Land Expropriations of Private Arab Land in Israel -
An Empirical Analysis of the Regular Course of Business

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Abstract

A fairly common premise in academic research is that the State of Israel expropriated large tracts of land from its Arab citizens. This premise does not distinguish between the taking of property which was expropriated from Arab refugees during the War of Independence and the expropriation of land “in the regular course of business”. This research attempted to isolate and clarify the extent of the "regular" expropriations that has been held on the national level according to the Lands (Acquisition for Public Purposes) Ordinance 1943 which is the main permanent tool for large scale expropriations in Israel. It shows that the common premise about Arab land expropriation is highly exaggerated. The Arab population’s share in the burden of expropriation was fairly small in absolute terms and was not significantly greater than the share of the Jewish population. A mere quantitative analysis of the expropriations cannot in itself produce a conclusion about harmful and unjustified influence of the expropriations on Arab citizens. While a qualitative analysis of each expropriation may possibly produce such conclusion, arguing against every expropriation of land which results in the transfer of resources from Arabs to Jews, may entails an a priori negation of the Jewish character of the State rather than legitimate criticism on the merits of each expropriation.

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I. INTRODUCTION

Scholars, jurists and others regard it as axiomatic that the State of Israel carried out extensive land expropriations from its Arab citizens, and that the expropriation tool was wielded primarily against Arabs. ¹ A number of writers have ventured general assessments of the expropriation scale as amounting to hundreds of thousands, even up to a million dunams.² Notably, these figures frequently include land assets of Palestinians refugees that were expropriated under the special circumstances of the 1948 War with expropriations in other frameworks. One may claim that a distinction should be made between the process that precipitated the refugees' problem and other processes, later in time, which purportedly occurred in "the regular course of business" of the State of Israel. The inclusion of the property of Palestinian refugees within the scope of the expropriated land reveals a view critical of Jewish use of the inventory of property left by Palestinian refugees in the State of Israel and prefers to


² There is widespread reliance on the assessment of Jiryis, that the issue concerns about a million dunams. See SABRI JIRYIS, THE ARABS IN ISRAEL 130 (New York, Inea, Bushnaq Tr., 1976).
continue regarding that property as an internal “Arab” resource. It reveals an a priori presumption concerning the wrongful nature of the change which took place to the inventory of refugee property following the establishment of the State of Israel. The correctness of such an approach is subject to a dispute which will not be discussed in this paper. However, blurring the distinction between land belonging to refugees and land belonging to Arab citizens creates the impression that the State of Israel expropriated large tracts of land “in the regular course of business” from her Arab citizens. Even those prepared to accept the inevitability of harm to the Arab minority under the circumstances that produced the refugee problem, have difficulty in accepting the systematic, and consistent harm perpetrated "in the regular course of business”. This paper will attempt to isolate the latter and clarify its extent.

In Israel, the main permanent tool for large scale expropriations on the national level is the Lands (Acquisition for Public Purposes) Ordinance 1943 (hereinafter "the Ordinance"). An examination of the scale of expropriations pursuant to the provisions of this Ordinance may help to determine whether in fact the harm to the Arab minority in the regular course of business was substantial, unjustified and disproportionate. The academic literature repeatedly cites sporadic examples of expropriation of Arab lands under the Ordinance: the expropriation of land for the creation of Upper Nazareth (about 1,200 dunams), the expropriation of Arab lands of the residents of the Baana settlement, Dir Al-Asad, and Nahaf, for the purpose of creating a new city in the Galilee at the beginning of 1963 (the total amount of

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4 Official Gazette 32 (1943). Expropriations in accordance with the Planning and Construction Law, 5725-1965 are conducted on a local level. This study does not examine the violation of land rights as a result of expropriations that are held according to this law. The local character of these expropriations affords the assumption that the scope of land to which it applies is appreciably smaller than the expropriations effected in accordance with the Ordinance, and the scale of harm based on local policies is therefore proportionately much smaller than the possible harm of national policies. See also Holzman-Gazit, supra note 3, at 12.

5 Kretzmer, supra note 1, at 52. The expropriation of lands in Upper Nazareth was adjudicated in H.C.J. 30/55 Committee for Protection of Expropriated Nazareth Lands v. Finance Minister, 9 P.D. 1261 (hereinafter: Nazareth Lands), where specific mention is made of the scope of private land expropriated: 1200 dunams out of a total area of 4,988 dunams (p. 1263, pars. c, d). See also Yalkut Pirsumim of 17.6.54 (no. 356).
expropriated land not exceeding 5,550 dunams), the expropriation of Arab lands during the seventies, which sparked off "Land Day" (about 6,320 dunams) and extensive expropriations in East Jerusalem in building the suburbs surrounding Jerusalem. There have also been reports of expropriations in the Negev areas with significant Bedouin populations (even though not necessarily owned by Bedouins) for various military purposes at different periods. Were it possible to view these examples as being exhaustive of the phenomenon, it could be argued that at least in absolute terms of area, the scale of violation of Arab lands was relatively small in relation to the entire area of the State, or even in relation to the general amount of privately owned land in Israel.

