



The Middle East Quarterly

December 1997

Can Arabs Buy Land in Israel?

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<http://www.meforum.org/370/can-arabs-buy-land-in-israel>

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The Palestinian Authority's justice minister, Freih Abu Meddein, announced in early May 1997 that Palestinians who sell land to Jews will face the death penalty¹ and over the next few weeks, at least four Palestinians said to have been involved in such sales were in fact murdered.² In addition, Israeli forces rescued a fifth land dealer as he was being spirited from his home near Jerusalem to Ramallah, presumably to be killed.³ Evidence, both circumstantial and otherwise, pointed to direct PA involvement in each of these murders; indeed, Yasir Arafat himself justified the executions:

Israel has always confiscated land from Arabs and dispossessed them of their property. The land always goes from Arabs to the Jews. Can a Palestinian resident of Nablus or Hebron buy land in Israel? Therefore, what should we call those from our nation who serve Israel's policy of stripping property? We are talking about a few traitors and we will apply what has been determined by law against them.⁴

Although the PA's actions raise a multitude of questions about its intentions to fulfill its obligations to Israel and its readiness to live peaceably next to Israel, we focus here on the specifics of Arafat's justification of brutal PA behavior. Is he correct that Israel's land policies discriminate against Arabs? Is it true, as he claims, that Palestinians from Nablus or Hebron cannot buy land in Israel. Conversely, can an Israeli buy land in Jordan or in PA-controlled territory?

A DISCRIMINATORY POLICY?

Palestinian leaders are hardly alone in claiming that the land "always goes from Arabs to the Jews." Many journalists and commentators have found Israel's policies to be discriminatory. These, they variously charged, bar non-Jews from leasing, or buying, or even accessing, most or all of the land in Israel.

The original formulation of this argument would seem to be by Walter Lehn, a professor of linguistics then at the University of Minnesota, who contended in a 1974 article in the *Journal of Palestine Studies* that

the [Israeli] state under colour of law effectively prevents any non-Jew from leasing or holding any rights ... to 90 percent of the land in Israel.⁵

Lehn's argument found a willing audience, and has been widely repeated by academics writing both for professional and lay readers. For example, Zachary Lockman, then a Harvard history professor, contended in a 1988 letter to The New York Times that

some 92 percent of Israel's land area is administered in accordance with ... [regulations which] prohibit these lands from being purchased, leased or worked by Arab citizens of Israel.⁶

More recently, speaking on National Public Radio's All Things Considered, William Quandt of the University of Virginia charged that

Israel was established as a state for Jews. It has of course an Arab minority who have citizenship rights, but the specific way in which land is owned in Israel is predominantly that the Jewish Agency purchases land on behalf of the Jewish people and then leases it out to its Jewish citizens.

Arabs cannot have access to that land that's owned by the Jewish Agency. They can keep land they have privately owned before the State of Israel was created. There's a small amount of private property that can be traded and Arabs can buy that as well as Jews, but most land is held in trust for the Jewish people, so yes there is a legal basis for what we would flat out call discriminatory practices.⁷

Rashid Khalidi, director of the Center for International Studies at the University of Chicago and president of the American Committee on Jerusalem, repeats the same argument, saying that in Jerusalem

non-Jews are barred by law from purchasing or leasing most properties (Jewish National Fund property, "state land," and land under control of the Custodian of "Absentee" Property—i.e., stolen Arab land).⁸

Journalists picked this argument up from academics. The Washington Post's Barton Gellman reported that because

the Zionists devised formal and informal mechanisms to prevent Arabs from acquiring Jewish land that persist today ... [the Palestinian death—penalty law] is not without parallels, penalty aside, in Israel.⁹

Commentators such as New York Times columnist Anthony Lewis took up these same ideas:

In Israel today most land is still held in trust by an agency devoted to furthering the Jewish homeland. As a practical matter, land used by Israeli Jews for home or business or farm is hardly ever sold to Arabs. So the idea of Palestinians wanting to keep what land they have is not unusual.¹⁰

While often repeated, these assertions are based on misconception, error and outright invention. In fact, most of the land in Israel is government-owned, and it is equally available to all Israelis, whether Jewish or Arab.

