For the Common Good

Military Expropriation Orders in the West Bank, 1967-2022

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In Defense of Human Rights

KEREM NAVOT
כרם נבות

"For the Common Good"

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The point of departure for this discussion is our assumption, which is also shared by the Foreign Minister, that time is pressing. Namely, the more we decide to take radical steps in order to complete the land parcels necessary for the settlements, we should do it, as much as possible, without delay, before the vigilance and activity of the new administration in the United States grow, and before the process of the political negotiations that may be expected at this time begins to take shape.

Israel Galili, 1977.[1]

December 2022

1. Minister Israel Galili at a meeting of the joint Ministerial Committee on Settlement and the World Zionist Organization, January 11, 1977. Israel State Archives (ISA)-PMO-Gov_WZO_Committe-001iccr (Hebrew (hereinafter, H).

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In accordance with legislation initiated by the Israeli government as part of its struggle against organizations critical of its policies in the Occupied Palestinian Territories, Kerem Navot and Haqel hereby state that in 2022, most of their funding sources were from foreign government entities.

The newspaper excerpts quoted in this report are taken from the Historical Jewish Press collection of the Israel National Library.

Cover photo: Al -Arroub refugee camp bypass road

Abstract

This report is the first of its kind dedicated to examining the land expropriation orders for "public purposes" issued by the Israeli military in the West Bank since June 1967 – a total of 313, covering an area of some 74,000 dunams.

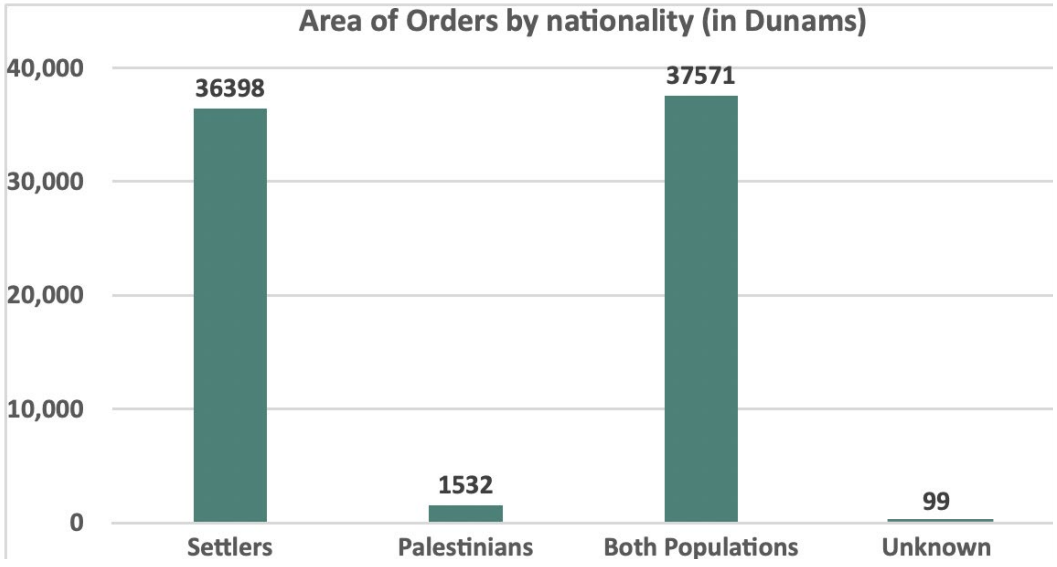
Israel's authority to expropriate West Bank lands for public purposes derives from Article 43 of the Hague Regulations, which obligates it, as an occupying power, to secure order and public life in the occupied territory. In practice, these orders have been issued based on the 1953 Jordanian Land Law, which Israel, as an occupying power, is required to uphold. Expropriation orders are usually permanent orders that transfer the ownership of the expropriated land to the state in return for financial compensation. Together with this expropriation procedure, Israel uses additional legal mechanisms to transfer lands in the West Bank from their Palestinian owners to the state, and from there, all too often to the hands of settlers. The most important of these are "seizure orders" for security purposes, which the state claims to be temporary as they are a safety necessity, and declarations of "state lands", based on Israel's far-reaching interpretation of the 1858 Ottoman Land Law. This report focuses exclusively on expropriation orders for public purposes.

As a point of departure, this document acknowledges that all Israeli settlements in the West Bank are illegal, as they violate the law that prohibits an occupying power from transferring its inhabitants to the occupied territory. This prohibition is derived primarily from the understanding that the transfer of a civilian population inevitably creates a conflict of interest between the occupying power's duty to ensure the wellbeing of the local population subjected to military rule and its desire to ensure that of the settler population in the occupied territory. This document demonstrates that this conflict of interest is clearly reflected in the considerations behind most of the expropriation orders.

In accordance with the Iskan verdict determined by the High Court of Justice (HCJ), Israeli case law requires a key criterion for assessing the legality of expropriations in the West Bank: whether the expropriation serves the needs - or unfortunately also the needs - of the "local Palestinian population." Over the years, the state has tried to argue that the settlers are also part of the "local population" in the West Bank, and therefore it is appropriate to expropriate land for the sake of its exclusive needs, but the High Court of Justice has thus far rejected that interpretation. Thus the main question examined here is whether this principle has been adhered to by the military over the years. Put differently, for what and for whom has Israel expropriated tens of thousands of dunams in the West Bank?

