The Palestinians in Israel: Between the Hammer of Land Privatization and the Anvil of Land Nationalization

Jamil Dakwar, Adv.
Adalah– The Legal Center for the Arab Minority Rights in Israel

1. Soon after the declaration of independence of the State of Israel, an intensified process of land nationalization started. This process was intended to systematically transfer Arab lands to the possession and use of the Jewish majority, with the purpose of redesigning the geographical space and maintaining a demographic balance between the group of the Palestinian natives and the group of the Jewish immigrants.

2. In 1960, the Israel Land Administration law came into force. This law provided that the government would establish the Israel Land Administration (ILA), which would manage the lands of Israel. It was further provided that the land policy of the ILA is determined by Israel Land Council (clause 3 of the law). The lands of Israel are divided between three bodies and constitute about 93% of the state’s land, as follows: the state of Israel, which owns about 14.5 million dunams; the Development Authority, which owns about 2.5 million dunams; and the Jewish National Fund (JNF) that owns about 2.6 million dunams.

3. The Israel Land Administration law did not define the goals and the special purposes of the ILA. The Israel Land Council approved the principles of the ILA policy in decision No. 202 from March 3, 1978, where it determined that: “…The Israel Land Administration is the only body managing the lands of Israel in accordance with the land policy determined by the Council. According to the convention between the government of Israel and the JNF and according to the law, the ILA is the only body authorized to manage the lands of Israel. The Council’s policy is governed by the need to maintain the land as a national asset and the trend to appropriately distribute the population.”

4. In the judgment of Ka’adan (H.C.J 6698/95) delivered two years ago, it was provided that “the special purposes of the ILA are to retain the lands of Israel in the possession of the state and to concentrate the management and development of the lands in Israel in one statutory authority. This is done in order to prevent the transfer of possession in the land to undesirable parties, to exercise a security policy, and to allow the execution of national projects, such as absorption of immigrants, population distribution and agricultural settlement.”

5. Starting the beginning of the 1990’s, far-reaching changes took place in the structure of land possession, especially in the Jewish agricultural settlements. These changes occurred while the influx of Jewish immigration from the former
Soviet Union had just began. The absorption of over one million Jewish immigrants over the last decade caused an increasing housing shortage and a lack of available lands for construction. Moreover, it is not accidental that these changes in the land possession and classification happened when the Jewish farmers in the Kibbutzim and Moshavim were suffering from a serious economic situation. The changes took place relatively rapidly, unnoticeably, and even without a primary legislation in the Knesset, but through the decisions of the ILA Council, that 49% of its members are appointed by the JNF and is considered as the body supposed to meet the Zionist goals mentioned earlier, meaning to act in favor of the interests of the Jewish majority in the state.

6. The main decisions, which in part were taken while Ariel Sharon was the minister who was chairing the ILA council, were decisions 533, 611, 612, 666, 667, 717, 727, 737. According to these decisions, holders of agricultural lands in the Kibbutzim and Moshavim were given the option to change the purpose of their land and to receive a significant cut of the land with the new purpose. In addition, the implication of these decisions is benefits in amounts exceeding thousands of percents more than the compensation the Jewish farmers would have been entitled to according to the situation preceding these decisions.

7. At the end of the 1990’s, the Ronen Committee, established by the former Minister of Infrastructure Ariel Sharon, published its recommendations and was requested to discuss the issues relating to the privatization of the state’s lands and the improvement of the function of the ILA. It was asked to recommend a policy with regard to the lands of Israel. The committee only dealt with lands held by Jewish farmers and referred mainly to the decisions of the ILA Council. The Jewish Agriculture Lobby, known to have a great influence on the political life in Israel and has an unprecedented support of representatives of Zionist parties from the left and right wings (Labor, Meretz, Shas, Mafdal and Likud), rose against the recommendations of the Ronen Committee, not because they did not do well with the Jewish farmers, but because it viewed them as threatening the intention of Jewish farmers to take the majority of the land into their own possession.

8. Following the disappointment with the Ronen Committee’s recommendations, an intensive legislation process initiated by the Jewish agriculture lobby and interested real estate entrepreneurs began. This way the bill for anchoring farmer rights in the land was formed. This bill was intended to transfer the effective possession of the lands from the State to the hands of the Jewish farmers in the Kibbutzim and Moshavim. Clause 2 of the bill provides that holders of agricultural land shall have a perpetual lease right for 196 years divided into periods of 49 years each. In addition, the bill sets a generous compensation mechanism for farmers whose land shall undergo a process of change of purpose and release for construction. This bill has already passed the first phase of legislation in the Knesset.
9. Today, several petitions submitted by the Hakeshet Hademokratit Hamizravit (Oriental Democratic Spectrum), Association for Civil Rights in Israel (ACRI) and the Society for the Protection of Nature in Israel are pending before the Israeli Supreme Court. The petitions demand to cancel the ILA’s decisions with regard to the change of purpose of the agricultural land and with regard to compensation and other benefits given to agricultural land holders at the time of purpose change. These petitions request to maintain the status quo, which existed prior to the decisions of the ILA in relation to land privatization and the change of their purpose, meaning, a condition where the state together with the Development Authority and the JNF shall keep on holding the state lands and shall act according to the goals set by the ILA Council. The petitions of ACRI and the Hakeshet emphasize the importance of the civil equality principle in dividing state lands and actually refer to the Arab minority in the state as another deprived group, similarly to, the Jewish residents of development towns, which can also benefit from the implementation of the equality principle when dividing the state lands.

