarded as the successors of the former Palestine Government".⁵⁷ This refusal was intended to disclaim Israel's obligations towards the Palestinian inhabitants of Palestine. Fifth, the act of expropriation cannot be validated retroactively if the original act was invalid. This was the intent of the Israeli Land Acquisition (Validation of Acts and Compensation) Law of 1953 (See *supra* para 27). Sixth, a foreign court will not enforce a decision of another country's domestic law if this law contravenes international law. Thus land expropriated by Israel cannot be sold, transferred or registered in a foreign country which

⁵⁴ Michael Kagan, "Destructive Ambiguity – Enemy Nationals and the Legal Enabling of Ethnic Conflict in the Middle East," *Columbia Human Rights Law Review*, Vol. 38, no. 2 (Winter 2007): 295. Kagan is a law professor at the University of Tel Aviv.

⁵⁵ Kraetzmer, David, *The Legal Status of the Arabs in Israel*, Jerusalem: The Institute for Israeli-Arab Studies, 2nd Edition, 2002, (in Arabic), p. 62.

⁵⁶ See Wortley, BA, *Transactions of the Grotius Society, Expropriation in International Law*, 33 *Problems of Public and Private International Law* 25 (1947) 27-35, quoted by Susan Akram and Terry Rempel in a forthcoming book.

⁵⁷ See: From British Legation, Tel Aviv to London on April 16, 1951, Vol 5, pp. 340-342, in: Toye, P. and Seay, A., *Israel: Boundary Disputes with Arab Neighbours, 1946-1964*, Reading: Archive Editions, 1995.

considers the expropriation illegal. Seventh, if the expropriation is to be legal, the state must provide remedy and the means to effectively challenge the legality of its acts within its domestic law. Israel never did that on a large scale as the majority of the claimants were expelled. Also, in the majority of cases before the Israeli High Court initiated by the remaining Palestinian minority (“Present Absentees”) the court ruled against them. If the state fails to meet these conditions, as Israel does, it cannot claim any right to the expropriated property under international law.

78. As Boling explained that under the Law of Nations,⁵⁸ The Permanent Court of International Justice invoked the doctrine of acquired rights in 1923:

Private rights acquired under existing law do not cease on the change of sovereignty.

The Court also found that “no treaty provision is required for the preservation of the rights and obligations” to reaffirm and protect the status of vested private property in cases of state succession.

Thus Israel is obligated to protect the acquired rights of Palestinians property owners and the title of their property remains vested in the original property owner regardless of sovereignty change or any law of the new state contrary to this doctrine.

79. Above all, the widespread ethnic cleansing which Israel committed in 1948, and thereafter in various forms, is a Crime against Humanity, according to Art. 7 (d) of the Rome Statute of the International Criminal Court of July 17, 1998. In committing about 70 massacres⁵⁹ against the Palestinians in 1948, it has committed Genocide according to Art. 6 (a) of the Rome Statute. Also, Israel has committed several war crimes as defined by Art. 8 (a), including paras (i), (ii), (iii), (iv), (vii) and (viii) of the Rome Statute. Art 8 (b) (xiii) defines “Destroying or seizing the enemy’s property” as a War Crime.

Clearly all such actions are illegal. As the last para, Art. 8 (b) (xiii), indicates, ‘seizing property’ is illegal and must be reversed.

⁵⁸ Boling, *supra* note 12, p. 118.

⁵⁹ See, for example, Pappé, Ilan, *Ethnic Cleansing of Palestine* London: One World Publications, 2008; Abdul Jawad, Saleh, “Zionist Massacres: The Creation of the Palestinian Refugee Problem in the 1948 War, pp. 59 – 127 in: Benvenisti, E, Gans, Ch, Hanafi, S (ed) *Israel and the Palestinian Refugees*, Berlin, New York: Springer 2007.

80. The international jurists, W.T. and S.V. Mallison, have analyzed the Israeli claims on the West Bank and Gaza after the 1967 occupation. They refuted all these claims under international law⁶⁰ well before the ICJ Advisory Opinion was given. (See para 55 herein.) They confirm that the Geneva Conventions apply and show that the Israeli settlements are illegal. So is deporting the existing population or transfer of the occupier's population to the occupied territories.

