

Israel's Continued Land Confiscation in Jerusalem: The Application of Israel's Absentee Property Law

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"The property of these people was always considered absentee property, but as long as there was no fence these people could access their property and from their point of view everything was all right. The fence is starting to enforce all kinds of laws, such as the Absentee Property Law or the Entry into Israel Law, according to which residents of the territories are not allowed to enter Jerusalem." – Unnamed Israeli judicial source¹

Background

Israel's Absentee Property Law

The Israeli cabinet recently confirmed that it adopted a resolution passed enforcing the application of Israel's Absentee Property Law to properties held in Occupied East Jerusalem².

The Absentee Property Law was enacted in 1950 in an attempt to legalize Israel's control over Palestinian land in what became Israel. The Law gives the Israeli Custodian of Absentee Property the "right" to seize, administer and control land owned by persons defined as "absentee". "Absentee" is defined as any Palestinian who, between 29 November 1947 and 18 May 1948, fled those parts of Palestine that became Israel (i.e. Palestinian refugees)³. The Palestinian lands seized under the Law following 1948 were eventually transferred from the Custodian to the Israeli Development Authority or the Jewish National Fund and made available for exclusive Jewish-only settlement. In other words, the Law "legalized" the confiscation of Palestinian property in what is now Israel, and turned that land to Jewish-only use, with little or no compensation paid to the original Palestinian landowners.

Israel's enforcement of the Law to Occupied East Jerusalem will now allow Israel to declare "abandoned" any Palestinian property in East Jerusalem whose owners reside in the West Bank, Gaza Strip or in any Arab country, thereby paving the way for its confiscation and development for exclusive Israeli use with no compensation paid to its Palestinian owners.

The enforcement of the Absentee Property Law is also in clear breach of the Road Map which states that the Government of Israel will not confiscate the property and houses of Palestinians.

Occupied East Jerusalem and the Absentee Property Law

After its occupation of East Jerusalem in 1967 Israel unilaterally expanded the municipal boundaries of East Jerusalem from six square kilometers to 70 square kilometers and extended the application of Israeli law into the newly expanded "municipal Jerusalem" area. The extension of Israeli law to East Jerusalem, along with the delineation of the expanded borders, were both declared illegal by UN Security Council Resolution 465.

Although the application of Israeli law to East Jerusalem in 1967 meant that the provisions of the Absentee Property Law were now in effect, the Israeli government from 1967 to 2004 continued to allow Palestinians residing in the West Bank and Gaza Strip to use and transfer ownership of their East Jerusalem property, as they had continued to do prior to 1967⁴. However, the Israeli government prohibited West Bank landowners from registering their land that fell within Israeli-defined municipal Jerusalem in the Israeli Land Registry (tabu). As a result, the land was left in a

legal vacuum.

Effects of the Application of Israel's Absentee Property Law to East Jerusalem

1. Confiscation of Thousands of Acres of Palestinian Land

The decision to now enforce the application of the Absentee Property Law comes, according to many analysts, as a result of the Wall constructed in Occupied Palestinian Territory. With the enforcement of the Absentee Property Law, Israel is now able to confiscate land situated west of the Wall by Palestinian West Bank residents with no compensation paid to its Palestinian owners.

The amount of land affected by the application of the Absentee Property Law is not known, since the Israeli government seized the records of all Palestinian landholdings in Jerusalem when it closed down the Orient House in August 2001. However the following data is available on land use in East Jerusalem:

- 43.5% of Palestinian land in East Jerusalem has already been confiscated and used for Israeli-only colony construction;
- 41% of Palestinian land in East Jerusalem has been declared a "green area" and is therefore subject to severe building restrictions by the Israeli government;
- Only 12.1% of East Jerusalem is permitted for Palestinian use – more than half of this land (6% of the total land of East Jerusalem) is owned by "absentees" and may therefore be confiscated under the new law; and
- 3.4% of East Jerusalem land is used for Israeli military facilities, roads and other infrastructure.

In relation to the "green area" lands, the Israeli government manipulates an old Ottoman law which provides that land that has not been cultivated for three years may be confiscated by the state and declared "state land". With the current Israeli restrictions on Palestinian movement and the construction of the Wall, Palestinian farmers face extreme difficulty accessing their land. As a result, all of this "green area" land is therefore under threat of confiscation, not just the amount owned by "absentee" landlords. Palestinians may therefore use as little as 7% of East Jerusalem following the introduction of this latest measure.

2. Economic Devastation

Since October 2001 Israel has prevented West Bank Palestinians from working in Jerusalem. Palestinians previously employed in the services industries have therefore reverted to farming their land as an alternative livelihood. The economy of the West Bank has been shattered since 2001 and there is no alternative work. The confiscation of the land which Palestinians farm is therefore the removal of the last means available for Palestinians to provide for themselves, without aid.