LAND LAW IN ISRAEL

The present landholding system in Israel can be traced back to the events of nearly a century ago, when the Fifth Zionist Congress meeting in 1901 created a private charitable organization called the Jewish National Fund (JNF) with the intent to purchase land for the resettlement of Jews in their ancient homeland. By the eve of statehood, the JNF had acquired a total of 936,000 dunums of land; another 800,000 dunums had been acquired by other Jewish organizations or individuals.¹¹ These holdings amounted to some 8.6 percent of the total land of what would later be Israel; of the rest, more than 70

percent were public lands vested in the British Mandatory authorities.¹² All the lands purchased by the JNF remained in JNF hands; these were never sold, either to Jews or Arabs, but instead were leased on a long—term basis for kibbutzim and other forms of Jewish settlement.

With the establishment of the State of Israel in 1948, the new government inherited the state-owned lands formerly in the possession of British Mandatory authority as well as property abandoned by Arab refugees. The government sold some of this land to the JNF, and retained the rest. In 1960, the Israeli parliament passed a series of land laws including the "Basic Law: Israel Lands" that defined government-owned and JNF-owned land both as "Israel lands." It reiterated the principle that these lands would only be leased, not sold. While the JNF retained ownership of its lands, the 1960 laws turned administrative responsibility for these (as well as government-owned) properties to a newly-created agency, the Israel Land Administration (ILA).¹³

The land-owning situation in Israel today is as follows: 80.4 percent is owned by the government, 13.1 percent is privately owned by the JNF, and 6.5 percent is evenly divided between private Arab and Jewish owners. Thus, the ILA administers 93.5 percent of the land in Israel.¹⁴ Put differently, 93.5 percent of the land is unavailable for private ownership; such land is sold neither to Jews nor to Arabs but is leased out by the ILA. Thus, while it is true that Israeli law prevents the sale of state—owned land to Israeli Arabs, this alone is extremely misleading, for it is equally unavailable for sale to Jewish citizens of Israel.

ARAB ACCESS TO LAND IN ISRAEL

This then raises the question, how do the Israeli Arabs fare in terms of land? Here we must distinguish between government, JNF, and private lands.

State-owned lands. Israeli Arabs have equal access to state-owned land—four-fifths of the entire country—both in theory and in practice. Indeed, about half of the land they cultivate is directly leased to them by the Israeli government through the ILA.¹⁵

Moreover, when it comes to residential land, the ILA sometimes offers Israeli Arabs more favorable terms from than it does to Israeli Jews. Thus, the ILA charged the equivalent of \$24,000 for a capital lease on a quarter of an acre in new Jewish communities near Beersheva while Bedouin families in the nearby community of Rahat paid only \$150 for the same amount of land.¹⁶ In a different case, when a Jewish policeman from Beersheva, Eleizer Avitan, applied to the ILA to lease land in a Bedouin community under the same highly subsidized terms available to the Bedouins, the ILA refused to lease him land there under any terms, so he sued. Israel's Supreme Court ruled in favor of the ILA, saying that what might be viewed as ILA discrimination against the Jewish citizen Avitan was justified as affirmative action for Bedouin citizens.¹⁷

JNF lands. The purpose of the JNF, according to both its original charter and its 1953 Israeli charter is to purchase land for the settlement of Jews, and this has been interpreted to mean that JNF land should not be leased, at least on a long-term basis, to non-Jews.¹⁸ There are, thus, formal restrictions on the lease of JNF land to Arabs. That JNF lands are now administered by a government agency does not change this restriction, for JNF land is privately owned and to lease it on exactly equal terms to Jewish and Arab Israelis would violate the 1960 agreement that placed JNF lands under government administration.

