



Right to Property

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SUMMARY

The right of Palestinians to property, enshrined in international law, has been violated since the establishment of the Israeli state and continues to be transgressed through Israel's policies today. Palestinians in the occupied territories (OPT), those inside Israel, and refugee communities are all affected by a range of measures. Violations of the right to property are both illustrative and symptomatic of fundamental legal inequalities that are designed to engineer the demography of the land by erasing Palestinian property and ownership.

RIGHT TO PROPERTY IN INTERNATIONAL LAW

The right to property is enshrined in the Universal Declaration of Human Rights (UDHR), which states that 'everyone has the right to own property alone as well as in association with others' and 'no one shall be arbitrarily deprived of his property.'¹ In human rights literature and treatises there is a fundamental recognition of a right to peaceful possession of private property. Further, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) clearly states that everyone has the right to equality before the law without distinction as to race, colour and national or ethnic origin, including the 'right to own property alone as well as in association with others' and 'the right to inherit.'² Other provisions in international law reinforce this

1. <http://www.un.org/en/universal-declaration-human-rights/>

2. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>

principle, including Article 46 of Convention (IV) respecting the Laws and Customs of War on Land: Regulations (The Hague 1907)³ and Article 53 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949).⁴

When assessing the discrimination faced by Palestinians, the right to property, and perhaps more specifically the right to peaceful possession of property, is in clear violation. It should be viewed within the broader context of legal inequality and as a component of the underlying structure of legal discrimination and displacement that Palestinians face. This is an issue affecting all segments of the Palestinian population: those inside the occupied Palestinian territories (OPT), Palestinian citizens of Israel and refugees.

CONTEXT AND HISTORY

The political and ideological forces behind the establishment of Israel and the dynamics that went into its creation, made, and to this day continue to make, property inequality and dispossession inevitable. In order for Israel to maintain its self-proclaimed character as a 'Jewish state', destroying and dispossessing Palestinian property was and continues to be a clear and effective strategy. The year leading up to Israel's declaration of independence in 1948 and the decades following it produced a sequence of laws and amendments formalising Israel's commitment to total

3. <https://www.icrc.org/applic/ihl/ihl.nsf/0/1d1726425f6955aec125641e0038bfd6>

4. <https://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6756482d-86146898c125641e004aa3c5?OpenDocument>



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ownership of the land, to ensure a demographic make-up that would, in terms used by the Israeli state itself, preserve its 'Jewish character'. Land, property and demography are thus tightly interwoven at the core of Israeli policy.⁵

Israeli law has been fundamental to the seizure of land and property from the Palestinian people ever since the Israeli state

was established. Israel's property laws are strongly linked to its citizenship and nationality laws, together allowing it to establish and maintain control of Palestinian land whilst simultaneously classifying and reclassifying

Palestinians to reinforce its own discriminatory system. These two sets of laws effectively reinforce each other to underpin a single legal apparatus.

When looking through the laws, they appear complex and at times disjointed, however there is a broad historical trajectory that can be discerned, which helps to reveal the political and ideological motivations behind Israel's legal system, and its ultimate goals:⁶

- + The first step was Israel's confiscation of land belonging to

5. Terry Rempel and Paul Prettitore, 'Restitution and Compensation for Palestinian Refugees and Displaced Persons', in Susan M. Akram, Michael Dumper, Michael Lynk and Iain Scobbie (eds.), *International Law and the Israeli-Palestinian Conflict: A Rights-Based Approach to Middle East Peace* (New York: Routledge, 2011), p. 87

6. <https://smpalestine.com/2015/04/02/how-israeli-law-turned-palestinians-into-infiltrators/>

Palestinians who were forced to flee the violence in 1948.