The medium to long term consequences of this Israeli action are relatively foreseeable. This land which is currently being used for subsistence living by the local Palestinian population is also the land bank for natural growth for the future. Without adequate land resources population densities will rise dramatically, as in the Gaza Strip, and without jobs and facilities this in turn will inevitably lead to increased poverty and social and economic instability.

3. Greater Israeli Colony Expansion and Wall Construction

Israel's enforcement of the Absentee Property Law is part of a broader Israeli government plan to annex the historic sites and green field land of East Jerusalem to Israel, while leaving the Palestinian residential areas on the other side of the Wall. This must also be viewed in the broader context of all of other Israeli measures to impose a final status outcome on Jerusalem ahead of a negotiated solution including the construction and expansion of Israeli-only

colonies, the construction of Israeli-only roads through and around East Jerusalem and the attempt to completely sever the economic and social ties between East Jerusalem the rest of the West Bank.

4. Ongoing Colony Expansion

The enforcement of the Absentee Property Law for the confiscation of thousands of dunums coincides with the Israeli government's plans for the expansion of Israeli-only colony blocs to the south of Jerusalem to link them more directly to West Jerusalem. On the land slated for confiscation two new Israeli-only colonies are planned around the Palestinian villages of Walaja and Khirbet Mazmoriya (to the east of Har Homa). The confiscated land will also facilitate the expansion of the Israeli-only colonies of Gilo and Har Homa. Together all of these colonies will extend Israeli control of the roads and territory leading further south to the Etzion colony bloc. The colony expansion has three practical effects:

1. To reinforce Israeli control over Palestinian areas in south west Jerusalem;
2. To prevent the natural growth of Palestinian East Jerusalem down to Bethlehem and;
3. To attempt to integrate the Etzion colony bloc with West Jerusalem.

5. Ongoing Wall Construction

Despite Israeli assertions to the contrary, the Wall has emerged as a permanent political border rather than a temporary security measure. West Bank Palestinians who own land in Israeli-defined municipal Jerusalem have already seen their land confiscated by the Israeli government with no compensation paid. For example, the Cliff Hotel, situated in Occupied East Jerusalem, arbitrarily falls within Israeli's self-declared "municipal area." The owner, a Palestinian from Abu Dis, was recently informed that the Israeli government had declared him an "absentee" and his property, worth more than \$3 million USD has been confiscated by the Israeli Custodian⁵. The Wall was the catalyst for this seizure: with the construction of the Wall, Israel has now solidified its hold on its unilaterally-expanded "municipal Jerusalem" and seized thousands of acres of land. These land seizures demonstrate that the Wall is a political border and that the Israeli government has no intention of ever returning Palestinian land isolated by the Wall – as is the case with the land belonging to the Palestinian refugees from Israel.

Action Required

The Israeli government's decision to enforce the Absentee Property Law to East Jerusalem is a violation of the Hague Regulations and the Fourth Geneva Convention. The application of the Israel's Absentee Property Law will result in the extensive appropriation of property in occupied territory, not justified by military necessity. Under article 147 of the Fourth Geneva Convention such appropriation is a grave breach of the Convention. Persons who order or commit grave breaches are subject to penal sanction under international law. Accordingly, all State Parties to the Convention must protest this decision to the Israeli government as being inconsistent with international law.

In addition, in its 9 July 2004 advisory opinion, the International Court of Justice called upon Israel to immediately halt the construction of the Wall: *"All legislative and regulatory acts adopted with a view to [the Wall's] construction, and to the establishment of its associated régime, must forthwith be repealed or rendered ineffective⁶"*. It further called upon all State parties to ensure compliance by Israel with international humanitarian law as embodied in the Geneva Convention⁷.

The international community must now act to ensure that Israel's violations of international law do not continue. Only respect for international law will ensure that a fair, negotiated settlement to the Israeli-Palestinian law is achieved; ignoring the law will only ensure that the conflict continues.

- 1. Quoted by Meron Rapport, "Land Lords", Ha'aretz Magazine, 21 January 2005 at 10.

- 2. The decision was secretly taken on 8 July 2004 but only revealed on 20 January 2005 in an Israeli newspaper. The resolution was taken with the concurrence of the Israeli Attorney-General and the Prime Minister. *Id.* at 8.
- 3. The Law also applies to Palestinian citizens of Israel who fled their homes for other parts of historic Palestine even for a temporary period of time.
- 4. In 1968, Meir Shamgar, the Israeli Attorney-General issued a directive stating that residents of the West Bank could claim their immovable property in Jerusalem at any time. In 1993, Israeli Prime Minister Yitzhak Rabin reissued this directive.
- 5. *Supra* note 1.
- 6. “*Legal consequences of the construction of the Wall in the Occupied Palestinian Territory*”, Advisory Opinion of the International Court of Justice, 9 July 2004, paragraph 151, page 54.
- 7. *Id.*, paragraph 159, page 56.