So much for official restrictions. In practice, JNF land is leased to Arab citizens of Israel, for both short- and long-term use. Thus, the ILA has leased on a yearly basis JNF-owned land in the Besor Valley (Wadi Shallala), near Kibbutz Re'em, to Bedouins for use as pasture.¹⁹ Arab citizens have also leased JNF-owned land for housing purposes via a legal device that evades the restrictions against precisely such

long-term use: The land in question is traded to the government so that it can be leased out and the JNF receives other land in return.²⁰ Such swaps have sometimes taken place under threat of court action.

Private lands. There are no restrictions on the purchase of private land in Israel. Israeli Arabs or non-citizens, including Arab foreigners, may freely purchase it. The Israeli authorities have placed no obstacles in the way of such purchases, which are proceeding, as Israel's Deputy Housing Minister Meir Porush recently noted:

The Palestinian Authority is encouraging purchases of land in Israeli territory by wealthy Palestinians. It is a matter of Palestinian figures tied to the real estate business, and living mainly in London, who try to purchase homes and lands in Jerusalem through agents and lawyers who live mainly in Ramallah.²¹

Clearly, many journalists reporting on Israel's land policies have uncritically accepted charges leveled by activists and Palestinian spokesmen. Typifying the problem was a New York Times article in which reporter Joel Greenberg made four major errors in one sentence:

In Israel, Palestinians cannot buy state land, which is 91 percent of the country's territory, and state land held by the Jewish National Fund cannot even be leased to Israeli Arabs.²²

In fact, state land amounts not to 91 percent of Israel's territory but to roughly 80 percent; neither Arabs nor Jews can buy state land; the Jewish National Fund holds no state land; and JNF land is leased, with some restrictions, to Israeli Arabs.

LAND LAW IN JORDAN

So much for Israel; what is the situation in its neighbors, Jordan and the Palestinian Authority? Under the direct instructions of King Husayn²³, the government of Jordan in 1973 passed the "Law for Preventing the Sale of Immovable Property to the Enemy."²⁴ The "enemy" is defined in Article 2 as "any man or judicial body [corporation] of Israeli citizenship living in Israel or acting on its behalf." Under Article 4 of this law any Jordanian citizen who sold land in Jordan or the West Bank to the "enemy" faced the death penalty and forfeiture of all his property to the state:

The sale of Immovable property against the provisions of this law constitutes a crime against state security and well being, punishable by death, and the confiscation of all the culprit's Immovable and moveable possessions.

In addition, Article 3 deemed the sale of land to any alien (i.e., a non-Arab) without permission from the Council of Ministers a security offense punishable by death.

According to PA Attorney General Khalid al-Qidra, Jordan had sentenced 172 people to death under this law.²⁵ Amnesty International reported that as of 1988 many of the convictions were in absentia and that there had been no executions.²⁶ However, PA Justice Minister Meddein claimed that Jordan had executed 10 violators.²⁷

Whatever its application, the Jordanian Parliament repealed the 1973 law in 1995, following the peace treaty between Israel and Jordan. Milder statutes adopted in its place still effectively bar Israelis from purchasing or leasing land in Jordan. The Law on Economic Boycott and Banning Dealing with the Enemy (Article 6) states that "it is impermissible for foreign persons or corporate entities that do not hold an Arab nationality to purchase, lease, or own directly or indirectly any immovable property in the kingdom."²⁸ The only exceptions require high level political authorization.

LAND LAW UNDER THE PALESTINIAN AUTHORITY

Enforcement of the old Jordanian law. The PA's justice minister, Meddein, has repeatedly stated his intention to enforce the 1973 Jordanian law.²⁹ It is doubtful, however, that this law has any legal standing in territories under control of the PA. The Oslo 2 Agreement of September 1995 specifically deals with regulations of this sort and renders them null and void in PA territories. Oslo 2 states that any legislation "inconsistent with the provisions of the DOP,"³⁰ [or] this Agreement ... shall have no effect and shall be void ab initio."³¹ Imposing the death penalty on Palestinians for selling land to Israelis clearly violates at least two provisions of Oslo 2.³²