81. Mallison demonstrates the inadmissibility of land expropriation, particularly in Jerusalem in accordance with the Security Council resolution 252 of May 21, 1968 after recalling General Assembly resolutions 2253 and 2254, about the invalidity of “all legislative and administrative measures and actions taken by Israel”.⁶¹

Recommendations

82. It is recommended that all concerned UN member states propose to the General Assembly of United Nations to adopt resolutions in which the General Assembly:

(1) Declares that any seizure, transfer and/or sale of any Palestinian movable and immovable property any time since 29 November 1947 to any Jewish entity is null and void.

(2) Reaffirms the sanctity of the Palestinian citizens' or refugees' property ownership rights.

(3) Reaffirms the right of the refugees to receive equitable income from their property at the current market values.

(4) Requests the Secretary General to send a fact finding mission to:

⁶⁰ Mallison, W.T and S.V., *The Palestine Problem in International Law and World Order*, Essex, UK: Longman, 1986, pp. 244-275.

⁶¹ *Ibid*, p. 221-224.

- (a) inspect, classify, record and document the Palestinian movable and immovable property whether this property is private, common or public or for common use, in the past or assigned in the future, grazing land or for the benefit of the Palestinian public or for the utilization of the natural resources in or above the ground or water surface.
 - (b) record and trace the sale, disposition, allocation, rental or usufruct of this property in para (a) at any time since November 29, 1947 to any party and to reverse this sale, disposition or allocation.
 - (c) make the above documentation accessible to the designated authority in PLO.
 - (d) make a worldwide public statement that any sale, purchase, disposition, allocation, rental or usufruct use of Palestinian property in para (a) above, other than with the written consent of the legal (original) owner/s obtained in good faith and free will, including their rights in public land or common rights in any territorial space, is null and void.
- (5) *Requests* all member states, where Palestinian property records exist, sales/purchases are registered, buyers or sellers reside, or benefits accrued or exchanged from any transaction, pertaining to any Palestinian property, to
- (a) nullify such transaction, sale or benefit, and reverse its effect,
 - (b) treat it and its consequences as illegal,
 - (c) confiscate all tangible and intangible consideration thereof and
 - (d) put all the proceeds or any funds collected for the purpose of carrying out these transactions at any time in an account under UNCCP management on behalf of the Palestinians.
- (6) *Instructs* UNCCP to renew its efforts, with assistance from member countries, to put into effect the restitution of all Palestinian property, and its restoration to their original owners and/or their heirs.
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Appendix 1

[http://www.adalah.org/features/land/Letter_re_Absentee_Property_English\[1\].doc](http://www.adalah.org/features/land/Letter_re_Absentee_Property_English[1].doc)

19 May 2009

Mr. Menachem Mazuz
Attorney General

Mr. Yaron Bibi
Director-General
Israel Lands Administration

Mr. Yaakov Brosh
CEO, Amidar

To: The Custodian of Absentees' Property

Re: Tenders for selling absentees' property administered by Amidar

Dear Sir,

We are writing to you as the individual authorized to cancel the tenders published on the Internet site of the Israel Land Administration (ILA) that offer to sell the ownership rights to absentees' property held by the Development Authority, for the following reasons:

1. In recent months the ILA has issued various tenders for the sale of a number of properties held by the Development Authority in cities such as Nazareth, Haifa, Led (Lod), Akka (Acre), Rosh Pina and Beit She'an.
2. These properties were transferred to the Development Authority by the Custodian for Absentees' Property, and are classified as absentees' property under the Absentees' Property Law – 1950 (hereinafter: “the Absentees' Property Law ” or “the law”).
3. The sale of absentees' property currently held by the Custodian for Absentees' Property to the public is illegal under Israeli law. The sale of these properties constitutes, in practice, the final expropriation of the ownership rights of the Palestinian refugees to their properties. This is completely contrary to the law, which vests the absentees' property in the temporary trust of the Custodian for Absentees' Property pending the resolution of the Palestinian refugees' issue. The sale also contradicts the Basic Law: Israel Lands – 1960, which prohibits the transfer of ownership of properties it defines as “Israel lands,” including property held by the Development Authority. In addition, the sale of properties belonging to the Palestinian refugees violates international humanitarian law (and in particular the regulations annexed to the 1907 Hague Convention (IV) Concerning the Laws and Customs of Wars on Land, and the Fourth Geneva Convention), which stipulates the duty to respect the right of private property and explicitly prohibits the final expropriation of property after the end of warfare.

