The Legal Status of the Arabs in Israel

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Control of Land

Jewish ownership and control of land was seen by the Zionist leaders of the pre-state era as the major component of success in the struggle for a Jewish state. Writing in 1904, Menahem Ussishkin, who was to head the Jewish National Fund (JNF) during most of the British Mandatory period, stated that establishment of a Jewish state was dependent on the majority of land in Palestine being in Jewish hands.[1] Avraham Granott (Granovsky), another prominent JNF leader who wrote extensively about the land issue both before and after the state was established, explained in a book published by the JNF in 1936 why Jewish control of land was "quite literally [a question] of life and death for Zionism and the Jewish National Home."[2] Land was needed not only as a resource for settlement of Jews; it was needed in order to transform the social and economic structure of the Jewish people who had been removed "from that vocation which is fundamental for all other peoples and is followed by large numbers of their populations because it is the source of all production: Agriculture."[3]

In order to facilitate acquisition of land in Palestine for the settlement of Jews, in 1901 the Fifth Zionist Congress decided on establishment of the Jewish National Fund (JNF). Before the state was established the JNF operated as the main arm of the Zionist movement in the acquisition of land. Thereafter it continued to operate as a body which performs both functions as a guardian of "Jewish national land" and certain state functions, such as land reclamation and development.

The area of land included in Israel's borders set by the 1949 armistice agreements was 20,255 sq.km.[4] In spite of the tremendous efforts that had been made by the Zionist Movement to purchase land in Palestine only a small proportion of this land was owned by Jewish institutions or individuals.[5] The Government of Israel inherited the lands that had belonged to the British Mandatory government, but most of these were uncultivable, waste lands or roads and forest areas that were at the

disposal of the public.[6] Most of the rest, especially the cultivable land, was owned by Arabs.[7]

Thus it was that the Jewish national movement had achieved *sovereignty* over the land, but it did not possess the *ownership* of land[8] needed to pursue its immediate goals: maintaining and expanding agricultural production,[9] bolstering Jewish presence in all parts of the country and settling Jewish immigrants who flocked to the country from all parts of the globe.[10]

The opportunity of extending Jewish control and ownership over land that had been in Arab hands was presented by the flight and expulsion from Israeli territory during the 1947/48 war of the majority of the Palestinian Arab population.[11] The political leadership of the fledgling state had taken the decision that those Arabs who had left would not be allowed to return. This decision not only eased the demographic and security problems that would have been faced by a Jewish state with a large and hostile Arab minority; it also opened the way for a public authority to seize the lands of absentee owners. The armistice agreements signed with the neighboring states in 1949 did not bring peace to the area and certainly did not resolve the conflict between the Jewish and Palestinian national movements. Gaining control over land resources was still perceived as a crucial means of furthering the Jewish interest in this conflict.[12]

It is not my intention here to review the land issue in the context of the Israel-Arab conflict.[13] The land policies that were adopted through a series of laws and legal arrangements had important implications for the Arabs who remained in Israel. It is with these implications that the present study is concerned.

The land policy of the Zionist movement in the pre-state era was based on purchase of land on the open market by Jewish institutions (mainly the JNF) and subsequent freezing of the ownership so as to ensure that the purchased land would be in Jewish hands in perpetuity. After the state had been established, the law-making power and control of executive powers could be used so as to adopt a method of land acquisition that had not been available when governmental power was in the hands of the British: expropriation. Alongside this method of land acquisition, the policy of freezing ownership once land had been transferred into Jewish hands was maintained. In this chapter I shall review the two stages in land control: expropriation and freezing of ownership.

Land Expropriation

The issue of land expropriation is possibly the most painful in the relationship between the Arabs in Israel and the Jewish state. It is an issue

that has caused tremendous resentment and bitterness among Israeli Arabs and has galvanized them into political action. This action reached a peak in the general strike of March 30th, 1976, which culminated in serious confrontation with the police in the course of which six Arabs were killed. March 30th, known now as "land day," has since become a national day of protest and commemoration of the Arab community in Israel.

Some of the laws that will be described in this chapter are no longer in force, or even if still in force, are no longer applied. In some respects, the expropriation issue is therefore mainly one of historical importance that has no place in a study on the current legal status of the Arabs in Israel. The issue is nevertheless discussed here for a number of reasons. First, as stated, the question of land ownership by exclusively Jewish institutions was a fundamental aim of the Zionist movement. It is important therefore to examine how this issue was dealt with once the state was established. Furthermore, this issue is generally regarded, at least by the Arabs themselves, as the most serious issue regarding their status in Israel.[14] No analysis of their legal status could therefore be regarded as complete without discussion of the legal aspects of this issue. It has also been assumed that the expropriation of land had a strong influence on the patterns of employment in the Arab sector.[15] While recent research doubts how strong this influence really was,[16] the legal regime which at least contributed to this change or expedited it, remains relevant in understanding the status of the Arabs in Israeli society today. Finally, while at the present time there are no wide-scale expropriations of land, in some cases the legal proceedings connected with the expropriation of, and compensation for, expropriated land continue.[17]

The laws dealing with land expropriation may be divided into a number of categories. The only category that will be considered at any length consists of laws that were passed after the establishment of the state for the specific purpose of expropriating, or facilitating expropriation of, land from Arabs. Before dealing with this category a brief summary will be given of other laws that were used to expropriate land from Arabs, or to prevent its use by Arab owners.

Land Expropriation and Restriction of Use

General Land Expropriation Law. The Land (Acquisition for Public Purposes) Ordinance, 1943, promulgated by the British Mandatory authorities during World War II, is the main general land expropriation law in force in Israel to this day. It has been used to acquire land for public purposes from Jews and Arabs.

The law gives the Minister of Finance the power "where he is satisfied that it is necessary or expedient for any public purpose" to acquire the possession or use of any land for a definite period, and to acquire an easement over land or any other right thereon. "Public purpose" is defined as any purpose certified by the Minister to be a public purpose, and publication in the government gazette of a notice of an intention to acquire land is "deemed to be conclusive evidence that the Minister has certified the purpose for which the land is to be acquired to be a public purpose." A person whose rights in land have been acquired for public purposes is entitled to compensation based, subject to a number of qualifications, on the amount which the land, if sold in the open market by a willing seller, might be expected to realize.

A number of cases in which this law was used to expropriate land belonging to Arabs in order to build towns for Jews have caused great resentment among the Arab population. Land of Arabs in the Galilee was expropriated in the 1950's and in the 1960's in order to build the development towns of Upper Nazareth and Carmiel.[18] When the government decided in 1976 to expropriate 20,000 dunams, 6,000 of which belonged to Arabs, for development of the Galilee, resentment of land expropriations had become so intense amongst the Arab population that the events of land day followed.[19] Since then no new large land expropriations have taken place, though apparently proceedings to complete the 1976 expropriation do continue.[20]

Land Laws with Expropriatory Effect. The Land (Settlement of Title) Ordinance, 1928, regulates settlement of land rights in areas in which land has not been properly registered. It provides that all land in which no private rights are established is to be registered in the name of the state. This has meant that lands that had in fact been regarded as village lands to be used for grazing, extensive agriculture and even residential purposes were registered in the name of the state. Under the Land Law, 1969 the right to use some of these lands for grazing and other common uses was also affected by narrowing the definition of lands that had been regarded as *metrouka* (public lands) under the Ottoman land laws.[21]

The State Property Law, 1951, provides that all land of the Mandatory government shall be registered in the name of the state.