Nonetheless, these sporadic examples do not reflect the entire picture of the expropriations, nor do they shed light on the ethnic distribution of expropriations in Israel. The major object of this paper is to feel the gap. In Part II I will present the resources out of which the overall picture may be drawn. I will further explain the methodological difficulties that are related with the assessment of the exact extent of

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6 Kretzmer, supra n. 1, at 52 (n.18); BARUCH KIMMERLING, ZIONISM AND TERRITORY: THE SOCIO-TERRITORIAL DIMENSIONS OF ZIONIST POLITICS 142 (Berkeley, 1983).
7 Kretzmer, supra n 1, at 52. The extent of the area declared under expropriation was actually 20,162 dunams but of these only 6,320 dunams was owned by minorities. See ELI RECHES, ISRAEL'S ARABS AND LAND EXPROPRIATION IN THE GALILEEE – BACKGROUND, EVENTS AND IMPLICATIONS 1975-1977, 46 (1977)(Hebrew).
8 Expropriation notices were made in respect of about 26,000 dunams but not all of the areas were private. See Haim Sandberg, Land Title Settlement in Jerusalem - Legal Aspects 23 THE JOURNAL OF ISRAELI HISTORY 216, 222, 229 (n.41) (2004).
9 Claims have similarly been made regarding land expropriations of Bedouins in the North-West Negev area immediately after the War of Independence, and concerning land expropriations in the Hasayag zone, as well as in the Tel- Malkhata region for the purposes of building the military airport – Nevatim, in the wake of the peace agreement with Egypt. For a summary of the claims see Shlomo Swirsky, Yael Hason, Transparent Citizens – Government Policy towards Bedouins in the Negev, 14 INFORMATION CONCERNING EQUALITY, PUBLICATION OF THE ADVA CENTER 4-5 (2005). Under the Acquisition of Lands in the Negev (Peace Agreement with Egypt) 5740-1980, Appendix A, the state declared an area of about 60 Sq. km. as being expropriated. This special expropriation is not discussed in this paper. It should be noted that, due to the nature of land as a desert and according to its classification as "Mewat" by the Ottoman Land Law - only a small portion of the area was indeed privately owned. For a comprehensive discussion of the subject of Bedouin ownership rights in the Negev, see Sandberg-Zionism, supra note 3, at 143.
10 The current area of Israel, which includes East Jerusalem and the Golan Heights, is 21,957 Sq. Km. See STATE OF ISRAEL-ISRAEL LANDS ADMINISTRATION, REPORT ON ACTS FOR BUDGETARY YEAR OF 2007 95 (2008). The land area of the State of Israel as per the armistice lines of 1949 was 20,265 Sq. Km. "Proposal for Completion of Land Settlement (Surveying and Mapping) of the Total Area of State" (appendix to letter of the Head of the Unit for Registration and Settlement of Lands in the State Comptroller's Office, dated 24.4.1960, State of Israel Archives, Section 74, Box C5733, File 3520/7.
11 The overall proportion of private ownership in the State of Israel is particularly small, amounting to about 8% (about 1443 Sq. km.) of the total area of the state. STATE OF ISRAEL-ISRAEL LANDS ADMINISTRATION, REPORT ON ACTS FOR BUDGETARY YEAR OF 1999, 48 (2000).
the expropriations on the basis of these data bases. In Part III I will show the overall picture that may be drawn out of the raw material as to the expropriation of lands in accordance with the Ordinance. I will attempt to answer two of the important questions that arise in this context. Firstly, was there a serious violation of the property rights of the minority sectors? Secondly, did the rate of expropriation from minority groups significantly exceed the rate of expropriations from Jews? In Part IV I will examine and critique the premise that every expropriation of land which results in the transfer of resources from Arabs to Jews is improper, whatever its scope. I will argue that this premise entails an a priori negation of the Jewish character of the State rather than legitimate criticism on the merits of each expropriation. I will argue that criticizing the expropriations of Arab private land must rely on the general criteria for public use expropriation. It should show the extent to which each specific expropriation harmed the individual land owner or the extent to which it blocked the possibilities of development and livelihood from the Arab settlements that were exposed to it. I will demonstrate the differences between the two attitudes in the 1955 Israel Supreme Court case concerning expropriations in the Galilee for the broadening of Upper Nazareth. A short conclusion follows.

II. Review of Resources and Methodological Difficulties

To date, there has been no official publication of a precise and comprehensive estimate of the quantitative scope of land expropriations in Israel in general, and specifically, of expropriations from Arab residents and citizens. Even though each expropriation is documented and published in the official reports, the data regarding the expropriations are neither collated nor centralized. Furthermore, data published regarding expropriations do not disclose the ethnic identity of the owners, so that any ethnic distribution of expropriations can only rely on assumptions regarding the ethnic identity of the areas in which the expropriation took place, which is determined in accordance with the identity of the majority of the population of the area, or its general surrounding. The resolution of these assumptions may be of a very general nature. Furthermore, the description of the expropriated area does not always indicate its precise location, and this obviously precludes any attempt at an ethnic
classification of the expropriation. An additional difficulty is that the demarcation of certain areas to be expropriated is generally a function of the anticipated planning for the area, being unrelated to the actual distribution of its original ownership. This in fact is the natural result of the rationale behind most expropriations, namely, the need to aggregate scattered fractions of privately owned land into the hands of one public authority. Accordingly, the expropriated area almost always includes lands which prior to the expropriation declaration were owned by the State of Israel, the Jewish National Fund or the Development Authority, which are public authorities. The expropriation notices contain no clear indication regarding the extent of privately owned land included therein. This problem finds a partial solution in the context of lands expropriated since the fiscal years of 1964/65, because from that year onwards the annual reports of the Israel Lands Administration included more sector related data regarding the general volume of lands in respect of which expropriation notices were published pursuant to the Ordinance. These reports include data classifying the lands according to the private or public identity of their owners prior to the expropriation (private bodies, disputed, State and the Development Authority, Jewish National Fund, local authorities, and "other"). The Administration data regarding these years provides an accurate picture regarding the scope of area that was expropriated and the scope of privately owned tracts included therein. However, the

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12 Data pertaining to expropriations relates to blocks and parcels, and hence the necessity of using maps to locate the parcel. Some of the publications regarding expropriations only refer to maps that are open for examination in the government offices for a limited period after the expropriation. The maps are not published in the Official Publications, meaning that identification of areas requires an enormous collection or mosaic of maps, being exceedingly difficult to follow or to reconstruct.