The normative framework for establishing the ownership status of absentees' property

4. Article 19 of the Absentees' Property Law authorizes the Custodian of Absentees' Property to transfer the ownership rights to the absentees' property vested in him by law, but *only to the Development Authority*. The Development Authority, whose status and authorities are established by the Development Authority Law (Transfer of Properties) – 1950 (hereinafter: the “Development Authority Law”), is authorized to initiate a wide variety of actions regarding the property under its jurisdiction, all of which are subject to the Basic Law: Israel Lands – 1960.

5. Article 1 of the Basic Law: Israel Lands prohibits the transfer of ownership rights to “Israel lands” held, inter alia, by the Development Authority, through their sale or any other means, as follows:

The ownership of Israel lands, being the lands in the State of Israel, the Development Authority or the Keren Kayemeth LeIsrael [The Jewish National Fund], shall not be transferred either by sale or in any other manner.

6. The Israel Lands Administration Law – 1960, which establishes the authorities of the ILA, stipulates that the ILA is obliged to administer “Israel lands,” as defined in Article 2 of the Basic Law: Israel Lands, i.e. including lands held by the Development Authority.
7. The ILA now seeks, via public tenders, to transfer the ownership rights to lands received from the Custodian of Absentees’ Property and held by the Development Authority to private hands.
8. In actuality, these tenders and the transfer of the ownership of absentees’ property are tantamount to expropriating the vested rights of the owners of this property – who are defined as absentees under the Absentees’ Property Law – despite the special legal, historical and political status of this property.
9. The absentees’ property was vested in the Custodian of Absentees’ Property by the Absentees’ Property Law. The law does not define the goal of the custodial institution, but it does assign it the duty of preserving this property.
10. The Development Authority is the government authority responsible for “developing the state” and promoting projects of benefit to the general public. A large amount of land has been transferred to the Development Authority under the Absentees’ Property Law, the Land Acquisition (Validation of Acts and Compensation) Law – 1953, and other land laws. However, these laws are entirely different in purpose from the special purpose that underlies the Absentees’ Property Law.
11. The special purpose of the Absentees’ Property Law can be discerned from the rulings of the courts that have examined it. For example, the honorable Justice Vitkin ruled in [Supreme Court] Civil Appeal 58/54, *Habab v. Custodian of Absentees’ Property* P.D. 10 918, 919 that:

The Absentees’ Property Law is intended to fulfill a temporary role: *to preserve the property of the absentees, lest they become abandoned, for anyone to grab*. For this reason, the law grants the Custodian powers and authorities that place him, in practice, in a situation of ownership. [Emphasis added.]

12. Hence, the Absentees’ Property Law expropriates the ownership rights only temporarily, assigning them in trust to the Custodian of Absentees’ Property until a future accord is reached that resolves the specific issue of the absentees. Article 28 of the Absentees’ Property Law stipulates that if a vested property is released: “*the right a person had in it*

immediately before it was vested in the Custodian will revert to that person or to his successor.” [Emphasis added.]

13. The verdict of Justice Amit in the *Bahai* case is also relevant to this matter:

Vesting is not a goal in itself, but rather a means of realizing the purpose of the law. Ostensibly, it seems that a distinction should be made between vesting and expropriating. Expropriation severs the connection of the owner to the property, although in today’s constitutional era there are some who also dispute this. See H.C. 2390/96, *Karsik v. Local Council*, P.D. 45(2) 625. But vesting ostensibly does not sever the absentee’s connection to the property.

Civil Case 458/00, *Bahai v. Custodian of Absentees’ Property*, para. 25.