During the time of the British Mandate, the land settlement officer who was empowered to settle rights in land, at times registered land surrounding villages in the name of "the High Commissioner for the time being on behalf of the village of . . ." In some cases a comment was added in the servitudes' column that "Registration is being made in the name of Government as there is no legal body to represent the village."[22]

In the case of *Yafia Local Council* v. *State of Israel*[23] the meaning of this registration was the issue. The government argued that under the State

Property Law, 1951, the property should simply be registered in the name of the State of Israel, (without the addition "on behalf of the village of Yafia"). The local council of Yafia argued that the land should be registered in its name.

There was an interesting difference in perspective on this peculiar type of registration. The government argued that such registration had in fact been carried out so as to remove lands so registered from lands available for purchase by Jews in accordance with Article 6 of the Mandate over Palestine, that obligated the Mandatory Power to facilitate Jewish immigration and settlement on state lands and waste lands not needed for public purposes. The local council argued that the land actually belonged to the village, but could not be registered in its name as the village was not at the time recognized as a legal entity. Once the village gained the status of a local council the land should be registered in its name.

The Supreme Court was not prepared to decide which version of history was the correct one, and it rejected the arguments of both sides. It accepted the government's claim that the State of Israel should replace the High Commissioner, but not that it could free itself of the registration "on behalf of the village of Yafia." It rejected the local council's argument, since the type of land involved — *miri* — was not land which could be registered in name of a local authority. Thus the land was registered in the name of the "State of Israel on behalf of the village of Yafia." What rights this registration gives the villagers is not at all clear.

According to the Ottoman Land Law that remained in force in Israel until it was repealed by the Land Law, 1969, a person who cultivated *miri* land, the most common form of rural land, for a period of ten years was entitled to title in that land. The Prescription Law, 1958 extended this period to fifteen years, for land title in which had not been settled, and twenty-five years for title-settled land. The law also provides that if a person had begun to hold possession after March 1, 1943, the first five years after the law came into force would not be taken into account Section 29(b) of the law stipulates that the new provisions apply *even if the period of years laid down in the Ottoman Law had elapsed before the law came into effect.* Thus a person who had already acquired title through possession under the Ottoman law could be deprived of that title by the extension in the prescription period and its application even if the original period had expired.[24]

It has been claimed that by the changes effected in the prescription period for land 205,000 dunams of land were in effect expropriated from Arabs.[25] The present writer has no way of corroborating or refuting this figure. It seems unlikely, however, that there could be definite figures on the amount of land in which Arabs would have acquired rights (of title or even protected possession) had the period of years remained un

changed. Possibly the figure relates to the amount of land in which Arabs *claimed* rights on the ground of possession and which was nevertheless registered in the name of the state.

Security and Emergency Laws. Regulation 125 of the Defence Regulations, 1945 authorizes the military commander to declare land to be a "closed area." Once so declared no person is permitted to leave or enter the area without special permission.

In the 1950's regulation 125 was used in order to restrict access of Arabs to their lands.[26] As we shall see below, it was sometimes used together with the Validation of Acts and Compensation Law in order to facilitate expropriation of land under that law.

In recent years regulation 125 was used to maintain closure of an area known as "Area 9."[27] This area, in the vicinity of the villages of Sakhnin, Arrabe and Dir-Khana, was used by the British for military training between the years 1942-1944. From 1952-1956 the Israel Defence Forces also used the area for occasional military exercises. Movement of the villagers on their lands in the area was only restricted during the exercises and compensation was paid for damage caused to crops. In 1956 the Chief-of-Staff issued an order under regulation 125 closing the whole area — including an area which included about 29,000 dunams of agricultural land. This order caused a public outcry as a result of which the authorities backed down. The area remained a closed area but villagers were given permits to enter the area in order to work their lands, save for the days when military exercises were going on. This *modus vivendi* continued until February, 1976, when the heads of the villages received notice from the local police that "Area 9" was a closed area and that entrance was forbidden. Following this notice an arrangement was worked out according to which the area would be divided into two zones: the one, smaller, zone in which the old *modus vivendi* would continue; the other, larger, zone to which entrance would be allowed only by special permit. Thus the access of the villagers to all their lands was limited. Later, the limitations were somewhat relaxed and a non-formal arrangement worked out which allowed access to most of the village lands when exercises were not in progress.[28]

"Area 9" was a source of great resentment among Arabs in the Galilee. In August, 1986 a ministerial committee decided that the area would no longer be used for military purposes and that the closed lands would be returned to the villagers for cultivation.

Other emergency laws used in the 1950's were the Emergency (Security Areas) Regulations, 1948, which were allowed to lapse in 1972,[29] the Emergency Regulations Concerning the Cultivation of Waste Lands and the Use of Unexploited Water Resources, 1949 that were formally repealed in 1984, and the Emergency Land Requisition (Regulation) Law 1949, that only applied for a restricted time.

Nature Protection Laws. It has sometimes been claimed that implementation of nature protection laws has had an "expropriatory effect" on use of lands held by Arabs.[30] It is hard to assess to what extent these claims are substantiated. It is especially difficult to gauge whether implementation of such laws has effected Arabs any more than Jews in their use of land. To complete the present picture of the land issue, brief mention must be made of two nature protection laws which, judging from legal sources, may have had an expropriatory effect on Arab-owned land.

According to the Forests Ordinance, 1926 the Minister of Agriculture may authorize a forest officer to take under his protection forest lands which are private property in respect of which it appears that the destruction of trees is diminishing or likely to diminish the water supply, is injuring the agricultural conditions of neighboring lands, or is imperilling the continuous supply of forest produce to the village communities contiguous to such lands. So long as any forest land is under the protection of the Government it shall be deemed to be a forest reserve, to which the numerous restrictions on land use in such reserves apply.

In the court decisions one comes across cases in which claims by Arabs to rights of use in land have been met by the argument that the land is part of a forest reserve (generally declared as such before establishment of the state).[31]

Under the National Parks, Nature Reserves and National Sites Law 1963 the Minister of Interior, on the recommendation of the Minister of Agriculture or in consultation with him, may declare a nature area to be a nature reserve. Once so declared restrictions on land use apply to land in the reserve.[32] It has occasionally been claimed that declaration of an area as a nature reserve has led to restrictions on use of land by Arab land owners.[33]

Special Land Expropriation Laws

While the above laws were certainly used to expropriate land from Arabs or to place restrictions on its use, there can be little doubt that the major expropriations of land belonging to Arabs were carried out under two laws that were specifically passed for this purpose. These two laws require somewhat more detailed discussion.

Absentees' Property Law, 1950. The declared object of this statute was both to protect the property of absentee owners, and to facilitate use of this property for the development of the economy and the state.[34] The statute

directs the Minister of Finance to appoint a Custodian for Absentees' Property and provides that

> all absentees' property is hereby vested in the Custodian as from the day of publication of his appointment or the day on which it became absentees' property, whichever is the later date. (Section 4(a)(1)).

The law empowers the Custodian to take care of absentees' property, manage it, and expel occupants, who in the Custodian's opinion, have no right to occupy it. It does not give an absentee the right to return of his property. Instead it gives the Custodian the power, in his sole discretion, and on the recommendation of a special committee, to release vested property. Where the vested property has been sold "the property sold becomes released property and passes into the ownership of the purchaser and the consideration which the Custodian has received becomes held property." (Section 28(c)).

Given the far-reaching powers of the Custodian, and the severe consequences, vis-à-vis a land-owner, of his property being deemed "absentees' property," the most important provision in the statute is the definition of the term "absentees' property." And it is in this very provision that the "catch" in the statute lies.