14 According to the Ordinance, the expropriation proceedings require the Minister of Finance to publish a number of notices in the Official Publication (Reshumot): A notification of the intention to acquire (section 5); notice of retracting the intention to expropriate (section 14); notice of delivery of possession in expropriated land (section 7); and notice of the purchasing and registration of land (section 19). There is also a publication of acquisition notices at the request of the Minister of Finance (section 22). The Land Administration Reports only include lands regarding which notices were given regarding the intention to acquire (section 5) and the taking of possession (section 7).

15 THE STATE OF ISRAEL: ISRAEL LANDS ADMINISTRATION, REPORT ON ACTIVITIES OF THE ISRAEL LANDS ADMINISTRATION FOR YEARS 1976/77, 121 (1977) (hereinafter "1976/77 Report"). This report collates all of the data relating to the years 1964-65 – 1976/77. I based my conclusions regarding the years between 1964/65 and 1976/77 on this report. As for the information regarding period between 1978/1977 and 1992/1993, I was compelled to collate and summarize the annual reports of the Administration on an individual basis, and the information is summarized in Sandberg-Zionism, supra note 3, at Appendix B. This paper will only demonstrate its overall conclusions.
ethnic resolution of this information is very low, because the geographical data presented in these reports relates to the distribution of the expropriated areas in terms of districts and not villages. Accordingly, the assumptions regarding the identity of the population in the expropriated areas are rather general. Furthermore, the distribution according to districts is generally given regarding the entirety of the expropriated area, including a considerably large portion of areas that are not privately owned. Regarding the period extending from the date of the State's establishment and until 1964 (when the Israeli Lands Administration began the publication of segmented reports), the only way of examining the extent of expropriations is by an individual examination of each expropriation notice under the Ordinance, as published in the Official Reports.\textsuperscript{16} Regarding these years it is not possible to precisely determine the scope of private land that was included in the expropriated notices, and one may only make general assumptions regarding the general rate of private land in the entire land that was included in the expropriation notices. On the other hand, the information regarding these years enables a higher resolution of ethnic distribution, in reliance on the ethnic labeling of the populations of settlements in which the expropriations were carried out.

From the raw material described above, I will attempt to answer in the next part two of the important questions that arise in this context regarding the expropriation of lands in accordance with the Ordinance. Firstly, what was the general extent of private land that had been expropriated according to the Ordinance and to what extent this general scope in itself can lead to conclusions about a serious violation of private property rights? Secondly, did the rate of expropriations from minority groups significantly exceed the rate of expropriations from Jews, and what conclusions can be drawn from the findings on this subject?

\textsuperscript{16} The detailed results of such an examination, which I conducted in the framework of this study, produced a list of settlements and a summary of the lands expropriated therein, as specified in Sandberg-Zionism, \textit{supra} note 3, at Appendix A. This paper will only demonstrate its overall conclusions.
III. Assessment of the Land Expropriated

III. (A) General scope of expropriations

In the years 1948 – 1993 the Ordinance was used for declaring the expropriation of lands at a scale of a total 248,684 dunams, as set forth in Diagram A.

Diagram A: Summary of Expropriations under the Ordinance (in dunams)

<table>
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<tbody>
<tr>
<td>General Total</td>
<td>123,814</td>
<td>96,024</td>
<td>28,846</td>
<td>124,870</td>
<td>248,814</td>
</tr>
<tr>
<td>Private Bodies</td>
<td>24,632 (26%)</td>
<td>8,347 (29%)</td>
<td>32,979 (26%)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disputed</td>
<td>23,760 (25%)</td>
<td>14,209 (49%)</td>
<td>37,969 (30%)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (Other public bodies)</td>
<td>5,400 (6%)</td>
<td>2126 (7%)</td>
<td>7526 (6%)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

All the same, it may be surmised that less than half of this area was privately owned just before the expropriation. For example, as indicated in Diagram A, the total scale of privately owned areas in the entire expropriated area of 1964-1993 was about 26%. The rate of private areas in the expropriation notices decreases to the extent that the areas indicated in the expropriation notices are larger.\(^{20}\) Presumably, privately owned areas also include areas defined as being "in dispute" immediately prior to the expropriation. But it may be assumed that most of the disputed area was not privately owned. This assumption relies both on the State's high rate of success in land

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\(^{17}\) Based on Sandberg-Zionism, supra note 3, at Appendix A. See supra not 16.


\(^{19}\) Based on Sandberg-Zionism, supra note 3, at Appendix B. See supra not 16.

\(^{20}\) For example, in the year 1971/1970 expropriation notices were published for a total area of 31,441 dunams, of which only 6,794 were privately owned (22%). On the other hand, in the year 1973/1974 expropriation notices were published for 1,319 dunams only, of which 857 dunams were privately owned (65%) see 1976/1977 Report, ibid.
settlement suits (between 60% - 70%)\textsuperscript{21}, and as described above, upon the general relationship between the area declared as expropriated and the privately owned areas, included therein immediately before the expropriation. Even though we lack verified statistics regarding the scale of privately owned land that was declared as expropriated until 1964, it may be presumed that the scales were similar then. In vulgar terms we may assume that the total sum of privately owned area that was expropriated from all kind of private owners between 1948 – 1993 did not exceed more than 30% - 50% of the total land expropriated during those years, i.e. about 75,000 – 125,000 dunams. This represents an extremely small portion of the total area of the State of Israel within the 1967 borders (not more than 6 promils), which constitutes at the very most about 8% of the entirety of privately owned land in the State of Israel.\textsuperscript{22} What this means is that the degree of public purpose acquisitions carried out by the State according to the Ordinance did not have a significant effect on the inventory of privately owned land in the State of Israel.