14. Furthermore, when the Absentees’ Property Law was presented to the Knesset plenum, MK Yosef Lamm explained the main objective of the proposed legislation as follows:

This law is intended to preserve the property of the absentees for purposes that have yet to be defined by the Knesset. I do not want to address here the question of whether this is for the benefit or to the detriment of the absentees, but the backbone of the law is undoubtedly to protect the property of the absentees. Read the law and you will see that the committee found it necessary in many cases to provide greater protection for absentee property than the law provides to protect the property of a citizen who is present in Israel and is not considered an absentee...

Knesset Record, Vol. 4, p. 952. [Emphasis added.]

15. In addition, this objective is consistent with the objective of Article 7 of the Absentees’ Property Law, which obliges the Custodian of Absentees’ Property to preserve the absentees’ property, and invest in them whatever is necessary for the realization of this objective. As stated, the transfer of these properties to private hands contravenes this objective in light of the different interests that guide the private buyer.
16. Judicial rulings have also established that, even if there is room for exploiting these properties for purposes of development, the law primarily grants the state the power to hold this property pending political accords that determine the fate of these properties. According to the ruling in the *Golan* case:

Judicial rulings have long recognized that the protection of absentees’ property is the underlying goal of the law... but I cannot accept that this is the law’s only goal – or even its primary goal, without which the law has no other (or almost no other) purpose. Without elaborating on this point, it is possible to say that the law, no less than it aims to serve the needs of protecting and administering the property on behalf of its absentee owners, it aims to fulfill the interests of the state in this property: the ability to exploit it for promoting the development of the country, while preventing its exploitation by someone defined by the law as an absentee, and the ability to maintain it (or maintain its value) until political accords have been reached between Israel and its neighbors that determine the fate of the property on the basis of reciprocity between the states.

17. Indeed, it seems that Article 19 of the Absentees' Property Law, which enables the transfer of absentees' property to the Development Authority, is intended to serve this purpose, since it clearly entails the transfer of property to a governmental body. Thus, the sale of absentees' property on the private market and the transfer of its ownership to private hands are contrary to the purpose of the law. This fact is also reflected in the words of the Custodian of Absentees' Property, as evidenced by Judge Bein in the *al-Sayed* case:

The absentee might also harbor expectations that in the distant future, when peace is established between Israel and the Arabs, the rights he had to the absentee property will be taken into consideration. But I am not staking out a position on whether or not such expectations should be taken into consideration. The possibility that the property will be released is not far-fetched or unreasonable, as indicated in the testimony of the Custodian of Absentees' Property, Mr. Manor, on page 77 [of the court's protocols]:

The government discussed how to institute a liberal policy towards those who are considered absentees in the West Bank and Jordan with regard to their property in East Jerusalem. The decision was made that the Custodian would not wield a heavy hand in these matters. If a person who lives in the West Bank or a resident of Jordan comes and he has someone in East Jerusalem who assigned him power of attorney to manage his property in East Jerusalem, despite the fact that the resident is in Jordan, the Custodian will not intervene and will not consider the property as absentee.

This liberal policy shows, therefore, that absentees like the complainants have a significant possibility of having the absentee property released from its absenteeism.

It is precisely this broad definition of 'absent,' which encompasses an entire world, that provides a basis for the expectation and hope that the release mechanism will be extensively used to prevent and correct acts of injustice that can be caused by the use of the literal definition of the law.

Civil Lawsuit (Haifa) 1401/76, *'Afani Mahmoud Mahmoud v. Hashem Khalil al-Sayed*, District Court Rulings 5742 (2), 322, 331.

18. In practice, the sale of the absentees' property on the private market means that the new owners can act and do as they wish with the absentees' property, including by razing it or carrying out work that permanently alters the character of the property. It goes without saying that the legal channel, which comprises the sole and last resort for the absentees, would become irrelevant and meaningless. If these properties are sold, no possibility would remain of granting effective legal remedy under Article 28 of the Absentees' Property Law, which allows the Custodian to release absentees' property according to his judgment and in consultation with the special committee appointed under Article 29 of the Absentees' Property Law.