Section 1 of the statute defines the term "absentee," as follows:

> (b) 'absentee' means —
>
> (1) a person who, at any time during the period between the 16th Kislev, 5708 (29 November, 1947) and the day on which a declaration is published, under section 9(d) of the Law and Administration Ordinance, (5708-1948), that the state of emergency declared by the Provisional Council of State on the 10th of Iyar, 5708 (19th May, 1948) has ceased to exist, was the legal owner of any property situated in the area of Israel or enjoyed or held it, whether by himself or through another, and who at any time during the said period —
>
> (i) was a national or citizen of the Lebanon, Egypt, Syria, Saudi-Arabia, Trans-Jordan, Iraq or the Yemen, or
> (ii) was in one of these countries or in any part of Palestine outside the area of Israel or
> (iii) was a Palestinian citizen and left his ordinary place of residence in Palestine
>
> (a) for a place outside Palestine before the 27th Av, 5708 (1st September, 1948); or
> (b) for a place in Palestine held at the time by forces which sought to prevent the establishing of the State of Israel or which fought against it after its establishment;

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

Examination of this definition reveals that a person may be an "absentee" under the law, even though he was present in Israel when his property was deemed to have become "absentees' property." There are, in other words, persons who have become known as "present absentees."

Status as a "present absentee" is not merely theoretical, since the law defines "absentees' property" as property *"the legal owner of which at any time . . . [after] 29th November, 1947 . . . was an absentee."*[35] In other words, if a person is an absentee at any time, his property becomes absentees' property, whether he is still an absentee or not.[36]

There is one exception to the above rule. The law recognizes the right of a person, who may be defined as an absentee, to confirmation that he is not an absentee, and therefore to release of his absentee property, if the Custodian is of the opinion that he left his place of residence —

> (1) for fear that the enemies of Israel might cause him harm, or
> (2) otherwise than by reason or for fear of military operations. (sec. 27).

The onus is on the person seeking confirmation that he is not an absentee to prove that the reason for leaving his residence was one of the reasons which entitle him to such confirmation.[37] On a number of occasions the Supreme Court did interfere in the decision of the Custodian and directed him to grant confirmation of non-absentee status.[38] It is fair to assume, however, that the majority of Arabs who left their homes during the period following the Partition Resolution of November 29th, 1947 did so "by reason or fear of military operations." Thus, the majority of the "present absentees" are not entitled to repeal of their absentee status.

All in all it has been claimed that 75,000 persons, who remained in the country after the war, became "present absentees."[39]

Under the original statute, the Custodian had the power, subject to the recommendation of a special committee, to release absentee property to its owners. However, judging by one case which came before the Supreme Court, the said committee was reluctant to recommend release of land needed for agricultural settlement and the court refused to interfere in the policy of the committee.[40]

The law forbids sale of absentee property, subject to one crucial exception: the property may be transferred to a Development Authority to be established under a law of the Knesset. This Development Authority was indeed established under the Development Authority (Transfer of Property) Law, 1950. On September 29th, 1953 an agreement was made between the Development Authority and the Custodian of Absentee Property under which all the absentee property held by the Custodian was transferred to the Development Authority.[41] Henceforth, under section 28(c) of the law, the "absentee property" held by the Custodian became the consideration received for the property. An absentee who applied for release of his property was entitled only to the consideration.[42] A law passed in 1973 replaced the system of consideration with a scheme of compensation.[43] Under this law, absentees no longer have the right to apply for release of their property; their only right is one to compensation.

Finally, it should be mentioned that the Absentees' Property Law did not apply only to land held by private individuals. Under section 1(d) it also applied to property of the Moslem Waqf, whose administrators had become absentees.[44] Under an amendment to the Absentees' Property Law, some of the Waqf land which had passed to the Custodian was later released to the Moslem community in towns in which "trust committees" were appointed by the government.[45]

Land Acquisition (Validation of Acts and Compensation) Law, 1953. In the wake of the War of Independence and the political and social upheaval which accompanied and followed it, large tracts of land owned by Arabs were taken over either for military purposes or for use by existing or newly established Jewish settlements. The declared object of this statute was to "validate" these acts and at the same time to provide for compensation to be paid to owners of land which had been taken over.[46]

The law authorized the Government to delegate a minister for its administration. It then goes on to provide:

> 2. (a) Property in respect of which the Minister certifies by certificate under his hand —
> (1) that on the 6th Nisan, 5712 (1st April, 1952) it was not in the possession of its owners; and
> (2) that within the period between the 5th Iyar, 5708 (14th May, 1948) and the 6th Nisan, 5712 (1st April, 1952) it was used or assigned for purposes of essential development, settlement or security; and
> (3) that it is still required for any of these purposes —
> shall vest in the Development Authority and be regarded as free from any charge, and the Development Authority may forthwith take possession thereof.

The government delegated the Minister of Finance to administer the law and during the period of one year provided for under section 2(b) of

the law for issuance of certificates, certificates were issued in relation to large quantities of land.

The conditions laid down by the said law for expropriation of land, as interpreted by the Supreme Court, were harsh. The Minister had no duty to grant a hearing to a land-owner before issuing a certificate in respect to his land and the certificate was regarded as conclusive evidence that the conditions of the law had been fulfilled.[47] Furthermore, the possession of an owner, to avoid application of the first condition, had to be actual possession.[48] If the owner was not in actual possession, for any reason whatsoever, and the other conditions also applied, his property could be expropriated. Even if access of the owner to his land was restricted by an order issued pursuant to regulation 125 of the Defence Regulations closing the area in which he resided, the Minister could certify that the owner was not in possession.[49]

As in the case of absentee property, land expropriated under the Validation of Acts and Compensation statute did not have to be private land. Waqf property was also subject to expropriation.[50] It has been claimed that 70,000 dunams of Waqf land were expropriated under this law.[51]

Compensation. Both the Absentees' Property Law and the Validation and Compensation Law provide for payment of monetary compensation to land-owners whose land was expropriated. The latter law provides that where the property was used for agriculture, and was the main source of livelihood of an owner who has no other land sufficient for his livelihood, the Development Authority is obligated, on the owner's demand, to offer him alternative land, either for ownership or for lease, as full or partial compensation. In such a case, a special committee determines the category, location, area, terms of lease and value of the leased property.[52] There is no obligation to provide land of the same kind as the expropriated land.[53]

Significant changes have been made over the years in the rate of compensation and in the linkage of unpaid compensation so as to mitigate the effect of inflation.[54] According to the latest figures released by the Israel Lands Administration, by the end of March, 1988, 14,364 persons had claimed compensation under the two statutes. Claims have been settled with respect to 197,984 dunams of land. NIS 2,724,137 have been paid over the years in compensation. 53,710 dunams of land have also been given as compensation under the Validation and Compensation Law.[55]

The Extent of Expropriated Land Under the Above Statutes. What is the extent of the land expropriated under the above two statutes? The official government figure for rural land which became vested in the Custodian for Absentees' Property is 3.25 million dunams.[56] According to figures

published by the Israel Lands Administration 1,225,174 dunams of land were acquired under the Validation and Compensation law, 325,000 dunams of which had been privately owned.[57] It may be assumed, however, that part of the land acquired under the latter law was in fact absentees' land (of real or present absentees) that had also been vested in the Custodian under the Absentees' Property Law. The really difficult question, and the one most relevant for the present study, is how much of the expropriated land belonged to Arab residents of the state. No figures for this are available. One writer has claimed that the figure reaches one million dunams,[58] but he gives no basis for this assessment. In the absence of authoritative figures one cannot assess the real figure. It is clear, however, that the effect of these laws on the land reserves of many Arab villages was substantial.[59]

Freezing of Land Ownership

During the pre-state era Jews could not gain control over land resources suitable for settlement unless the economy were freed so as to enable them to purchase land on the open market. Maintaining control over that land once it had been acquired by Jewish institutions, however, required that Jewish ownership be frozen.[60] Thus it was that the Zionist movement strenuously opposed legal restrictions on sale of land to Jews, and at the same time laid down a land policy that forbade sale of land that had been purchased by Jewish national institutions. This policy, which furthered public rather than private ownership of land, was consistent both with the dominant collectivist trends in the Zionist movement and with Jewish tradition according to which "the land shall not be sold in perpetuity" (Lev. 25, 23).