The new Palestinian law. The Palestinian Legislative Council has passed the first reading of a draft law intended to supersede the 1973 Jordanian statute.³³ This new law reportedly bars sales to "occupiers" whom it defines as the "Israeli occupying government and its civil and military institutions, settlements and whomever is under their authority." It declares the sale of land in "Palestine" to such occupiers to be "high treason" punishable "according to the criminal law." And it states that foreign violators have "committed harm to the national security and will be punished according to the criminal law." The draft law is vague about punishment, but according to the Jordanian Penal Code, which is still in effect on the West Bank, the crime for treason is death.³⁴

According to PA legislators, the term "Palestine" in the law refers to all the territory of the Palestine Mandate, meaning all of Israel.³⁵ Under this proposed statute, then, an Israeli Arab who sells any land in Israel to an Israeli Jew would face the death penalty. Such extraterritorial threats receive added weight from the reported formation by the PA of a shadowy force known as "The Long Arm," whose task is to track down and execute Palestinians living anywhere in the world who have sold land to Israeli Jews.³⁶

It hardly needs pointing out that this new Palestinian law would, like the 1973 Jordanian law it replaces, directly violate the Oslo 2 Accords.

CONCLUSION

In sum, the Palestinian Authority has successfully managed to charge Israel with the very sins that it itself is guilty of. The most striking instances of this success, perhaps, are the many academics and journalists who repeat and reinforce Palestinian charges of Israeli discrimination with regard to land ownership. This climate of distortion has two consequences. First, it misleads politicians, diplomats, and others about the basic facts that underlie the Israeli-Palestinian negotiations. Second, it encourages Palestinians to harbor unreasonable hopes and make exorbitant demands. These twin problems reinforce each other, and thereby make a genuine peace that much more difficult to achieve.

This presents a particularly bad precedent for the negotiation of such final status issues as Jerusalem, water rights, and the drawing of borders. It is likely that these final status issues will also be subject to campaigns to portray Israel as an unprovoked aggressor and Palestinians and Arabs as blameless victims. Indeed, there are signs that this has already begun.³⁷

¹ Agence France Presse, May 5, 1997.

² Farid Bashiti (Reuters, May 10, 1997), Harbi Abu Sara (Associated Press, May 18, 1997), 'Ali Jamhur (Associated Press, May 31, 1997), and Hakam Qamhawi (Associated Press, June 15, 1997).

³ Jerusalem Post, June 2, 1997.

⁴ Yedi'ot Ahronot, May 21, 1997.

⁵ Walter Lehn, "The Jewish National Fund," *Journal of Palestine Studies*, vol. 3, no. 4 (1974), p. 88.

⁶ The New York Times, Apr. 26, 1988.

⁷ "All Things Considered," National Public Radio (NPR), March 8, 1997. After an extended correspondence with the author, Professor Quandt admitted his error and notified NPR. The network,

however, has not responded to inquiries concerning the matter, nor, apparently, has it aired a correction.

⁸ The Washington Post, Oct. 1, 1997.

⁹ The Washington Post, May 20, 1997.

¹⁰ The New York Times, May 16, 1997.

¹¹ Efraim Orni, *Land in Israel: History, Policy, Administration, Development* (Jerusalem, Jewish National Fund, 1981), p. 40; Abraham Granott, *Agrarian Reform and the Record of Israel* (London: Eyre and Spottiswoode, 1956), p. 28.

¹² Moshe Aumann, "Land Ownership in Palestine 1880 - 1948," in Michael Curtis, Joseph Neyer, Chaim Waxman, Allen Pollack eds., *The Palestinians: People, History, Politics* (New Brunswick, N.J.: Transaction Books, 1975), p. 29.