19. Legal demands to release absentees' property under Article 28 of the Absentees' Property Law are common demands that have been submitted to the courts continuously since the

establishment of the state, until this very day. See, for example: Civil Appeal 58/54, *Habab v. The Custodian of Absentees' Property*, P.D. 918; Civil Appeal 170/66, *Fiyad v. The Custodian of Absentees' Property*, P.D. 20(4) 433; Civil Lawsuit (Nazareth) 187/78, *The Custodian of Absentees' Property v. Shalabi*, District Court Rulings 5741(2) 241; Civil Appeal 1397/90, *Diyab v. The Custodian of Absentees' Property*, P.D. 46(5) 789; Civil Demand 458/00, *Bahai v. The Custodian of Absentees' Property*.

20. It further goes without saying that the Absentees' Property Law has drawn considerable criticism due to the drastic and sweeping infringement it entails to the constitutional right to property, which is anchored in Article 3 of the Basic Law: Human Dignity and Liberty – 1992. This infringement gains additional force in the case of citizens of the state whose ownership is severely damaged by the Absentees' Property Law. The words of Justice Amit in the *Bahai* case apply to this issue:

The directives of the law are all-encompassing and were it not for the [provision] concerning the validity of laws stipulated in Article 10 of the Basic Law: Human Dignity and Liberty, it is doubtful whether in today's legal climate, with the constitutional recognition of the right of property, its directives would have passed through the filter of the limitation paragraph of the basic law.

Civil Case 458/00, *Bahai v. Custodian of Absentees' Property*, para. 27.

21. In light of the above, the sale of absentees' property to any third party as described above is unconstitutional because it is contrary to the Absentees' Property Law and its purpose, and is also contrary to the Basic Law: Israel Lands.

The status of the absentees' property in international law:

22. There is no doubt that the international laws of war apply to the war of 1948, which created the Palestinian refugee problem. Therefore, the principles of international humanitarian law apply to the events and consequences of the war.

23. The sale of absentees' property via tenders or any other method constitutes, in practice, the final expropriation of this property from its owners, since the property would no longer have the status of custodianship. Instead, the property would be put up for sale, with the right of ownership being transferred to buyers, both citizens of the state and others. Such an action is contrary to Article 147 of the Fourth Geneva Convention (hereinafter: "the Geneva Convention"), which stipulates that "extensive appropriation" of occupied territories constitutes a "grave breach" of the Geneva Convention:

Art. 147. Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: [...] unlawful deportation or transfer or unlawful confinement of a protected person, [...] and *extensive destruction and appropriation of property*, not justified by military necessity and carried out unlawfully and wantonly. [Emphasis added.]

24. Moreover, Regulation 46 of the regulations attached to the Hague Convention Respecting the Laws and Customs of War on Land of 1907⁶² (hereinafter: “the Hague Regulations”) stipulates the need to respect the right of private property and explicitly prohibits the confiscation thereof: “Family honor and rights, the lives of persons, and *private property*, as well as religious convictions and practice, must be respected. *Private property cannot be confiscated.*” [Emphasis added.]

25. Moreover, Michael Kagan of Tel Aviv University, who has recently analyzed this issue, reached the conclusion that the State of Israel’s policy after the 1948 war toward the expropriation of Palestinian property constitutes a violation of the Hague Regulations, and falls under the definition of “plunder.” Kagan writes:

Israel’s June 1948 focus on conquest as a legal criterion for property confiscation was clearly rooted in the antiquated doctrine of war booty, in which conquest alone was enough to justify seizing property. This policy violated the Hague Regulations and likely fell under the definition of ‘plunder’ used at Nuremberg.⁶³

26. The ruling in Case No. 10 of the U.S. Military Tribunal at Nuremberg, *U.S. v. Alfred Krupp et al.* was the first to address the confiscation of property following the end of fighting in the Second World War. The court ruled, inter alia, that this confiscation constituted a violation of Article 46 of the Hague Regulations, which as noted prohibits the confiscation of private property. The court stated, inter alia, that:

We conclude from the credible evidence before us that the confiscation of the Austin plant based upon German-inspired anti-Jewish laws and its subsequent detention by Krupp firm [...] was also a violation of Article 46 of the Hague Regulations, which provides that private property must be respected: that the Krupp firm [...] voluntarily and without duress participated in these violations by purchasing and removing the machinery and leasing the property of the Austin plan and in leasing the Paris property [...].⁶⁴

27. Therefore, the sale of absentees’ property is universally regarded as a violation of international humanitarian law, and in particular of the 1907 Hague Regulations.