Following the land expropriations under the Absentees' Property and Compensation and Validation Laws described above, and the inheritance by the State of Israel of all lands previously held by the British Mandatory Government, more than 90 per cent of the land in the country was owned by three bodies: the state, the Development Authority and the Jewish National Fund (JNF), that had been the main arm of the Zionist movement for acquisition of land in Palestine before 1948. What is the status of these lands? What is the relationship between the JNF land, which is held as the eternal property of the Jewish people, and land held by the Jewish state? The answer to these questions is provided in special legislation passed in 1960.

The Basic Law: Israel Lands states that the ownership in "Israel lands," namely lands in Israel of the state, the Development Authority or the JNF, shall not be transferred by sale or in any other manner.[61] Under the Israel

Lands Administration Law, 1960 the Israel Lands Administration (ILA) was established as a government authority whose task is to administer all "Israel lands."[62]

With the ownership in Israel lands frozen, the rights of possession and use in these lands is regulated through leases administered by the ILA. The issue that interests us here is how this system of land leases affects the Arab residents of Israel.

Israel lands include both JNF lands and state lands (which, for all intents and purposes, include Development Authority lands). In discussing the issue of land leases a distinction has to be made between these two categories of Israel land.

Jewish National Fund Land

In order to appreciate the special problems associated with use of JNF land the background and history of the JNF must be briefly reviewed.

JNF Background and History. The fifth Zionist Congress, meeting in Basle in 1901, decided on establishment of the JNF to purchase land in Palestine and Syria for the settlement of Jews. All property of the fund would become "the perpetual property of the Jewish people." While the JNF was established as an official organ of the Zionist Organization (later the WZO) it was separately registered in London as a limited company.[63]

As an organ of the WZO, the status of the JNF was determined by the World Zionist Organization and Jewish Agency Status Law, 1952 that applies to all institutions of the WZO. However, the lands purchased by the JNF were registered in the name of the limited English company. The Jewish National Fund Law, 1953 was passed so as to facilitate transfer of title in all these lands to an Israeli company. The statute authorized the Minister of Justice to approve the memorandum and articles of a new Israeli company and stated that if this company were to reach an agreement to that effect with the existing English company, upon approval of the above documents by the Minister and their publication in the official government gazette, all land in Israel registered in the name of the English company would be registered in the name of the new company. The memorandum and articles of association of the Israeli JNF company were duly approved and published under the terms of the statute[64] and JNF lands in Israel were subsequently registered in the name of the newly formed Israeli company, called the *Keren Kayemet le'Yisrael*.[65]

The memorandum of the new company, approved by the Minister of Justice under the 1953 law, states the objects of the JNF. The main object as defined in section 3a of the Memorandum, is

> purchasing, acquiring by lease or exchange, receiving by lease or in any other way, lands, forests, rights of possession or easements and all other such rights, as well as immovable property of any sort, in the designated area (which includes the State of Israel and any area controlled by the Government of Israel) *for the purpose of settling Jews on the said lands and property*. (emphasis added)

The memorandum contains a long line of objects, such as "leasing part of its lands under conditions decided by it," and using monies received from contributions "to further... any charitable aim which in the opinion of the company might be beneficial, directly or indirectly, to people of Jewish race, religion or descent" but also includes the following proviso:

> provided that the object stated in sub-section a. of this section shall be regarded as the main object of the company, while the powers listed in the following sub-sections shall be carried out so as to assist, in the opinion of the company, in achieving the said object.

In other words, acquiring rights in land for the purpose of settling *Jews* is the main object of the JNF. While it is not expressly stated in the memorandum, this has been taken to mean that lands belonging to the JNF may not be leased, at least on a long-term basis, to non-Jews.

From the time of its creation until establishment of the state the JNF concentrated on purchase of land in Palestine. When the state was established it owned 936,000 dunams of land in the territory of the state,[66] most of which had been leased to Jewish agricultural settlements.[67]

As seen above, the law relating to absentee property permitted the Custodian of Absentee Property to sell absentee property to the Development Authority that was specially established under the Development Authority (Transfer of Property) Law, 1950. This law provides that the Development Authority is permitted to sell its property to one of four bodies: the State of Israel, the JNF, local authorities and an institution for settling landless Arabs. Sale of land to local authorities is restricted to urban land within their local jurisdiction (on which the JNF must be given the right of first refusal) and the institution for settling landless Arabs mentioned in the statute was never established. Rural land could therefore be sold only to the state or to the JNF.[68]

Even before the Development Authority had been formally established the government decided to sell most of the absentees' rural land to the JNF. Under one agreement signed in January, 1949 1,101,942 dunams were sold to the JNF, 98.5 per cent of which were rural lands.[69] In October, 1950 another agreement was reached according to which a further 1,271,734 dunams were sold to the JNF, practically all of which was rural land.[70] Thus it was that by a combination of expropriation and land transfers over

two million dunams of rural land that had belonged to Arabs, some of whom were still resident in the state as "present absentees," were placed in the hands of an institution whose declared policy was that its land should not be made available to non-Jews.

Under the agreements mentioned above, a large proportion of the rural lands that had been expropriated from Arabs who were real or present absentees were sold to the JNF, which thereby increased its holdings of land from just under one million dunams to three-and-a-half million dunams.[71] At the same time, by acquiring the expropriated Arab lands that had not been sold to the JNF, waste and barren lands, and public lands formerly owned by the Mandatory Government the state had become the largest landowner in the country.[72] By the late 1950's over 90 per cent of the land in Israel was Israel land. The JNF no longer needed to acquire lands, and its functions became land reclamation, land development and afforestation.

Management of JNF Land. The 1960 legislation under which all Israel lands were to be administered by the ILA was preceded by extensive negotiations between the government and the JNF. After the legislation was enacted a formal covenant was signed between the government and the JNF which reflected the agreement that had been reached in those negotiations.[73] The declared aim of the covenant was to do away with the overlapping in dealing with public lands, now that the State of Israel had become the owner of most of the land in Israel and the JNF's main function was no longer acquisition of lands but land reclamation. In return for agreeing that its land would be administered by a government body, control over rural land development and afforestation was placed in the hands of a special JNF body, the Land Development Authority (not to be confused with the statutory Development Authority). The Israel Lands Council, which under law was to be appointed by the government to set land use policy, would be comprised of thirteen members, seven of whom would be government officials and six of whom nominees of the JNF. The Land Development Authority would also be managed by a board of thirteen, but on this board the majority of seven would be JNF appointees and the minority of six, government nominees.[74] Furthermore, the government undertook to consult the JNF before appointing the ILA director.

The covenant lays down the policy both for administration and development of state lands. All state lands must be administered according to the principle that land is not sold, but is leased according to the land policy fixed by the Israel Lands Council. *JNF lands must also be administered in accordance with the memorandum and articles of association of the JNF.* Land development policy must be determined by the board of the Land Development Authority "according to the agricultural development plan of the Minister of Agriculture."

Approximately 19 per cent of the Israel lands administered by the ILA are JNF lands,[75] which, according to the JNF covenant, must be administered in accordance with the memorandum of the JNF. As seen above, the accepted interpretation of this memorandum is that JNF land may not be leased (at least on a long-term basis) to non-Jews. Thus the ILA administers the JNF land according to a policy which forbids leasing that land to Arabs. This policy is implemented through clauses in all lease agreements which forbid subletting or transfer of the lease unless prior consent is received from the ILA. If the prospective new lessee is non-Jewish, consent may be withheld.