- + Then, Israel annexed land for military and development purposes, and to validate this, enacted laws that nullified or retroactively voided Palestinian ownership (even with proof of said ownership).
- + Hundreds of thousands of Palestinians were concurrently classed as 'present-absentees', which effectively stripped them of whatever land rights they had at that point. Palestinians bearing deeds who attempted to return to their properties were labelled as 'infiltrators' and were treated as enemies of the state.
- + Taken together, in just under two decades the Israeli state designed a highly effective legal system that enabled it to expel Palestinians, prevent their return, and appropriate their land and property.

As is clear from the above processes, the Israeli state has developed a comprehensive legal system over time which effects the right to property of all Palestinians, bringing together issues of land, nationality, citizenship and security. What is clear is that property laws, together with historical Israeli practices associated with them, have played a key role in actually developing and consolidating the state, its demographic vision and its hold over various territories. Importantly, particular historical moments, such as 1948, the mass expulsion of Palestinians and the refugee crisis that followed, opened up opportunities for



these property laws to actually take effect and shape the future of the Palestinians. Crucially, these laws effect Palestinians in the occupied territories, inside Israel and refugees. Below is just a selection of some of the property laws that form the bedrock to Israel's establishment and subsequent development, and the systematic denial of rights and access to property faced by Palestinians (and indeed, the key point is that the two go hand-in-hand). Unless stated otherwise, the majority of the information below comes from BADIL Resource Centre.⁷

ABANDONED PROPERTY ORDINANCE, 1948

This was the first major land regulation law passed after the establishment of Israel, passing over "abandoned" land and property to the Israeli government despite evidence of Palestinian ownership. Crucially, this law targeted Palestinians who pre-emptively left their homes in 1948, based on the assumption that they had left their land outright and had no intention of returning.

THE AREA OF JURISDICTION AND POWERS ORDINANCE, 1948

This law validated the annexation of land appropriated by the Israeli military. It retroactively authorised the confiscation of land

by paramilitary groups prior to the previous law and even prior to the establishment of the State of Israel, allowing the state to obtain land as it was actively appropriated. In this instance, therefore, to a significant extent the law came after practice, and sought to legitimise it after the fact.

ABANDONED AREAS ORDINANCE, 1948

This law, much like the initial Property Ordinance, validated the confiscation of land the government considered to be abandoned. Specifically, land that had not been directly appropriated by Israeli forces but that was still "left" by Palestinian villagers was considered fair for confiscation. Again, this assumed that those Palestinians had no intention of returning to their property. There was no evidence for this – even coming back with proof of ownership, Palestinians were finding it impossible to return to their homes.

ARTICLE 125 OF THE DEFENCE (EMERGENCY) REGULATIONS, 1948

This law established a set of regulations that effectively prohibited Palestinian land owners from physically accessing their land. It empowered the Military Governor of a region to declare any portion of land under his jurisdiction "closed," such that entry to it and exit from it could be undertaken only with a written permit from the Governor or his representative.⁸ This enabled and accelerated Israeli land confiscation. By preventing Palestinians

7. http://www.badil.org/phocadownload/Badil_docs/bulletins-and-briefs/bulletinno.26.pdf

8. http://repository.uchastings.edu/cgi/viewcontent.cgi?article=1040&context=faculty_scholarship



from accessing their lands, Israel gave itself the legal grounds to reclassify the land as 'abandoned'. Therefore, this law worked in close conjunction with the laws stated above, giving Israel the legal validity it needed to annex the land. Israel essentially engineered the situation of abandonment which it sought and required for subsequent laws to take effect and permit land confiscation.

ABSENTEES' PROPERTY LAW, 1950

This is a major law which formally defined Palestinians who had been away from their homes for any reason after the partition of Palestine as an 'absentee'. The law is extensive, and one of the most significant on the issue of land and property. Its primary objective is to include as many Palestinians as possible under

the category of 'absentee'.