In light of all of the above, we hereby request that you immediately cancel the tenders issued by the ILA and Amidar [a state-owned and run housing company], which offer for sale absentees’ property held by the Development Authority, as well as prohibit the publication of such tenders in the future.

Yours Respectfully,
Suhad Bishara, Adv.

⁶² Convention (IV) Respecting the Laws and Customs of War on Land and its annex: Regulations Concerning the Laws and Customs of War on Land. The Hague, October 18, 1907.
<http://www.icrc.org/ihl.nsf/FULL/195?OpenDocument>.

⁶³ Michael Kagan, “Destructive Ambiguity - Enemy Nationals and the Legal Enabling of Ethnic Conflict in the Middle East,” *Columbia Human Rights Law Review*, vol. 38, no. 2 (Winter 2007): 295.

⁶⁴ U.S. Military Tribunal at Nuremberg, *U.S. v. Alfred Krupp et al.*, cited in *How Does Law Protect in War? Cases, documents and teaching materials on contemporary practice in international humanitarian law*, 2nd ed. Vol. 2, Geneva: ICRC (2006), p. 1030.

Appendix 2

http://www.adalah.org/features/land/Adalah_ACRI_letter_re_Israel_and_JNF_land_swap_july_2009.doc

9 July 2009

Mr. Menachem Mazuz
Attorney General
Ministry of Justice
Jerusalem

Re: Land swap agreement between the State of Israel and the Jewish National Fund

Dear Sir:

On 26 May 2009, the State and the JNF signed the “Principles of the Agreement between the State and the JNF” on the subject of land swaps (hereinafter: “the agreement”). According to the agreement, which was signed by Mr. Yaron Bibi, the director-general of the Israel Land Administration (ILA), and Mr. Menachem Leibowitz, the vice chairman of the JNF’s board of directors, the JNF will transfer its land assets it has allocated to third parties for housing and employment, to state ownership. In exchange for this transfer of ownership, the state will transfer to the JNF (or to the “Himanuta” company) ownership of available and unplanned land of the same amount in the Negev (Naqab) and in the Galilee.

Section 2 of the agreement states, inter alia, that the JNF agrees to the administration of its land by a Lands Authority that is to be established in accordance with the government decision of 12 May 2009 on reforming the ILA (hereinafter: “the Authority”). The Authority will manage the lands “in a way that will preserve the principles of the JNF in regard to its lands.” Section 3 of the agreement states that the Authority will be headed by a council to be comprised as follows: the responsible minister – chairman; seven government representatives from among state employees; and five representatives of the JNF.

The directives of the agreement – regarding both the preservation of the JNF’s principles and the representation of the JNF on the Authority’s council – are illegal and completely contrary to the right of equality and the rules of sound administration, as described below:

Preserving the principles of the JNF

1. Administration of lands in accordance with the principles of the JNF stands in complete contradiction to the state’s obligation to act with equality, including equality on a basis of nationality, in administering any land under its authority.
2. The directives of the agreement in this matter constitute an attempt to circumvent the rules of public law and lead to the non-application of the right to equality in regard to lands slated for transfer to the JNF’s ownership in the framework of the agreement. This is because the JNF’s principles prohibit the allocation of rights to lands under its ownership to someone who is not a Jew. In the framework of its response to the petitions

pending in the Supreme Court on the issue of applying the right to equality in regard to lands under its ownership,⁶⁵ the JNF has repeatedly explained that:

“The fidelity of the JNF is not given, and cannot be given, to the entire Israeli public. The JNF’s fidelity is reserved for the Jewish people only – on whose behalf it was founded and on whose behalf it operates.

[...]

The JNF will argue that it is not obliged to allocate its lands to those who are not Jews. In regard to the lands of the JNF, imposing an obligation to allocate them to Jews and non-Jews would not only disrupt the operations and missions of the JNF or be detrimental to them, but would completely nullify the unique role of the JNF as the owner of the eternal property of the Jewish people.