The legality of the ILA's adherence to JNF policy has never been ruled on by a court in Israel. In some cases in which Arabs have applied to lease JNF land in urban areas the ILA has avoided confrontation by adopting a "legal device" aimed at circumventing the restriction on leasing such land.[76] This involves transferring the JNF land to the Development Authority (a transaction that is allowed under the Israel Lands Law, 1960). The land, which, as Development Authority land, is not bound by the restriction on JNF land, is subsequently leased to the Arab applicants.

Would the refusal of the ILA to allow leasing of JNF property to Arabs stand up in court? Would it not offend the principle that a governmental organ may not discriminate between citizens on the basis of race, religion or national origin unless expressly authorized to do so by statute? While it is not possible to give an authoritative answer to this question, I shall point out the likely arguments to be made for and against the legality of the said policy.

On the one hand, it may be argued that the JNF is not a body established or even directly controlled by the state. It is an organ of the WZO which remains a voluntary organization. There is no restriction on the setting up of voluntary organizations which aim to further the interests of one religious, ethnic or national group. Thus, for example, a religious order or institution may restrict use of its property to members of the particular religious persuasion. Property of the Moslem Waqf may be devoted to use by Moslems. According to this approach there is no reason, even after the state was established, why a voluntary organization may not continue to pursue its aim of furthering the interests of Jews (just as there is no reason why an organization may not further the interests of other groups, however defined — Arabs, Moslems or Christians). It is indeed true that the JNF lands are *administered* by a government organ, but they remain the sole property of the JNF. If the JNF itself is entitled to lease its land to Jews alone, there is no reason why the ILA, which acts merely as an agent of the JNF, may not do the same on its behalf. One may draw a parallel between the public custodian, who may administer property left by a will for the enjoyment of one particular group according to the terms of that will, and the ILA, which acts as a custodian of JNF property.

Furthermore, by including JNF land among the Israel lands, without expropriating it, or changing the memorandum of the JNF which was approved under the JNF law of 1953, the Knesset must be seen to have expressly authorized the ILA to administer that land according to the memorandum. In the Knesset debate on the 1960 legislation there is indeed support for the view that members were conscious of the restrictions that would be imposed on use of JNF land, as opposed to other categories of Israel land.[77]

The counter-argument is based on the following points:

1. The JNF has in actual fact lost its status as a purely voluntary body and must be regarded as an arm of the government. The factors which led to this change in the character of the JNF are the special statute regulating the formation of the new JNF company; the inclusion of JNF lands amongst the lands defined by law as Israel lands; the legislative provision that the JNF lands are to be administered by a statutory body; the handing over of sole authority to deal with what are essentially state functions — afforestation and land preparation — to the JNF; the conclusion of a covenant between the government and the JNF which, inter alia, gives the JNF status in appointing members to a statutory body whose function is determining the land policy of the state, and the granting the JNF exemption from a wide range of taxes.

2. Administration of JNF lands is in the hands of a public body acting under law. The covenant between the JNF and the government does provide that the JNF lands will be administered in accordance with the memorandum of the JNF which declares that these lands are to be used for the settlement of Jews , but the terms of a covenant between the government and another body cannot change a basic principle of Israeli constitutional and administrative law, viz., the principle of equality according to which a body exercising public functions under law may not discriminate between citizens on the basis of their religion or national origins. One may even go further and argue that, according to the opinion of the Attorney General on the Kiryat Arba coalition agreement discussed in chapter 1 above, insofar as the object of the said clause in the covenant is to obligate the ILA to discriminate between Jews and non-Jews in the administration of JNF lands, the clause should be regarded as invalid.

3. The assumption of the above argument is that all JNF lands were purchased by the JNF on the free market. This assumption is not well-founded. As seen above, many of the JNF lands[78] were expropriated from Arabs and thereafter sold to the JNF. Although the JNF paid for these lands it is hard to see how the government, which is no doubt bound by the equality principle in the way it deals with land, can effectively

suspend operation of that principle by transferring the land to another public body.

It is not my intention here to express an opinion on the chances of each argument to be accepted in court. However, the legal position can be summarized as follows:

1. JNF lands are regarded, under law, as "Israel lands";
2. According to the memorandum of association of the JNF, approved under law by the Minister of Justice, JNF lands are meant for the settlement of Jews. JNF policy is therefore not to lease these lands to non-Jews, at least not on a long-term basis;
3. All "Israel lands" are administered, under law, by a statutory body, the ILA;
4. According to the covenant between the government and the JNF, the JNF lands must be administered according to the JNF memorandum;
5. The legality of the above arrangement, which allows discrimination between Jews and Arabs by a statutory body, has never been confirmed by a court.

State Lands

The legal arrangements described above, which prevent leasing of land to non-Jews, apply only to JNF lands. Under the principle of equality that binds all public authorities the ILA may not refuse to lease other Israel lands, i.e., lands belonging to the state or to the Development Authority, to Arabs. In practice such lands are indeed leased to Arabs, mainly for urban use, but they are also sometimes leased to Arabs for agricultural use too, especially in the Negev where fairly large tracts of land have been leased to Bedouin as part of a government policy to regulate the status of Bedouin land rights in that area.

The area of land outside the Negev leased to Arabs for agricultural use is limited. There are a number of reasons for this. First, most of the agricultural land in the hands of private individuals is owned by Arabs.[79] This may in part explain why the share of public land in private farms (as compared to collective and co-operative villages) is about 70 per cent in the Jewish sector and only 50 per cent in the Arab sector.[80] Second a substantial proportion of the publicly owned cultivable land belongs to the JNF.[81] The reserves of non-JNF land available for lease are limited. Thirdly, for reasons that will be explained below in the chapter VI, new agricultural settlements have not been established in the Arab sector, while in the Jewish sector much of the agricultural land that was not leased to existing settlements is leased to new settlements. Finally, most

of the agricultural land is leased to co-operative and collective settlements, *kibbutzim* and *moshavim*, that are run by Zionist settlement movements, and Arabs are effectively prevented from leasing such lands.[82]

The leasing policy of the ILA for agricultural land is based on two types of leases: single-*nakhala* leases and non-*nakhala* leases.[83] Both types contain clauses that ensure that land leased to Jews will remain in Jewish hands.

The "single-*nakhala* agreement" is used for long-term leases of land. In recent years this type of lease is used almost exclusively for leasing land to members of *moshavim* (co-operative settlements in which members work their own plots). Like all other lease agreements of the ILA, it stipulates that the plot may not be sublet or transferred without prior permission of the ILA. A specific stipulation is also included that permission of the ILA will not be granted unless the new candidate is a "qualified lessee," who is defined in the agreement as a person permitted, under the decisions of the Israel Lands Council, to be the lessee of a *nakhala* in Israel lands, and who is not the owner of another *nakhala*. Decisions of the Israel Lands Council provide that a "qualified lessee" must receive the approval of a special committee made up of representatives of the settlement movement to which the particular settlement belongs, the Jewish Agency, if the settlement is still sponsored by it, and the head of the *moshav's* council.[84] In effect this means that the chance of an Arab being recognized as a "qualified lessee" is negligible.

There are various kinds of non-*nakhala* leases. One such lease is for land leased to collective or co-operative settlements themselves, rather than to members of those settlements. The lease incorporates a tripartite agreement, the parties to which are the ILA, the Jewish Agency and the particular settlement. The formal lessee is the Jewish Agency which, the agreement states, "under the WZO-Jewish Agency Law, 1952 and the covenant made thereunder, deals with settling Jews in the state on Israel lands." The Jewish Agency undertakes to use the land to develop the particular settlement (either a *kibbutz* or a *moshav*). Neither the Jewish Agency nor the settlement may transfer their rights under the agreement without the permission of the ILA and the agreement specifically states that the ILA will not approve use of the land by anyone who is not a member of the settlement. In the case of a *moshav* the agreement even states that a list of the members of the *moshav* is appended to the agreement and that any change in the membership requires the permission both of the Jewish Agency and of the ILA.