10. Obviously, the above mentioned bill that was presented in the Knesset, as well as the decisions of the ILA Council, in the matter of agricultural land privatization and the change of their status and classification, there is a set settlement of transferring rights of ownership in lands ‘owned’ by the State to whoever obtained these lands in the past as a lessee or permit holder. The problem is that because the land confiscation and allotment in the past was done in a discriminating and injustice manner, transferring the ownership right today to the hands of whoever benefited from the discriminating policy means perpetuating and deepening the injustice and discrimination policy towards the Palestinian minority in Israel.

11. However, as much as the issue of land privatization relates to the Palestinians, citizens of Israel, it cannot be tested and viewed only on the civil equality plane within the state. This issue should be examined and reviewed in the historic context and in light of the standards and norms of the international law, especially in light of the decisions of the UN in the matter of Palestinian refugees. Any settlement in relation to change of purpose or land privatization, which will lead to transfer of ownership rights in the land to Jewish farmers who obtained permission and right of use in the land in the past, will prevent the possibility of finding a solution to more than two hundred thousands of displaced Palestinians citizens of Israel, and the Palestinian refugees and their national historical rights in the lands they owned, and will also be in contradiction with the UN decisions in this matter. In other words, the ‘national’ privatization process of the lands in Israel might be more dangerous and more irreversible than the nationalization process that started fifty years ago.

12. The Palestinians in Israel have many good reasons to resist and object the existing privatization process beyond the principle position with regard to the violation of national and historic rights of the refugees and displaced Palestinians. The state of
Israel confiscated most lands owned or held by Palestinians prior to the establishment of the state of Israel. While the ILA allotted many lands to the Jewish settlements, there was no such allotment of lands to the Arab towns and villages and since the establishment of the state of Israel not even one Arab town has been established (apart from the imposed townships established for the Arab Bedouins in the Naqab).

13. As a result of the above, the Arab towns and villages in Israel suffer from serious problems of housing shortage, density, lack of public areas, and lack of land reserves for construction, environmental, and industrial development. The problem is even more serious in the unrecognized villages, and in order to solve their problem, there is a need for a significant allotment of lands owned by the state.

14. In order to deal with the land shortage in Arab villages, an affirmative action policy is needed in the allotment of lands ‘owned’ by the state to Arab villages. Unfortunately, the trend of changes in the matter of possession of lands is in the opposite direction, meaning the process of land privatization, the change of their purpose and classification, and the bestowing of ownership rights in the land only to residents of the Kibbutzim, Moshavim, and companies of agricultural cultivation. If this trend continues, these lands, consisting of many millions of dunams, will be taken out from the land reservoir of the state and transferred to private hands in a way that will not enable their future allotment to Arab towns and villages.

15. A significant part of the lands and agricultural lands, which are expected to undergo a process of release and change of purpose, were owned by Arabs prior to their confiscation and were even cultivated for hundreds of years by Arab farmers. These lands were confiscated following the establishment of the State of Israel for realization of ‘public goals’, which served the interests of the Jewish majority and for the fulfillment of Zionist goals. Throughout the years, the state leased, through the ILA the same lands to Jewish settlements for use and agricultural cultivation, in complete contrast with the goals of confiscation and while completely ignoring the Arab farmers’ needs. As the public goal requiring the confiscation of lands is no longer relevant and before a process of purpose change is taking place as well as the transfer of ownership rights to the lessees and permit holders, the state must seriously examine the option of returning the confiscated lands to their original owners.

16. While the Israeli government refuses to recognize the unrecognized Arab villages and communities in the Naqab, and while the state renounces the rights of native Naqab communities in their agricultural lands and attempts in every way to move them out of their lands, the ILA accelerates the process of land privatization in order to improve the difficult economic situation of the Kibbutzim and Moshavim and to solve the housing shortage for the new immigrants and in order to create industrials and fire zone areas. On the other hand, the Arab farmers in the Naqab
who cultivate their lands in the most difficult conditions and who for years now ask to recognize their rights in the lands, do not get similar treatment, but face a strict policy, intending to confiscate the rest of the lands from their hands.

17. Finally, it is worth noting that according to the Israeli case law, the ILA is an administrative authority and is subject to the public law rules, and as such it has a duty to act fairly and equally. As the trustee for managing a significant percent of the state’s lands, the Israel Land Administration is nothing but a trustee of the public who must act on behalf of all citizens of the state. The trend characterizing the policy of the Israel Land Administration so far, in the subject of change of purpose of agricultural lands is guided by Zionist ideological considerations and is in favor of interested groups in the Israeli society. This trend violates the basic principles of proper administration and constitutes a betrayal of public trust. A policy relating to the most expensive and limited resource in the state must be based on the principles of equality and justice.