[...]

Distributing land for the use of all citizens of the state directly contradicts the objectives of the JNF and its *raison d’être*. It is prohibited for the JNF to allocate lands to all residents of the state. If the JNF is required to allocate its lands for the benefit of all citizens of the state – this would be tantamount to liquidating and nationalizing its assets.” (Sections 7, 27 and 220 of the JNF’s response to the Supreme Court petitions dated 15 December 2004.)

3. Management of the JNF’s lands as stated is liable, therefore, to create a reality in which the JNF’s lands would be allocated for Jewish settlement, and would be withheld from Arab citizens of the state due to their national affiliation. This fear received tangible expression in various statements and reports that accompanied the process of approving the agreement of principles by the JNF, according to which the lands transferred to the JNF’s ownership in the Negev would be used to develop and establish Jewish communities only.
4. In administering the lands owned by the JNF, the Authority would still operate as a public body that is prohibited from adopting discriminatory rules in administering lands. As such, the Authority is obligated to operate in strict accordance with the standards of public administration and the principles of equality, fairness, good faith, and the just allocation of the land resources in the state. In a long series of rulings, the Supreme Court has emphasized the unique public nature of the ILA and the standards, principles and rules that are supposed to guide it:

“The public’s lands must be administered according to state criteria – the adoption of such criteria is the obligation of public authorities in all of their work, and even more so in regard to the handling of property that is owned by the entire public. The translation of these criteria into action underlines, *inter alia*, the obligation to act with fairness and equality, and in accordance with the rules of sound administration.”

⁶⁵ HCJ 7452/04, *Abu Rea et al. v Israel Land Administration et al.*; HCJ 9010/04, *The Arab Center for Alternative Planning et al. v. Israel Land Administration et al.*; HCJ 9205/04, *Adalah v. Israel Land Administration et al.* (cases pending).

(HCJ 5023/91 *Poraz v. Minister of Construction and Housing*, Piskei Din 46(2), 793, 801 (1992)).

And in regard to the **New Discourse NGO**, it was ruled, inter alia:

“The Israel Land Administration serves as the public’s trustee in administering the lands of the state. It must administer them while protecting the public’s interest in them, including the protection of the land for the benefit of the entire public, including the need to refrain from granting unjustified land benefits to others. As required of any administrative body, the Israel Land Administration must act with fairness, in accordance with relevant considerations and with equality, while offering equal opportunities to the entire public. One of the general aims of any administrative body is to act with equality. This also applies in setting and implementing the policy of land allocation.” (HCJ 244/0091 **New Discourse NGO v. Minister of Infrastructure**, Piskei Din 56(6) 25, 64, (2002)).

These remarks also apply, of course, to the Land Authority that is to be established by law and replace the ILA.

5. The agreement of principles and the detailed agreement that is slated to be signed between the state and the JNF cannot release the Authority from its obligation to the right of equality in all of its actions and contracts. Moreover, in the matter under discussion, the transfer of state lands to the JNF’s ownership contradicts, in itself, the ruling that prohibits the state from transferring land resources to third parties that adopt a discriminatory policy:

“The obligation of the state to act with equality in allocating land rights is violated if the state transfers land to a third party that discriminates, on its part, in allocating lands on a basis of religion or nationality. The state cannot release itself from its legal obligation to act with equality in allocating land rights by employing a third party that adopts a discriminatory policy. Indeed, what the state is not allowed to do directly, it is not allowed to do indirectly.” (HCJ 6698/95 **Ka’adan v. Israel Lands Administration**, Piskei Din 54(1) 258, 283 (2000)).

6. It should be emphasized that the directives of the agreement in regard to preserving the principles of the JNF are not only contrary to the state’s basic obligation to act with equality. They are also contrary to your position, which was presented to the Supreme Court in May 2007 in the framework of the aforementioned petitions. According to this position, “The Israel Land Administration must maintain the principle of equality, and it must not discriminate on the background of national affiliation [as well as] in its activity as the administrator of lands owned by the JNF.” This position did not receive any expression in the agreement and it is not at all clear how it is consistent with its directives in this matter.
7. The agreement for swapping land adds another layer to the many years of discrimination against the Arab population in the areas of land, planning and housing. In this case, not only is the State of Israel failing to take action and/or making any special plans to cancel the discrimination and close the huge gaps between Jews and Arabs in these areas, but it

is adopting in the framework of this agreement separate and discriminatory rules in administering lands. And these rules perpetuate the discrimination and widen the gaps.