Concededly, it may be claimed that the relatively small rate of expropriations in the quantitative sense does not indicate the real scope of the damage to this privately owned inventory. The argument would therefore be that the damage is in fact more severe because the tracts of privately owned lands that were expropriated are located primarily within the settled areas in the heart of the country. The land rights in a major part of these land tracts were primarily acquired prior to the establishment of the State. After the State's establishment, and primarily after the enactment of Basic Law: Israel Lands, it became almost impossible to acquire private land in Israel.\textsuperscript{23} The islands of private ownership purchased prior to the establishment of the State were located in areas which already at that time were economically valuable and being in the centre of the country, had a very high value. Yet, most of the expropriations were carried out mainly in the more peripheral areas, in the South, the East and the North of


\textsuperscript{22} See supra note 11.

\textsuperscript{23} From out of only one hundred thousand dunams, which pursuant to section 2 (7) of the Israel Lands Law, 5720-1960 (original version, S.H. 56), were transferable to private ownership, as of 1993 only 30,649 dunams had actually been transferred. THE STATE OF ISRAEL: ISRAEL LANDS ADMINISTRATION, REPORT ON ACTIVITIES OF THE ISRAEL LANDS ADMINISTRATION FOR YEARS 1992/93, 92 (1993). Recently, the upper limit of possible transfers was raised to two hundred thousand dunams. According to section 12 of the State Economy (Arrangements) Law (Legislative Amendments for Attainment of Budgetary Goals and Economic Policy for 2006 Fiscal Year), 5769-2006, S.H. 306
the country, whereas the amount of expropriations in the Districts of Tel-Aviv and other central populated areas was minor. This emerges from the district segmentation of the expropriations since 1964, as indicated in Diagram B.

**Diagram B: Segmentation of Land According to Districts**

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<tbody>
<tr>
<td>District</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jerusalem and Southern District</td>
<td>44,792</td>
<td>22,922</td>
<td>67,714</td>
</tr>
<tr>
<td>Haifa and Northern Districts</td>
<td>47,512</td>
<td>4,419</td>
<td>51,931</td>
</tr>
<tr>
<td>Tel-Aviv and Central</td>
<td>3,720</td>
<td>1,505</td>
<td>5,225</td>
</tr>
</tbody>
</table>

**III. (B) Ethnic distribution of the owners' identities**

Having seen that the overall and absolute scope of expropriation of the private land inventory of the State was not extensive, the question arises regarding the extent to which this violation of the private land inventory was focused upon members of the minority groups. It should be indicated that the degree of land privately owned by minorities, specifically - Arabs, out of the total amount of land which are actually privately owned, is in excess of their proportion of the population. Bearing this fact

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24. The diagram is in dunams, and based on the annual reports of the Israel Lands Administration

25. Despite the lack of complete and precise data regarding the ethnic distribution of privately owned lands in the State of Israel, the data we have is sufficient to assume that the Arab citizens were and are still in possession of private lands in excess of their proportion of the population. This result can be reached by subtracting the data that we have on the rate of private Jewish ownership from the entire land mass in private ownership. For example, the scope of land under private Jewish ownership before the creation of the State was estimated at being between 800,000 – 925,000 dunams. This land expanse also includes the land assets of PICA, Hachsharat HaYishuv, and other public bodies. YOSSI KATZ, THE BATTLE FOR THE LAND, 353 (Hebrew University Magnes Press, Jerusalem, 2005); Ruth Kark Planning, Housing, and Land Policy: The Formation of Concepts and General Frameworks, ISRAEL- THE FIRST DECADE OF INDEPENDENCE 461, 479 ( I. Troen, N. Lucas eds). After the establishment of the State some of these lands became "Israel Lands" so that the correct number of Jewish, privately owned lands "net" is even lower. The remainder of lands, after the establishment of the State, was under Arab ownership, meaning not less than 525,000 dunams (35%). Kark estimates that in 1949 there were 867,000 dunams of cultivated rural land under Arab ownership (*ibid*). More accurate, albeit partial data exists with respect to private Arab ownership regarding the scope of land registered as being under private Arab ownership in the land title settlement operation in the Galil, which was conducted in the Arab villages in the first few decades following the establishment of the State. In the framework of this
in mind, it is highly likely that the degree of expropriation of privately owned Arab lands will be in excess of their proportion of the total population. Data pertaining to the scope of land expropriations of private minorities land during the years 1948-1964, is indicated below in the Diagram C. This diagram includes the data on areas declared as expropriated during those years, as reaching a total of 123,814 dunams. As mentioned above, only a part of this land (presumably, not more than 30-50%) was actually privately owned before the expropriation. The ethnic classification is based on assumptions regarding the identity of the population in the neighborhood (village or town) of the expropriated land.