Most of the land leased under non-*nakhala* agreements is leased for short terms of one to three years, where the lease is tied to a specific crop. New leases must be approved by a district leasing committee that includes representatives of the Jewish Agency Rural Settlement Depart-

ment, the *kibbutz* and *moshav* movements and the JNF Land Development Authority. The committee may not approve a lease for more than three years. Any lease of agricultural land for a period of more than three years must be in accordance with the policy set by the Agricultural Planning Authority. It must also be approved by a special Land Committee of that authority, that is comprised of representatives of the Ministry of Agriculture, the Jewish Agency, the ILA and the settlement movements.[85]

In summary: there are no *legal* impediments to lease of non-JNF Israel lands to Arabs. Such lands are indeed leased to them both for residential and agricultural use. However, institutional constraints of the land-lease system restrict the extent of land leased to Arabs, especially in the agricultural sector where the collective and co-operative settlements established by the Zionist settlement movements enjoy a favored status.

Agricultural Settlement Law, 1967

During the 1960's Jewish settlements which had been established on land leased to them by the ILA (which was often, but by no means always, JNF land) began subletting part of the land to Arabs, many of whom had lost their lands by one of the various methods of expropriation. While such subletting was in contravention of the lease agreements, the ILA found it difficult to act against such settlements. In an article published in the daily *Ha'aretz* in October, 1966 entitled, in a play on words, "*Keren Kayemet LeYishmael*" — Ishmael's National Fund, the writer quoted from interviews with senior ILA and JNF officials who spoke of "Arab farmers returning to work on land which had been expropriated or redeemed" and of "*moshavim* and even *kibbutzim* which sublease lands which were expropriated or redeemed with the help of Zionist funds, in ways which are always disguised so as to prevent us from acting, so that only a clear law will solve the problem." The writer concluded the article with the following statement:

> If this process is not halted and the custom of handing land over to Arab cultivators is not terminated, the program of developing the northern area will become an empty vision.

A short while after this article was published, the government introduced the "clear law" in the Knesset. This law, the Agricultural Settlement (Limitations on Use of Agricultural Land and Water) Law, 1967, forbids a person in possession, under a lease agreement or license, of agricultural land which is Israel land to engage in "irregular practices" in respect to that land. It also forbids such a person who has been granted

a water allocation to transfer that allocation or to allow another person to use his allocation. Section 1 of the law defines the term "irregular practices." These include:

> 1) transferring or conveying any right the person in possession has in the land or part thereof, or placing a charge on that right; save that work by hired workers or cultivation by independent contractors at the expense of the person in possession shall not be regarded as an irregular practice;
> 2) forming a partnership in the land or its produce, except for a partnership between residents of the same settlement if the partners share the work equally;
> 3) granting a right to reside on the land.

According to section 7 of the law, the rights of a person in possession of Israel land who engages in irregular practices may be forfeited. The land is then returned to the person who gave the land to the former possessor and that person may not thereafter lease the land to anyone else without the consent of the ILA.

This law bolsters the legal and administrative structures under which agricultural land outside the Negev is leased almost exclusively to Jewish collective and co-operative settlements. It makes sure that Jewish lessees will not in fact allow use of the land by Arabs.

Notes

1. See the Ussishkin Book (1939) 104, quoted in B. Kimmerling, *Land Conflict and Nation Building: A Sociological Study of the Territorial Factors in the Jewish-Arab Conflict*, (Department of Sociology and Social Anthropology, Hebrew University of Jerusalem, 1976) 59.

2. See A. Granott, *The Land Issue in Palestine* (Jerusalem, 1936), 12.

3. *Ibid.*, 14.

4. This is the official figure given in Israel Lands Administration, *Report for 1961/62*, (Jerusalem, 1962), 7. And cf. E. Orni, *Land in Israel: History, Policy, Administration, Development* (Jerusalem: Jewish National Fund, 1981) 43 who gives the figure as 20,550 sq.km.

5. See A. Granott, *Agrarian Reform and the Record of Israel* (London: Eyre and Spottiswoode, 1956), 28. Granott gives the total area of land owned by Jews as 1,734,000 dunams (a dunam is approximately one quarter of an acre; there are 1000 dunams in 1 sq.km.). The breakdown is as follows: JNF — 933,000; PICA (which held the land purchased by Baron Edmond de Rothschild) — 435,000; private purchasers — 366,00. To this could be added approximately 195,000 dunams of state land that were held by Jews on various tenancies: see J. Ruedy, "Dynamics of Land Alienation" in I. Abu-Lughod (ed.), *The Transformation of Palestine: Essays on the Origin and Development of the Arab-Israeli Conflict* (Evanston: Northwestern University Press, 1971) 119, 134.

6. See Granott, *ibid.*, 90.

7. *Ibid.*, 92. Orni (note 4 *supra*, 43) gives the breakdown of Arab-owned land as follows: 1,373,000 dunams of arable land; 1,700,000 dunams that had been tilled infrequently and haphazardly by Bedouin and 2,720,000 dunams of totally waste and barren surfaces. This figure is also cited by Granott (note 5 *supra*, 89) who maintains, however, that the total figure should be considerably reduced since there was doubt as to title in waste lands and lands in the Northern Negev. On the other hand, the UN Conciliation Commission for Palestine estimated that more than 80 per cent of the land in Israel had belonged to Arab refugees, and that more than 4,574,000 dunams of this land were cultivable: see Ruedy, note 5 *supra*, 135.

8. The distinction between sovereignty and ownership over the land is developed by Kimmerling, note 1 *supra*, 35-44.

9. As a large part of the agricultural land in the territory that was incorporated in Israel's armistice borders had been cultivated by Arabs, the exodus of most of the Arabs resulted in a large drop in agricultural production in the period immediately following the establishment of the state: see Granott, note 5 *supra*, 93-96. Practically all the rural land that belonged to the JNF and other Jewish institutions and individuals was already leased out to agricultural settlements.

10. According to official Jewish Agency figures, between May 1948 and the end of 1952 over 700,000 new immigrants entered Israel: see *The New Standard Jewish Encyclopedia* (Jerusalem: Massada, 1970) 74.

11. As stated in the introduction I have no intention here of examining the detailed causes for the departure of most of the Arabs from Israeli territory and have accepted the conclusion of Benny Morris that there was not one cause, but that it "was born of war, not by design, Jewish or Arab ... [and] was largely a by-product of Arab and Jewish fears and of the protracted, bitter fighting that characterized the first Israeli-Arab war." See Introduction, note 16.

12. See Kimmerling, note 1 *supra*, 131-243.

13. This issue has been extensively reviewed by others: see D. Peretz, *Israel and the Palestinian Arabs* (Washington D.C.: The Middle East Institute, 1958); Kimmerling, note 1 *supra*; Granott, note 5 *supra*; Ruedy, note 5 *supra*.

14. See I. Lustick, *Arabs in the Jewish State* (Austin: University of Texas Press, 1980), 12-16. Also see S. Jiryis, *The Arabs of Israel* (Beirut: Institute for Palestine Studies, 1976). Jiryis devotes a major section of his analysis to the land question (*ibid.*, 75-134). And see Sabari, "The Legal Status of Israel's Arabs" (1972) 2 *Iyunei Mishpat* 568.

15. See Y. Oded, "Land Losses Among Israel's Arab Villagers," *New Outlook*, Sept. 1964, 10-25.

16. See R. Klinov, *Arabs and Jews in the Israeli Labor Force* (Working Paper #214, Jerusalem: Departments of Economics, Hebrew University of Jerusalem, July, 1989) 10. Klinov claims that land expropriation "may have been less important in shaping the long-term pattern of employment and earnings of the Arab labor force."