8. In this context, most of the land to be transferred to the JNF's ownership under the agreement is state land in the Negev region (about 90% of the land), and the rest (about 10%) is state land in the Galilee. The location of this land intensifies the anticipated harm to the Arab population because this population lives primarily in the Negev and in the Galilee, and is desparate for development, suitable planning and land resources. At the same time that the State of Israel is committing itself in the framework of the agreement to act in accordance with principles that ensure the allocation and development of land resources for the benefit of the Jewish public only, it continues to refuse to develop and/or recognize dozens of Arab villages, most of which were in existence prior to 1948 and where more than 80,000 Arab citizens of Israel reside.
9. The impact on the Arab population is even stronger in light of the fact that most of the lands slated to be transferred from JNF ownership to state ownership are built-up lands that have already been leased to private Jewish tenants. These lands have been marketed over the years to their tenants in accordance with the discriminatory policy that enabled them to be marketed to Jews only. The transfer of these engaged lands to state ownership does not enlarge the scope of available land for the Arab public.

Representation of the JNF in the Authority's Council

1. As noted, the agreement, as well as the proposed law for reforming the ILA currently under discussion by the Knesset Economics Committee, grants considerable weight to the JNF's representatives on the council (about 40%). This composition of the Authority's council is disproportionate and contrary to the principles of public administration.
2. The Land Authority will be a public authority, established by law. It will administer the "lands of Israel" and its roles will include:
 - Setting land policy by which the lands of Israel will be administered;
 - Marketing urban lands for the purposes of housing and employment through sale, and the allocation of lands used for other purposes in locations and in the scope that correspond to the needs of the economy;
 - Acquisition and expropriation of land for public purposes and land redemption.
3. This means that the JNF has become nearly a complete partner (with the government) in administering the public land resources of the State of Israel and in setting the land policy of the State of Israel. And it should be clear that this partnership with the JNF is not limited only to its lands, which will be administered by the Authority, but that it also extends to all of "the lands of Israel."
4. As noted, the JNF regards itself as a body that is responsible for the interests of the Jewish people only. From this perspective, the JNF adopts the position that its lands must be marketed to Jews only, as explained above. Thus, the JNF and its representatives cannot faithfully represent the interests of the entire public in Israel without favoring a particular

nationality and/or religion. A public Authority established by law should look after the interests of the entire public in Israel, both Jews and Arabs.

5. This matter takes on additional urgency in light of the importance of the land resources the Authority will administer, which are considered the primary and most essential resource for social-economic development. Considering the fact that the Authority will administer about 93% of the lands in Israel, its policy in this matter will be crucial; it will be empowered to decide who will use land resources and under which conditions. The representation granted to the JNF on the Authority's council would enable the body, which explicitly declares that it practices discrimination and operates for the benefit of the Jewish public only, to play an active and decisive role in designing a policy that is so important and vital for the entire public, including the Arab population.

In light of all of the above, we ask you to take action to cancel the aforementioned agreement of principles and not to sign the land swap agreement between the state and the JNF, and/or to clarify your position in regard to the administration of state land that would be transferred to JNF ownership under the agreement, including the Authority's commitment to act in accordance with the rules of public law and the right to equality in its administration of these lands. In addition, we ask you to take action to cancel any representation of the JNF in the Authority's council and, alternatively, we ask that the JNF's representation be limited to only one representative on the Authority's council.

In light of the urgency of the matter, we would appreciate receiving your response as soon as possible.

Very respectfully,

Suhad Bishara, Advocate
Adalah – The Legal Center for
Arab Minority Rights in Israel

Auni Banna, Advocate
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cc: Osnat Mandel, Advocate
Director of the Supreme Court Petitions Department at the Attorney General's Office, Jerusalem