Diagram C – Expropriations for Public Purposes – 1948-1964 (Ethnic Segmentation) (In dunams)

<table>
<thead>
<tr>
<th>Area Expropriated → Ethnic Segmentation ↓</th>
<th>Area (in dunams)</th>
<th>Percentage out of Total Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minorities Cities &amp; Villages</td>
<td>18,816</td>
<td>15%</td>
</tr>
<tr>
<td>Jewish Cities &amp; Villages</td>
<td>18,781</td>
<td>15%</td>
</tr>
<tr>
<td>Abandoned (1948-1951) Minorities Villages &amp; Cities</td>
<td>27,216</td>
<td>22%</td>
</tr>
<tr>
<td>Cities with Mixed Population (Jewish &amp; Arab)</td>
<td>12,093</td>
<td>10%</td>
</tr>
<tr>
<td>Beer-Sheva Open Area</td>
<td>25,908</td>
<td>21%</td>
</tr>
<tr>
<td>Caesarea</td>
<td>21,000</td>
<td>17%</td>
</tr>
<tr>
<td>Total Area</td>
<td>123,814</td>
<td>100%</td>
</tr>
</tbody>
</table>

As indicated in Diagram C, the amount of land declared as expropriated in minorities' settlements during this period stood at 15% only (18,916 dunams). It may however be assumed that minorities were also harmed as a result of the expropriations of large clusters of land in the Beer-Sheva area, which constituted 21% of the land that was expropriated during those years (25,908 dunams). Presumably, in view of the size of these land clusters and its location in the open areas of the Negev, the rate of private ownership therein was minimal. It may reasonably be presumed that there was a

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26 See Diagram A above.
27 See above supra note 22 and preceding text.
certain infringement of minorities' rights due to the expropriations carried out in the mixed towns (10% of the land, 12,092 dunams) especially in Haifa, Tel-Aviv-Jaffa and Jerusalem. However, there is no indication that the infringement was directed specifically against the minorities, who constitute a small proportion of the overall population of those cities after 1948. It may reasonably be presumed that to the extent that there was an infringement of rights, it particularly affected the assets that have been left in these cities by the refugees of 1948. In this context it is reasonable to presume that the refugees were also adversely affected by expropriations in the villages and cities that were abandoned in 1948 (22% of the land, 27,216 dunams) and also as a result of the large area expropriated in the Caesarea area, a significant portion of which had belonged to Jewish P.I.C.A Corporation and to the State of Israel (17% of the land, 21,000 dunams). All the same, these were small offshoots of the treatment of the refugee's assets. Based on these statistics it may almost certainly be presumed that the rate of violation of minorities' assets during this period did not exceed the minorities' share of ownership of the tracts of privately owned land, and conceivably was not significantly greater than their proportion of the population. In absolute terms, there is no doubt that the violation of the private lands inventory of minorities was not especially significant.

28 For a list of the blocks included in this one time expropriation see O.G. 5756 (2.2.56) 539 (no. 461). According to the central map of blocks in Israel, the overall area of this expropriation extends from the southern areas of the Gisr AL-Zarka village in the North, and until south of Sdot-Yam kibbutz in a strip extending from the Sea and until the center of Or-Akiva. Presumably, this means the expropriation of most of the area that was designated for establishment of Caesarea and for the management by the Edmond Benjamin de Rothschild Caesarea Development Corporation Ltd. in accordance with an agreement between the State of Israel and the Edmond Rothschild's Caesarea Fund. A significant portion of the land was previously owned by the P.I.C.A. Corporation, previously owned by the Rothschild family. This information was given to me by Mr. Yoel Schwartz, the director of the Haifa district, of the Israel Cartography Center, 23.10.06, and see also the Internet site of the Caesarea Fund.  See www.caesarea.org.il/keren/template/default.asp?maincat=12&catid=55&pageID=156&kid_site=9

29 It may be assumed that a small section of the land also consisted of absentee lands from the village of the Caesarea. The residents of Caesarea village lived in the lands rented out to them by P.I.C.A. BENNY MORRIS, THE BIRTH OF THE PALESTINIAN REFUGEE PROBLEM 1947-1949, 82 (3rd and revised edition, Tel-Aviv, Am Oved, 1997)(Hebrew).

A list of the expropriations carried out in the villages and cities that were abandoned in 1948 appears in Sandberg-Zionism, supra note 3, at Appendix B (Table D). In only five of the cities and villages in this list was the number of internal refugees in excess of 500 (Akko, Tiberias, Magdai, Damun, Ma'alul) and most of the settlements had no internal refugees at all. Based on comparison to HILEL COHEN, THE PRESENT ABSENTEES - THE PALESTINIAN REFUGEES IN ISRAEL SINCE 1948, 24-25 (2000)(Hebrew). Most of the expropriations in these settlements were on a very small scale, because in any event most of the areas relevant to the internal refugees were handled in the framework of the large scale activities by which the State took control and ownership of the refugees' assets immediately after 1948.
An attempt to establish the ethnic segmentation of the expropriations since 1965 could be based on the reports of the Israel Lands Administration. Admittedly, these reports do not specifically present the ethnic segmentation of the expropriations, but it may be inferred from the data on the expropriation segmentation in the different districts. In this context Diagram B shows that most of the land expropriated during these years was located in the areas with Arab population (primarily in the Northern districts and Haifa, Jerusalem, and the Southern districts). Only a negligible portion of the expropriated land was located in the Central district, populated primarily by Jews. Yet, the ethnic resolution of this data is low because it does not reveal the extent of private land that was expropriated in each district and have no other ethnic segmentation within each district. A more precise segmentation of the data is presented below in Diagram D which presents the comparative data for years in which expropriations were conducted on a significant scale, indicating the scope of expropriations in the different districts and the scope of expropriations of private land.

The datum relating to the scope of private land is not classified in terms of districts, but an analysis of the datum indicates the inter-district distribution.

