

LAND AND LAND USE PLANNING

1982

1. Much attention has been paid to Israel's taking of lands in the West Bank, whether through confiscation, closure, declaration of areas as state domain, or other methods. Figures and estimates vary from 27% to 64% (Sahliyeh, JPS, Winter 1982, p. 64) of the total area of the West Bank (5.8 million dunams). The methods used by Israel to acquire land have also been the focus of many studies and legal analyses. It is customary to define "land under direct Israeli possession" as all areas which fall under one of the following definitions:

A. Absentee property

Land and other property owned by citizens of the West Bank who left the area in 1967. The land is administrated by the Custodian of Abandoned Property. The Custodian has leased large areas to agricultural settlements in the Jordan Valley.

B. Registered state domain

Areas registered in the name of the Treasury of the Jordanian government or in the name of the Jordanian King. The status of the Military Government in these areas is that of a temporary administrator for the duration of the military occupation. However, the Military Government treats these lands as Israeli state domain and leases it to settlers, including for "Build Your Own Home" schemes, i.e., for very long-term leases (49 years, renewable).

C. Lands requisitioned for military purposes

Privately owned land, seized by the Military Government under an order proclaiming that the area is needed for "vital and immediate military requirements." It remains theoretically under private ownership, and all the Military Government offers for the requisition

is payment for the "use" of the land. In fact, many settlements have been built on these lands.

D. Lands closed for military purposes

Areas closed by the Military Government for use as training grounds, firing ranges, "security" zones, etc. In some cases, the military allows cultivation when the area is not used by it. "Closed" lands tend to become "requisitioned lands" (for example Kiryat Arba land acquisition).

E. Jewish lands

Lands owned by Jews prior to 1948 and administrated by the Jordanian Custodian of Enemy Property.

F. Lands purchased by Jewish bodies

Until 1979, only public Jewish companies who obtained permission from the Military Government were allowed to buy land in the West Bank. Most of the lands were purchased by an affiliate of the Jewish National Fund. Since 1979 the Military Government has allowed individual Israelis to acquire land in the West Bank.

G. Land expropriated for public purposes

Areas expropriated according to the Jordanian Expropriation of Property Law of 1953. The law was amended by the Military Government to facilitate the expropriation process. However, it is limited to local civilian needs, such as roads. The Military Government used the expropriation law for acquiring land for roads, including arterial roads and access roads to Israeli settlements. The justification for this has been that the Israeli High Court of Justice (1972) recognizes Israeli settlers as part of the population of the West Bank.

The total area thus seized amounts to approximately 1.5 million dunams. However, all

these calculations and classifications seem outdated. In 1979 the Israel government adopted a new approach to land ownership which has enabled it to seize practically any land needed for unlimited Jewish settlement in the West Bank.

2. The new policy is based on the Turkish Land Code (Art. 103) which stipulates that "Vacant land, such as mountains, rocky places, stony fields . . . and grazing ground which is not in possession of anyone by title deed, nor assigned ab antiquo to the use of inhabitants of a town or village, and lies at such a distance from towns and villages from which a human voice cannot be heard at the nearest inhabited place is called mawat (dead) land, . . . anyone who is in need of such land can, with the leave of the official . . . cultivate it on the condition that the ultimate ownership shall belong to the Sultan" (quoted R. Shehadeh, JPS, Summer 1982, p. 87).

3. Already in 1967, Military Government Order No. 59 empowered the "Custodian of Government and Abandoned Property" to declare certain lands as state property. However, the procedures by which the Israel government acquired land in the West Bank have been for many years to requisition land "for security purposes" or to use areas declared as "absentee" properties. This of course in addition to outright seizure of all lands registered officially in the name of the Jordanian government.

In 1977, the Likud government, following its policy of "settlement in all parts of Eretz Israel," began to look for lands in heavily populated areas of the West Bank. Faced with lack of "suitable" lands in Military Government possession, it tried to secure space for new settlements by "requisitioning land for military purposes," a method liberally used by previous governments. However, the High Court, in an

unprecedented judgment, decided that the establishment of a civilian settlement (specifically Eilon Moreh) cannot justify the requisition. Ever since this verdict the government has refrained from using this method and private, registered land has not been taken for the establishment of settlements. However, expropriation of lands for access roads to settlements and major arterial roads--in some areas, strips 150 meters wide and many kilometers long--continued.

4. The method of securing land for Jewish settlement since then has been to claim all unregistered mawat (see above) lands as state property (as successors of the Sultan). It should be pointed out that only one-third of the West Bank lands are "settled" by definition, that is, rights over them are secured by entries in the Land Registry. Already in 1968 the Military Government published an order (No. 291), "halting temporarily" all land settlement proceedings. Using order 59, it became the practice to issue notices that "stony fields" and "rocky places" which are not registered in the land registry, because "land settlement" proceedings were not completed, are government property and the government intends to take possession of them. Order No. 59 requires the appellant to prove that the contested land belongs to him. Such evidence is hard to come by and usually not conclusive. The Arab inhabitants lose most cases. It should be pointed out that the Appeals Board, before which the Arabs may appeal such notices, is headed by a senior legal adviser of the Israel Land Authority--obviously an interested party. Large-scale maps, based on aerial photographs of rocky and stony mountains were drawn (see attached map), and a committee of land experts began to inspect these mawat lands. They issued notices according to the needs of the settling agencies. This procedure was sanctioned by a High Court judgment (1981) and is operating smoothly.