¹³ David Kretzmer, *The Legal Status of the Arabs in Israel* (Boulder, Colo.: Westview Press, 1990), pp. 60—61. Kretzmer notes that there are exceptions to the prohibition against sale or alienation of state-land: ownership, for example, can be transferred to Arabs, or their heirs in Israel, as compensation for land lost in 1948. According to the ILA, by the end of 1993 such compensation transfers totaled almost 55,000 dunums of land.

¹⁴ Government Press Office of Israel, May 22, 1997. Older sources (for example, Kretzmer, *Legal Status*, p. 75) place JNF holdings at up to 18 percent of the land in Israel.

¹⁵ *Rural-Urban Land Use Equilibrium* (Tel Aviv: Ministry of Agriculture, 1979) as cited by Kretzmer, *Legal Status*, p. 66.

¹⁶ Ezra Sohar, *Israel's Dilemma* (New York: Shapolsky Publishers, 1989); p. 97.

¹⁷ Israel Supreme Court, *Avitan v. Israel Land Administration*, HC 528/88.

¹⁸ Kretzmer, *Legal Status*, p. 62.

¹⁹ Aref Abu-Rabia, *The Negev Bedouin and Livestock Rearing: Social, Economic, and Political Aspects* (Oxford: Berg, 1994), pp. 28, 36, 38.

²⁰ Kretzmer, *Legal Status*, p. 64.

²¹ *Yedi'ot Ahronot*, Jan. 3, 1997.

²² The New York Times, May 16, 1997. Other inaccurate reports were filed by Dan Perry of the Associated Press, May 22, 1997; Hilary Appelman of the Associated Press, May 21, 1997; and David Ensor of ABC's World News Tonight, May 21, 1997. The Associated Press corrected Appelman's report on June 5.

²³ *Arab Report and Record* (London: Arab Report and Record), Apr. 16-30, 1973, p. 179; May 1-15, 1973, p. 204; July 16-31, 1973, p. 319.

²⁴ *Al-Jarida ar-Rasmiya* (Amman), #2429, 1973, p. 1223-1224.

²⁵ *Palestine Report*, June 6, 1997.

²⁶ *Jordan: Human Rights Protections After the State of Emergency* (New York: Amnesty International, 1990), pp. 53,55.

²⁷ The Los Angeles Times, June 1, 1997.

²⁸ *Al-Aswaq* (Amman), July 27, 1995, as translated by the Foreign Broadcast Information Service.

²⁹ Independent Media Review and Analysis (IMRA) interview, Dec. 23, 1996 and June 4, 1997; Agence France Presse, May 5, 1997; *Yedi'ot Ahranot*, May 20, 1997; *Ha'aretz*, May 28, 1997.

³⁰ Declaration of Principles, the agreement signed on the White House lawn in September 1993.

³¹ Oslo 2 Agreement (formally, the "Israeli-Palestinian Agreement on the West Bank and Gaza Strip"), Article XVIII.4.a.

³² Article XVI, paragraph 2 of Oslo 2 requires that Palestinians who have "maintained contact with the Israeli authorities" will not on this account be subject to "harassment, violence, retribution or prosecution." Article XIX requires that the Palestinian Council "shall exercise their powers and responsibilities pursuant to this agreement with due regard to internationally—accepted norms and principles of human rights and the rule of law."

³³ *Palestine Report*, Aug. 22, 1997.

³⁴ Amnesty International, Jordan: Human Rights Protections, 1990, p. 52.

³⁵ Agence France Presse, June 16, 1997.

³⁶ Al-'Arab al-Yawm, May 17, 1997, as translated in the British Broadcasting Corporation Summary of World Broadcasts.

³⁷ Walid M. Awad, Jerusalem, a City Crying out for Justice, available at the official Palestinian web site, <http://www.pna.org>; Sharif S. Elmusa, The Water Issue and the Palestinian-Israeli Conflict (Washington, D.C.: The Center for Policy Analysis on Palestine, 1993); Thomas R. Stauffer, Water and War in the Middle East: The Hydraulic Parameters of Conflict (Washington, D.C.: The Center for Policy Analysis on Palestine, 1996).