**Diagram D:**

**Expropriated Area (in dunams) according to District and Ownership classification (selected years)**

<table>
<thead>
<tr>
<th>Years →</th>
<th>Area included in expropriated area ↓</th>
<th>64/65</th>
<th>66/67</th>
<th>67/68</th>
<th>68/69</th>
<th>70/71</th>
<th>75/76</th>
<th>78/79</th>
<th>79/80</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jerusalem and Southern District</td>
<td>544</td>
<td>13,470</td>
<td>4,018</td>
<td>7,550</td>
<td>12,374</td>
<td>4,890</td>
<td>4,538</td>
<td>4,400</td>
<td></td>
</tr>
<tr>
<td>Haifa and Northern District</td>
<td>6,060</td>
<td>37</td>
<td>125</td>
<td>88</td>
<td>18,895</td>
<td>21,185</td>
<td>637</td>
<td>2,449</td>
<td></td>
</tr>
<tr>
<td>Tel-Aviv and Central District</td>
<td>500</td>
<td>104</td>
<td>673</td>
<td>411</td>
<td>172</td>
<td>259</td>
<td>140</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td>&quot;Private Bodies&quot;</td>
<td>1,193</td>
<td>154</td>
<td>3,746</td>
<td>1,239</td>
<td>6,794</td>
<td>9,143</td>
<td>571</td>
<td>4,407</td>
<td></td>
</tr>
<tr>
<td>&quot;Disputed&quot;</td>
<td>718</td>
<td>13,457</td>
<td>525</td>
<td>176</td>
<td>8,581</td>
<td>-</td>
<td>4,554</td>
<td>174</td>
<td></td>
</tr>
</tbody>
</table>

According to Diagram D, in 1964-65 the overwhelming majority of the expropriated land was in the Northern district, so that the private land expropriated may be
identified (albeit without absolute certainty) as belonging to this district (a total of 1,193 dunams). It may be presumed that some of the land expropriated was designated for the expansion of Upper Nazareth. In the years 1967/1968, and 1968/1969 the vast majority of expropriations were in the Jerusalem district, meaning that the private land expropriated may be identified (albeit without absolute certainty) as belonging to this district (a total of 4,985 dunams). The remaining private land that was expropriated does not admit of inter-district classification because in the relevant years there were massive expropriations both in the south and in the north. Most of the private land expropriations took place within a three year period, which were the only years during which the total scope of annual expropriation exceeded dozens or only a few hundred dunams: Hence, in 1970/1971 - 6,794 privately owned dunams were expropriated; in 1975/1976 - 9143 privately owned dunams were expropriated, and in 1979/1980 - 4407 dunams were expropriated, totaling 20,344 dunams. Some of the expropriations of 1975/1976 can be attributed to the Galilee development program, which precipitated the 'Land Day' incidents. Based on Government datum published in that regard, it emerges that a total of 6,320 dunams were expropriated from Arabs, constituting 31.44% of the land declared as expropriated for purposes of this plan (a total of 20,102 dunams). These dunams may be divided up as follows: 3,634 in Nazareth, 1,952 in Carmiel, and 734 in Maker. This is as opposed to 4,369 dunams, amounting to 21.73% of the land declared as expropriated, and which was taken from Jewish ownership, particularly in the Zefat area. Most of the area expropriated in the 1979/1980 (about 4,400 dunams) can be attributed to expropriations in Northern Jerusalem for the establishment of the Pisgat Zeev neighborhood. The ethnic distribution of these neighborhoods is well known: 2,900 dunams (66%) Arab owned and 1,500 dunams (34%) Jewish owned. An additional and final finding which can be inferred from the data is that more than one

30 As noted in the Administration's report of that year, the expropriations led to the filing of five petitions in the High Court of Justice, four of which ended up with compromise agreements for compensation in the form of alternative lands (during that year 65 dunams were given as compensation for expropriations). THE STATE OF ISRAEL: ISRAEL LANDS ADMINISTRATION, REPORT ON ACTIVITIES OF THE ISRAEL LANDS ADMINISTRATION FOR YEARS 1964/65, 163 (1965). See also supra note 6.
31 In this context see Sandberg – Jerusalem, supra note 8, at 514 (n. 46).
32 Reches, supra note 7, at 46 (Appendix A).
34 H.C. 307/82 Lubianker v. Minister of Finance, 37 (2) P.D. 141, 149.
half of the "disputed" land was expropriated in the Jerusalem area during the years 1966/1967 (13,457) and in the Southern area during the years 1978/1979 (4,554 dunams). These expropriations took place in East Jerusalem and the Negev areas, most of which had not yet undergone the settlement process, which explains the large proportion of "disputed" land. The State's general record of success in settlement suits enables the presumption that at least half of this area was not privately owned.\(^{35}\)

The picture emerging from analysis of these data is that the rate of lands expropriated from minority groups between the years 1964-1993 was in excess of their proportion of the population, and perhaps exceeded the overall rate of their relative holdings in the tracts of privately owned land. Nonetheless, even if the precise segmentation of the Arab element of the expropriated land still requires verification, it is clear that not all of the land expropriated belonged to minorities.\(^{36}\) In absolute terms, the overall amount of private land expropriations for public use during these years was small, about 33,000 dunams. I am skeptical as to whether these data can substantiate the claim that public purpose expropriations seriously affected the inventory of lands of the minorities.

**III. The Purpose of the Expropriation: The Legitimacy of Using Arab Land for National and Jewish Purposes**

Irrespective of the data regarding the extent and rate of the expropriations in the Arab sector, they are all subject to the ubiquitous challenge of their legality, based on the claim that there was no justification for using the tool of expropriation as a means for transferring lands from the ownership of the Arab minority group for goals that serve the Jewish majority. This argument assumes that a significant proportion of the expropriations from this sector were intended for the needs of the Jewish public or for purposes of the entire public, and specifically for the purposes of establishing Jewish settlements. A blatant example of this is the expropriation of lands for the development of the Galilee, and after 1967, for realizing plans for the ring neighborhoods of Jerusalem.\(^{37}\) Here I should stress that my current concern is not with whether it is justified to prevent Arab Israeli citizens from having the right to live in

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\(^{35}\) See supra note 21 and adjacent text.