17. See, for example, report in *Jerusalem Post* of October 17, 1989, page 2, of a planned strike in the villages of Ein Mahil, Ka'ana, Reina and Mash'had to protest against enforcement of a 1976 expropriation order relating to 3600 dunams of land.

18. Attempts to challenge the expropriation of the Nazareth lands in court were unsuccessful: See *Nazareth Lands Defence Committee* v. *Minister of Finance* (1955) 9 P.D.1261; *Kassam* v. *Minister of Finance* (1957) 12 P. D. 1986. The land expropriations for the building of Carmiel are discussed by Kimmerling, note 1 *supra*, 231; they were the subject of a Knesset debate reported in 33 *Divrei HaKnesset* 1126-30.

19. See Rekhes, *Israeli's Arabs and the Expropriation of Lands in the Galilee* (Tel Aviv: Shiloah Institute, 1977).

20. See note 17 *supra*.

21. See J. Weisman, *The Land Law, 1969: A Critical Analysis* (Jerusalem: Institute for Legislative Research and Comparative Law, 1970) 33-34.

22. See *Hativ* v. *State of Israel* (1974) 30 P.D. II 440 and the further hearing of this case in *Yafia Local Council* v. *State of Israel* (1976) 31 P.D. II 605; *Touran Local Council* v. *JNF* (1964)18 P.D. III 596.

23. Note 22 *supra*.

24. See *al-Tabash* v. *Attorney General* (1958) 12 P.D. 2006. This was an action for eviction and a declaration that a certain plot of land in the Arab town of Shefaram belonged to the state. The defendants claimed that they had been in possession of the land and had cultivated it since 1941. Thus, had they proven their claim, they would have been entitled to title in the land in 1951 (before the action was started). However, the Prescription Law had changed the period of years to 15, and the court therefore held that even if the defendants had proven their claim they would not have succeeded, as the new period of 15 years had not yet lapsed when the action was brought.

25. See Sabari, note 14 *supra*, 569, citing the Communist Party newspaper *al-Ittiyad*.

26. The most famous case was probably the case of the village of Rabesia, in which the first attempt of the authorities to use regulation 125 was thwarted by the Supreme Court which ruled that the order was invalid as it had not been published in the official gazette: see *Asslan* v. *Military Commander* (1951) 6 Psakim 134. The authorities later overcame this difficulty and the order was later confirmed by the court, which nevertheless recommended that a solution be found for the villagers who had been prevented form returning to their homes: see *Asslan* v. *Military Commander of the Galilee* (1951) 9 P.D. 689.

27. See R. Kislev, *Ha'aretz*, 27.7.1976.

28. See Attalah Mansour, *Ha'aretz*, 17.8.1986.

29. See A. Rubinstein, *The Constitutional Law of the State of Israel*, 3rd ed. (Tel Aviv: Schocken, 1980) 189.

30. See S. Jiryis, *The Arabs in Israel* (Beirut: Institute for Palestine Studies, 1969), 82. Also see the article by the town planner M.M.Brodnitz, *Ha'aretz*, October 23, 1989, p. 11. Brodnitz writes that the

> Hebrew National Revival Movement did things that could be interpreted as use of nature reserves and forests in order to gain control of land that was regarded by the Arabs as Arab. *Metruka* lands that were used for grazing, lands of abandoned villages that had been destroyed and lands of villages of present absentees were planted as forests or declared to be reserves. Their previous owners, their heirs, relatives or members of their people, saw this as symbolic of the Hebrew control of Arab land.

31. See *Local Council of Touran* v. *JNF* (1964)18 P.D. III 596; *al-Tabash* v. *Custodian*

of German Property (1963) 17 P.D. 2675.

32. The law itself does not list all the restrictions. These are generally included in the approved plans for the area and in regulations: see Nature Reserves (Arrangements and Conduct) Regulations, 1979.

33. See Knesset debate on Ministry of Agriculture, 104 *Divrei HaKnesset* 2692 (May 20, 1986) and 105 *Divrei HaKnesset* 3128 (June 17, 1986). Opposition members claimed that declaration of a nature reserve had impeded building in the village of Beit Jan.

34. See the address of the Knesset Finance Committee Chairman, who presented the bill to the Knesset: 4 *Divrei HaKnesset* 868-870 (27.2.1950). The statute was preceded by Emergency Regulations dealing with absentees' property. Section 38 provides that an act done before the statute came into force which would have been valid had the statute been in force shall be deemed to have been validly done. The meaning of this provision is somewhat obscure: see *Custodian of Absentee Property* v. *Samara* (1955) 10 P.D. 1825.

35. The statutory definition refers to the period between November 29, 1947 and the day on which it is declared that the state of emergency declared by the Provisional Council of State, on 19th May, 1948, has ceased to exist. That day has yet to arrive.

36. In the Knesset debates on the Absentees' Property Law, 1950 a number of M.K.'s suggested that the definition of "absentee" be changed so that it would only apply to persons not legally in Israel at the time of the law: 4 *Divrei HaKnesset* 870-871; 918. All these proposals were rejected: see the speech of the Knesset Finance Committee Chairman, *ibid.*, 872. His main arguments against these proposals were that the land of people who had left the country may have been taken over by others, who could not automatically be expelled from such land, and that the security situation was still serious and war could break out any minute. He stated:

> I think that this law is also for the good of the absentees. It is a constructive law, which protects the people's rights ... The law does not cause injustice to anybody. Whatever is due to people, they will receive. Peace will come and matters will be satisfactorily resolved.

37. See *al-Fahoum* v. *Custodian of Absentee Property* (1963) 17 P.D. 2271.

38. See *Kauer* v. *Custodian of Absentee Property* (1950) 4 P.D. 654; *Palmoni* v. *Custodian of Absentee Property* (1952) 7 P.D. 836.

39. See Kislev, *Ha'aretz*, 25.7.1976.

40. See *al-Fahoum* v. *Custodian of Absentee Property*, note 37 *supra*.

41. See 1955 *Government of Israel Yearbook* 47. Under this agreement 69,000 apartments or houses and businesses were transferred to the Development Authority: State Comptroller, *Report No. 9 for financial year 57/58*, 52. According to Granott (note 5 *supra*, 111-112) about 2,370,000 dunams of absentees' rural land had been acquired by the JNF under agreements with the government that preceded enactment of the Development Authority Law.

42. Section 19 provides that the absentee property must be sold for its "official value." Under section 19(c) "official value" is a function of the net annual value of the property for property tax purposes in the year 1947-1948 "provided that the Minister of Finance may reduce any of the rates ... in the case of property the possibilities of using which are, in his opinion, limited owing to damage or neglect

or for another similar reason." Considering that between 1947 and 1953 — the d of the transfer agreement with the Development Authority — there was inflat in the value of Israeli currency, the amounts due under the original law were c siderably lower than the real value of the property (even if we ignore the rais value of property and assume that the "official value," defined as a function of value for property tax purposes would have reflected the real value of the prope in 1947/48). This problem was alleviated by the Absentees Property (Comp sation) Law, 1973. See note 43 below.

43. See Absentees Property (Compensation) Law, 1973. This law provides compensation to Israeli residents for property which became absentees' prope and had not been released, according to readjusted property values. The amou of compensation for urban property are once again a function of the net value property tax purposes. However the amount may be more than 200 times original "official value." For rural property the amount is on fixed values dunam of land, depending on the type of land. The compensation is paic government bonds which are linked to the cost of living index and carry inte of 3% p.a. These bonds are due for payment in fifteen annual installme beginning one year after the sum of compensation has been finally determin

44. In *Bulus* v. *Minister of Development* (1955) 10 P.D. 673 the Supreme Court h that in actual fact the rights *to administer* Waqf property passed to the Custod if the administrators were absentees. Also see Sabari, note 14 *supra*, 569; Jiryis, r 14 *supra*, 117-121.