The urban and non-agricultural nature of the post-1977 settlements (see below) enables the government to make use of the "rocky mountains," and to claim that all Jewish settlements are built on state land.

5. The new policy is a direct continuation of the land policies of the Israel government vis-à-vis the Arab minority in Israel. Lustick (1980; 171) quotes an authority on Israeli land policies: "Under the Ottoman system . . . subject to over-riding needs such as afforestation, the lands surrounding a village were considered the patrimony of the local population and constituted a reserve for future development. Since 1948 the opposite attitude has prevailed. All land is national patrimony except that which the villagers can prove is theirs under the narrowest interpretation of the law." "National patrimony" has "consistently been taken to imply the Jewish population only."

The identical policy is being pursued in the West Bank. Considering the fact that two-thirds of the area is without "land settlement" and that 55% of the total West Bank area is classified as "pasture" and "uncultivable" (see above), it is clear that by 1982 there could be no more limitations on the availability of land in the West Bank for Jewish settlements. The exact amount of land is irrelevant. New Jewish towns are being built intensively (see below) and a relatively small area can accommodate tens of thousands of settlers.

6. Possession of land is a major weapon in the battle over control of space in the West Bank (see below). The complementing weapon is the control of land use through administrative and legal means.

The Military Government was aware of the enormous political importance of land use planning and licensing. Accordingly, it amended the existing Jordanian Town and

Village Planning Law (1966). The Military Government restricted Arab planning and licensing power to the area of the Arab municipalities proper, abolished the independent planning powers of the village councils; abolished the district planning commissions and vested all planning powers in the Higher Planning Council, a body composed of Israeli officials only. It further enabled the higher council to assume all powers of any lower commission and to exempt any person from the need to obtain a planning license. Involvement of West Bank inhabitants in the land use planning process is therefore limited to local licensing in Arab municipalities. Military Order No. 393 (1970) empowers the Military Government "to prohibit or halt construction of buildings or impose conditions." This order has been used frequently to restrict or cancel legal building licenses issued by the local (Arab) planning commissions. Until 1977, the main efforts of the Military Government in controlling land use planning was to safeguard Israeli interests in specific areas, such as military installations, roads and settlement regions (Jordan Valley, Etzion bloc). There was little effort to restrict Arab building and curb Arab spatial sprawl outside the built-up areas. As a result, extensive Arab residential housing developed, especially in the Jerusalem metropolitan area, and along arterial roads ("ribbon development").

7. With the creation of the Jewish regional councils (see below) their area of jurisdiction was declared "special planning regions." The Jewish councils became "special planning commissions" with powers equal to those of the Arab municipalities. A special district commission was created for the approval of Jewish plans. Yet even at this stage the main Military Government interest remained in spot planning. Land use considerations were limited to Jewish settlement (on Jewish planning, see below).

8. At the end of 1979 a new policy was adopted: Instead of limiting land use planning to Jewish settlements and regions and thus leaving open space for Arab sprawl, the opposite would be true: Arab development would be limited by restricting land use to existing built-up areas and imposing severe land use restrictions on all Arab-owned land outside nuclear towns and villages, leaving open space to the control of the Israelis. The first legal planning document to be drawn according to the new policy is a new outline scheme for a 275,000-dunam area bordering on Jerusalem (see attached map). This plan was submitted on October 28, 1981 and objections are waiting to be heard.

The principles of the Jerusalem region outline scheme are simple:

A. To check future expansion of Arab towns and villages. The planners assumed double the present population of the Arab towns and villages, at existing housing densities. Hence, they doubled the planned built-up area of Arab settlements, but clearly demarcated their maximum expansion. The open space was defined either as "special areas" (i.e., areas already seized or planned to be declared state lands, for Jewish settlements), or as agricultural lands, nature reserves or areas for future planning.

B. Knowing that Arab housing tends to follow new arterial roads in a "ribbon development" pattern, the planners fixed extremely wide building lines on either side of the main roads, i.e., 100 and 150 meters, to prevent Arab urban development along the roads and to dissect existing Arab areas.

9. Other outline schemes are being prepared for "sensitive areas" (i.e., areas in which the Israelis have an interest). The combination of land acquisition, closure of

JERUSALEM AREA MAP



- Plan border
- - - Armistice line, 1949-1967
- Existing and planned Jewish neighborhoods
- Arab towns and villages

- Agricultural areas (includes nature reserve; leisure and tourist areas)
- Authorized roads
- Proposed roads



areas for military purposes and land use planning, roads and infrastructure development, has already ensured complete Israeli control over space in the West Bank.