\(^{36}\) Examination of the official publications relating to the expropriations clearly indicates that significant portions of land were also expropriated in Jewish settlements. See for example, the notice of expropriation of 942 dunams in Rosh Pinna. *Yalkut Pirsumim* (24.10.75) 295.

\(^{37}\) Sandberg – Jerusalem, supra note 8, at 513-514.
settlements originally designated for Jewish population or to purchase land therein. I concur with the Israeli Supreme Court's position that this kind of prohibition could, in many cases, violate the principle of equality.\textsuperscript{38} Reality has also shown that the minority populations have in fact been absorbed into the cities or neighborhoods that were initially established in order to house the Jewish population, such as Carmiel, Upper Nazareth, or the ring neighborhoods of Jerusalem. The argument that I wish to examine and critique is that the expropriation of lands from the Arab population for the establishment of settlements for the Jewish population or for other public needs of a Jewish State is fundamentally illegitimate. In essence, the argument is that the land reserves of one population sector cannot be used to promote the interests of the majority group.\textsuperscript{39}

I do not think that the general principles guiding the law of expropriation in other democratic states preclude expropriation of land from a particular group in the interests of designating them for goals that serve the public at large or any other particular group. The considerations that justify expropriation reflect a balance between protection of private property, on the one hand, and the general societal interests on the other. There is nothing inherently faulty in the central government choosing to promote national interests at the expense of the residents of a particular area, especially when their promotion is not possible in exclusive reliance on regular market controlled acquisition. The decisive question is what the intensity of the violation is and what the scope of the compensation is. Based on the data I provided regarding scope of expropriations in the Arab sector I think that if we were to neutralize the ethnic factor, assuming instead that the victims and the beneficiaries were both members of the same national group, it might well have been possible to justify the expropriations for the purpose of establishing new settlements or for the development of a particular region, which had become an urgent public need. Demographic changes and waves of immigration may likewise justify the transfer of land reserves from richly landed groups to groups of immigrants.\textsuperscript{40} As I showed above, the Arab minority was and continues to be the owner of a relatively large portion of the private land. The security considerations that served as the basis for imposing the military government in certain frontier parts of the state, may also justify

\textsuperscript{38} H.C. 6698/95 Kaadan et al v. Israel Lands Administration, 54 (6) P.D. 258, 275 ff (2000).
\textsuperscript{39} Oded, supra note 1, at 24.
\textsuperscript{40} See Holzman-Gazit, supra note 3, at 128.
a policy of strengthening state territorial hold on these areas, and to a certain extent may also justify expropriation, in the absence of which those policies would otherwise be frustrated.\textsuperscript{41} It is clear that there are grounds for examining the extent to which each specific expropriation harmed the individual land owner and the extent to which it blocked the possibilities of development and livelihood from the settlements that were exposed to it. This kind of analysis is legitimate, but its results are usually local and admit of a solution or remedy if required. However, it does not fundamentally negate the basis in principle for expropriation for the purposes of establishing a new settlement. Furthermore the data indicates that most of the lands that were designated for purposes of expropriation were at all events public areas. This indicates that the projects for which the lands were designated were established primarily in areas that were not expropriated from private ownership. Most of the private land that was expropriated was either agricultural land or vacant land, and only a small portion was built up, and it too was dispersed sporadically among areas designated for development, or in the periphery sections thereof. As such there was plenty of land left for the victims of the expropriation. I do not claim that all of the expropriated Arab lands answered this criterion, but the examination or negation of this phenomenon is the proper subject of review when analyzing the expropriation of Arab lands for public purposes, including Jewish purposes. Those who share the basic idea that Israel is a Jewish and Democratic state cannot fundamentally reject the possibility of using particular areas in the Jewish State for Jewish purposes, nor can they accept a prohibition on exercising the tool of expropriation purely because it is used for Jewish purposes. This kind of use does not inherently involve a violation of rights that is unacceptable in democratic states for long as the violation of the inventory of the minority is not excessive, and that it is carried out in compliance with general principles that justify and establish guidelines for land expropriation. On the other hand, from the perspective of those who negate the Jewish character of Israel, depleting the inventory of Arab land is not only illegitimate by reason of its scope, but primarily because of its aims. Expropriation for purposes of Judaizing the Galilee or the expansion of Jerusalem is illegitimate, and by extension any use of the Arab inventory for Jewish purposes, irrespective of its scope and circumstances, is

illegitimate. In this context the opposition to the use of the Arab inventory is secondary in comparison to the opposition to the purpose of the expropriation. As such it does not admit of any attempt to rectify the violation, and it implies a total prohibition on the public or Jewish use of any land in an area populated by Arabs, be it private land that was expropriated, or publically owned land. The result and perhaps the rationale of this approach are to frustrate the Jewish development of any area, be it the Galilee, the Negev or Jerusalem. The "Israelization" or the "Judaizing" of any geographic area are illegitimate per se, irrespective of the extent to which it diminishes the Arab land inventory, and irrespective of the nature of the expropriation carried out for that purpose.