45. See Absentees Property (Amendment No. 3) (Release and Use of Tru Property) Law, 1965. And see chapter 9, below.

46. See explanatory note to bill in 5712 *Hatza'ot Hok* 234.

47. See *Yonas* v. *Minister of Finance* (1954) 8 P.D. 314.

48. *Ibid.*; also see *al-Nahdaf* v. *Minister of Finance* (1955) 11 P.D. 785.

49. See *Yonas* v. *Minister of Finance*, note 47 *supra*.

50. See *Waqf Ala A-Din Ashkuntna* v. *Development Authority* (1960) 15 P.D. 1

51. See Sabari, note 14 *supra*, 569.

52. And see Acquisition of Land (Validation of Acts and Compensat (Determining Alternative Property as Compensation) Regulations, 1954, wl lay down guide-lines for the committee's decision.

53. See *Uda* v. *Competent Authority* (1958) 12 P.D. 1513.

54. The rate of compensation for absentees' property is fixed in a schedul the Absentees' Property Law, 1973. Until February, 1988 these sums were lin to 80% in the rise of the cost of living index and carried interest of 6%. Since they are fully linked, but carry interest of 4%: see Israel Lands Administrat *Report for 1987 Budget Year* (Jerusalem, 1988), 138.

55. *Ibid.*

56. See 1959 *Government of Israel Yearbook* 74.

57. See *Report for 1987 Budget Year*, note 54 *supra*.

58. See Jiryis, note 14 *supra*, 138.

59. See the study by R. Kislev published in a series of articles that appeare *Ha'aretz* on July 23, 25, 26, 27, 29 and 30, 1976.

60. See Kimmerling, note 1 *supra*.

61. Adoption of the principle that "Israel lands" could not be sold was regai

as a victory for JNF officials (especially the head of the JNF, A. Granott) who argued that the JNF principle of inalienability of land should be adopted by the state: see Orni, note 4 *supra*, 46. The basic law states that the principle of inalienability shall not apply to classes of lands and transactions determined by law. The Israel Lands Law, 1960, that was passed together with the basic law, specifies the exceptions to the inalienability principle. One of the exceptions relates to transfer to absentees, or heirs of absentees, who are in Israel, of Israel lands in substitution for lands that were vested in the Custodian of Absentee Property.

62. The bill originally submitted by the government was termed the Basic Law: People's Land. There was some objection to this title, as the term "people" could be taken to refer to the Jewish people, whereas non-JNF land belongs to all citizens of the state, Jew and non-Jew alike. The title was therefore changed and the term "Israel lands" adopted. This term is somewhat ambiguous. Israel is the name of the state, and in this sense the lands may be regarded as state lands. However, Israel is also the name of the Jewish people, and so Israel lands may also be regarded as lands of the Jewish people.

63. The incorporation took the form of an "association limited by guarantee" which ensured permanent control by the Zionist Executive: see Orni, note 4 *supra*, 22.

64. See 1954 *Yalkut HaPirsumim* 354.

65. "*Keren Kayemet le'Yisrael*" which literally means "the Perpetual Fund for Israel" was the Hebrew name for the JNF from its inception. The official name of the English company is the Jewish National Fund Ltd.

66. See Orni, note 4 *supra*, 40.

67. See Granott, note 5 *supra*, 99.

68. See Granott, note 5 *supra*, 104, who states:

> Thus a great rule was laid down, which has a decisive and basic significance — that the property of absentees cannot be transferred in ownership to anyone but national public institutions alone, namely, either the State itself, or the original Land Institutions of the Zionist Movement.

69. *Ibid.*, 107-108.

70. *Ibid.*, 109-111.

71. As seen above when the state was established the JNF owned 936,000 dunams. According to Granott's figures a total of 2,373,677 dunams of "abandoned land" was sold to the JNF under the two agreements with the government. The total land holdings of the JNF in 1962 were 3,570,000 dunams: see Israel Lands Administration, *Report for 1961/62* (Jerusalem,1962) 7. This means that at least two thirds of the JNF land were lands that were expropriated from Arabs who had either left the territory of Israel or were still residents of the state.

72. According to the 1962 Report of the Israel Lands Administration the state (including the Development Authority) owned 15,205,000 dunams. (1,480,000 dunams were privately owned and the rest belonged to the JNF). The state's land includes the entire Negev region which covers approximately half of Israel's territory: *ibid.* Some of this land is land in which Bedouin clans have claimed to have traditional rights, based mainly on use for grazing and extensive agriculture. (Granott claimed that about 1,700,000 dunams in the northern Negev were normally tilled by Bedouins or pastured flocks "which use of land was equivalent

to a form of ownership." See Granott, note 5 *supra*, 89.) For a variety of reasons that will not be examined here, the legal basis of *ownership* rights that had never been registered was dubious, and the traditional tribal rights of the Bedouin were not recognized as ownership rights by the government. The government stand was that a country with the limited land resources of Israel could not tolerate extensive agriculture of the traditional Bedouin type. It also argued that proper education, health and social services could not be provided to a fairly small population spread out over a huge area. Government policy was therefore to settle the Bedouin in seven special settlements that were built on state land in the Negev. This policy has been rejected by some of the Bedouin who continue to demand recognition of their traditional land rights. The dispute with some of the Bedouin clans continues to this day.

73. The covenant was published in 5728 *Yalkut HaPirsumim* 1597.

74. The size of these bodies was subsequently increased but the principle of a majority of one for the government in the Lands Administration and for the JNF in the Land Development Authority was maintained: see *Report for 1987 Budget Year*, note 54 *supra*.

75. According to the Report of the Israel Lands Administration for 1962 the JNF owned 3,570,000 dunams out of a total land area of 20,255,000 dunams. If the JNF land holdings have increased only slightly since then the JNF owns 18% of the land in Israel and 19-20% of the Israel lands administered by the ILA.

76. In 1987 a petition was submitted to the Supreme Court in which an Arab real estate agent from Haifa challenged the legality of the restrictive policy. The petition was withdrawn after this "legal device" was used to transfer the land in question to the agent's clients.

77. See 27 *Divrei HaKnesset* 2955.

78. See Granott, note 5 *supra*, 111.

79. See Z. Tsur, "The Jewish National Fund's Heritage and the Formation of the Public Land System in Israel" in *Karka (Land), Collection of Essays on the Occasion of the JNF's 80th Anniversary* (Jerusalem: Land Research Institute, 1983), 59, 64. Of the 630,000 dunams of agricultural land held by private individuals 450,000 dunams are owned by Arabs.

80. See *Rural-Urban Land Use Equilibrium* (Tel Aviv: Ministry of Agriculture, Rural Planning and Development Authority, 1979) 43.

81. See Granott, note 5 *supra*, 253.

82. According to figures for the year 1976, of a total of 4,180,000 dunams of agricultural land 2,775,000 dunams were in the hands of collective and co-operative institutions. Almost 99% of this land was public land of one sort or another: *Rural-Urban Land Use Equilibrium*, note 80 *supra*. Of the public land leased for agricultural use, 77% was leased to collective and co-operative institutions.

83. According to biblical sources every family in Israel was entitled to a plot of land that would pass from father to first-born son for generations. This plot was called the *nakhala*, i.e., heritage or estate.

84. See Resolution 185 of the Israel Lands Council of January 17, 1977 in *Resolutions of Israel Lands Council* (Israel Bar Association), 31.

85. This general arrangement for non-*nakhala* leases does not apply to leasing of agricultural land to Bedouin in the Negev. A special committee was set up to

decide on such leases. The leases are non-*nakhala* leases for a short term (10 months for grazing and one year for crops): see Resolution 29 of the Israel Lands Council, *ibid.*, 173.