The Absentee Property Law introduced in 1950 was a means for the Israeli government to further reduce the number of Arab inhabitants left in the newly created state of Israel. It allowed the "Custodian of Enemy Property" (later to be called "Custodian of Absentees'

Property") to appropriate the land and property of anyone considered an absentee. An absentee was an individual who had left their residence and property either for territory outside of Palestine or any territory occupied by Arab military forces (even if within Palestine) between November 29, 1947, and September

1, 1948. Consequently, all absentees' property was subject to appropriation by the government. Through this law alone, evidence suggests that the Israeli state was able to acquire at least two million dunams (approximately 500,000 acres).⁹

As the handful of laws described here illustrate, laws relating to land and property instituted by Israel have formed a matrix of displacement and exclusion. Although enacted many years ago, they have gone hand-in-hand with the Israeli state's consolidation since.

CONFISCATION OF PALESTINIAN LAND TODAY

Palestinian loss of land and property is still very much an ongoing process. The story of the village of Susiya, in the South Hebron Hills, illustrates this starkly. The village and its people have been fighting a 20-year long battle for survival. During this time, Israeli authorities have attempted to justify its destruction using a range of reasons, from security, to illegality, to archaeological excavation. In 2016 the battle entered a new phase as it was earmarked for demolition by an Israeli official in July, provoking unanimous condemnation from the international community, including the EU and the US. In November 2017, the Israeli state attorney's office announced a demolition order on the village.¹⁰ Over the years, different parts of the village have been demolished, rebuilt by locals, and demolished again.

9. <https://apps.cndls.georgetown.edu/projects/palestinian-culture-and-society/items/show/40>

10. <http://www.independent.co.uk/news/world/middle-east/israel-palestine-west-bank-demolition-war-crime-susiya-settlements-children-homeless-winter-susya-a8091711.html>

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For press coverage and details, see The Guardian and the BBC.¹¹

BILL ON THE ARRANGEMENT OF BEDOUIN SETTLEMENT IN THE NEGEV

Also known as the Praver-Begin Plan, this bill was framed as a five-year 'economic development' plan approved by the Israeli government in September 2011, effectively approving the eviction of 30,000-70,000 Bedouin citizens located in the southern Negev desert (al-Naqab), who live in what the bill describes as 'unrecognised' villages, and their forced relocation to government townships known to have high poverty rates and poor infrastructure. The purpose of the plan, according to

Yaron Ben Ezra, the director of the settlement division of the World Zionist Organization (WZO) was "to prevent the continued invasion of state lands by the Bedouin and to prevent the creation of Bedouin or Arab [territorial] contiguity," through the replacement of these Bedouin

villages with Jewish communities. Many of these communities and their properties, it should be noted, pre-date the creation of Israel in 1948 and the residents have legal titles to the land going back to British Mandate and also Ottoman eras. It is

the system of Israeli laws regarding land and property that is designed to render this historical ownership void, enabling mass dispossession.

Despite the plan reportedly being shelved in December 2013, on the ground evictions and demolitions have continued to take place on an arbitrary basis.¹² The village of Umm al-Hiran, home to around 1,000 Bedouins, is a case in point. In 2003, the Israeli state classified them as "trespassers", sparking a legal battle. In 2015, the high court declared that the residents were not, in fact, trespassers, but still had no legal ownership of the land.¹³ Israeli authorities regularly carry out demolition orders based on the claim that residents do not have building permits, and Israeli actions, including the constant threat of razing the entire village, have even led to the killing of one resident.¹⁴ Activists and locals believe Umm al-Hiran for the Israeli authorities is effectively a prelude to a larger project to replace the Praver Plan and thereby continue with the large-scale demolition of Bedouin villages.

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11. <http://www.theguardian.com/world/2015/jul/21/israel-demolition-palestinian-village-khirkhet-susi-ya-eu-protest>; <http://www.bbc.co.uk/news/world-middle-east-33651356>

12. <http://www.haaretz.com/israel-news/1.563200>

13. <http://www.aljazeera.com/indepth/features/2017/08/village-demolition-based-israel-racist-plan-170820152548100.html>

14. <http://www.aljazeera.com/indepth/features/2017/01/umm-al-hiran-continuing-nakba-170122085822718.html>