A clear expression of the differences between these two approaches may be found in the arguments of the petitioners in H.C. 30/55 Committee for Protection of Expropriated Nazareth Lands v. Minister of Finance and the Court.\textsuperscript{42} This case adjudicated the expropriation of lands for purposes of broadening Upper Nazareth. From out of about 5,000 dunams that were designated in that case for establishing the Kirya, only about 1,200 were privately owned, of which 560 dunams were inside the municipal Nazareth and another 640 were outside of Nazareth, in the Reine village.\textsuperscript{43} Certain owners of the expropriated land variously raised the following two claims before the court, reflecting the two approaches described above. The first was based on the diminished potential for broadening their city in the future. This argument is not based on the principled denial of the possibility of using land for a "Jewish purpose". Rather, it focuses upon on the degree of harm caused to the Arab population by the expropriation. Justice Witkon rejected this claim on an empirical basis, ruling that: "It seems to us that the applicants' attorney slightly exaggerated when he claimed that the land that had been purchased was a kind of reserve fund for the Arab population, and that the townspeople have them in mind when considering the city's development and expansion needs in the future. We saw that these lands do not constitute such a large part of the total lands of the city and that there are lands at their disposal, both within the municipal area and outside thereof, which have yet to be developed and which are still free of any building or planting."\textsuperscript{44} Further on he states that: "We do not believe that the city's future and the best interests of its residents are

\textsuperscript{42} Nazareth Lands, supra note 5.
\textsuperscript{43} \textit{Ibid} at 1263.
\textsuperscript{44} \textit{Ibid} at 1265.
dependent upon this area of a few hundred dunams of land.\textsuperscript{45} Witkon's factual findings were and are still disputed by certain scholars, and conceivably, with the passage of years, there have been changes in the municipal development of Nazareth.\textsuperscript{46} I will not address the issue now, but merely wish to point out that the criticism of the land owners against the expropriation, had it been true, would have been legitimate criticism insofar as it neither contradicted nor challenged the Jewish character of the State. The reason is that the victims of this kind of expropriation can find their remedy in the allocation of alternative lands to the victims, or in another forms. For example, in that case it was related that the Director of Development Authority promised that "instead of financial compensation he would be prepared to give the owners of agricultural land – agricultural lands in other locations, and for those requiring residence, he would allocate building land in the city itself."\textsuperscript{47} Indeed, in 1964/65 five petitions were filed in High Court of Justice against expropriations in Upper Nazareth, and in four of them the petitioners reached compromise agreements based on compensation in the form of alternative land.\textsuperscript{48} The first argument is therefore not based on a fundamental negation of the purpose of the expropriation but rather on its negative effect on the victims. It differed from the petitioner's second argument, in the very same case, according to which "the transfer of lands from their Arab owners to Jewish settlers is nothing but a discriminatory act against the Arabs, and in favor of the Jews".\textsuperscript{49} This argument negates any expropriation of Arab land when done for the realization of public purposes which reflect Jewish interests. It was refuted on its merits by Justice Witkon who stated that "The sovereign state does not mean the autonomy of its citizens be they Jews or Arabs, to the extent of enabling them to frustrate a plan approved for public purposes, and which was decided upon for the benefit of the region and the land as a whole. In this context the central government has preference over the wishes of the local residents."\textsuperscript{50} It is not always easy to distinguish between the two claims, and occasionally one of the claims may actually be motivated by the other. Justice Witkon maintained that the petitioners were not primarily motivated by the scope of the harm to the individuals, nor the extent of harm to the city of Nazareth, but rather by the political goal of preventing

\textsuperscript{45} Ibid at 1266.
\textsuperscript{46} See Forman, supra note 21, at 76 (n. 76).
\textsuperscript{47} Nazareth Lands, supra note 5, at 1267 (S.Z. Cheshin).
\textsuperscript{48} See supra note 30.
\textsuperscript{49} Nazareth Lands, supra note 5, at 1263.
\textsuperscript{50} Ibid, at 1266.
the Judaizing of the Galilee. "Given that the respondents are not prepared to replace the location, the dispute over the purchase of these lands in order to establish the suburb has become a dispute over the right in principle to establish a suburb in the city of Nazareth".51 Obviously, the Court rejected the notion that land cannot be expropriated for Jewish purposes. If there is any defect in the expropriation from a Jewish perspective it lies in the scope and the implications of the expropriation and not in its purpose.

IV. Conclusion

A fairly common “premise” in academic research about Israel is that the State of Israel expropriated large tracts of land from Arabs, whether citizens or Palestinian refugees. This premise does not distinguish between the taking of property which was expropriated from Arab refugees during the War of Independence and the expropriation of land “in the regular course of business”. Blurring the distinction between land belonging to refugees and land belonging to citizens creates the impression that the State of Israel expropriated large tracts of land “in the regular course of business”. This research attempted to isolate and clarify the extent of the "regular" expropriations that has been held on the national level according to the Lands (Acquisition for Public Purposes) Ordinance 1943 which is the main permanent tool for large scale expropriations in Israel. The research showed that the common premise about Arab land expropriation is highly exaggerated. The Arab population’s share in the burden of expropriation was fairly small in absolute terms and was not significantly greater than the share of the Jewish population. The Exaggeration of the prevailing ethos regarding the extent of expropriations blows up the aforementioned ethos in excess of its real dimensions. It dose not mean that the expropriations did not have a harmful and unjustified influence on Arab citizens or Arab villages. Yet this harm is not proved by a mere quantitative analysis of the expropriations. It can be proved by a qualitative analysis of each expropriation based on the general justifications for public use expropriations and the harm that was caused by the certain expropriation. Arguing against every expropriation of land which results in the transfer of resources from Arabs to Jews, may entails an a priori negation of the

51 Ibid, at 1265.
Jewish character of the State rather than legitimate criticism on the merits of each expropriation.