To answer that question, we examined the declared purpose of each expropriation order, while comparing it to its actual implementation. The main findings are as follows: About half of the orders, 176 of them, are used by the two populations. About one-third (115 orders) are used exclusively by the settlers. The smallest group, 25 orders, serves only the Palestinians. These figures indicate that although Israel officially only expropriates land in cases where the Palestinians also benefit from the expropriation, in practice, a considerable part of the orders are used by Israelis alone, in contravention of the *HCJ Iskan case* verdict.

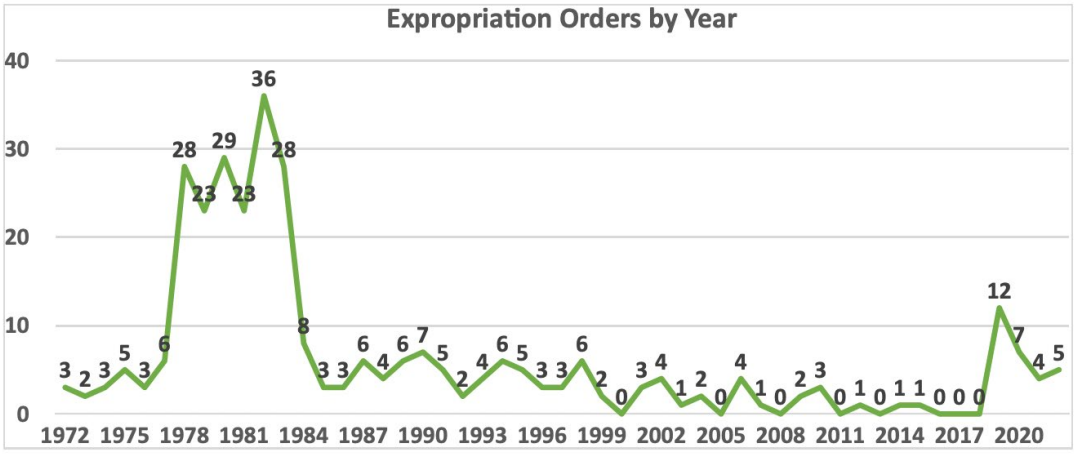
When the expropriated area is divided according to the same logic, even greater question marks arise. A little less than half of the total area (36,398 dunams) has been expropriated for or is actually used by settlers. A somewhat larger area (37,571 dunams) has been expropriated for the benefit of or is actually used by both populations. We have also found that the area expropriated for or actually used by Palestinians exclusively is 1,532 dunams, or only 2% of the total.

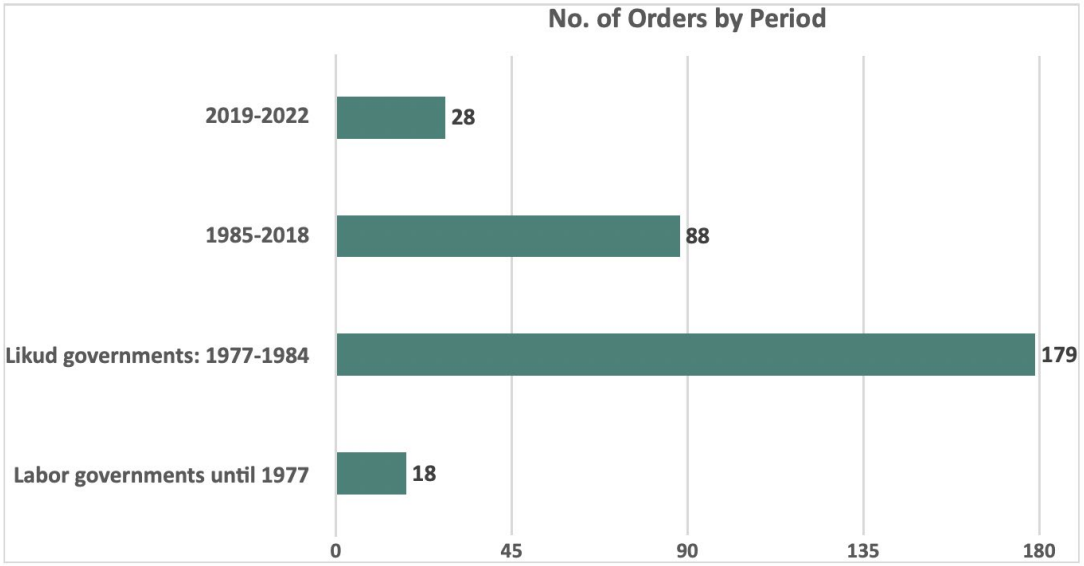


The data provided by the Israeli Civil Administration of the West Bank, on which this research is based, include the order "type," or overarching purpose. In examination of these, we identified three main categories:

- In terms of both the number of orders (142) and their total size (31,613 dunams), the category of orders issued for road construction is the largest.
- The second largest category in terms of total size in dunams includes orders issued to build and expand the settlements of Ma'ale Adumim, Ofra, and Har Gilo. Although it includes only four orders, their total area amounts to 30,700 dunams.
- The orders included in the third category were issued to pave access roads to settlements, some of which also serve Palestinian villages. The total size of these 52 orders is 6,414 dunams.

Another angle from which the purpose of expropriation orders may be examined is their year of issue. During the terms of the first three Likud governments (1977-1984), 179 orders were issued, or about 56% of the total issued hitherto. Conversely, only 18 expropriation orders were issued during the preceding decade, when the Labor Party was in power, during which the first thirty settlements were built. The sharp increase in the number of expropriation orders in the years following the transfer of power to the Likud reflect the changes in the Israeli settlement policy. Indeed, during those seven years, over seventy new settlements were built. This leap required massive land expropriation, mainly for access roads, and in certain cases also in order to upgrade the highway system, used by both settlers and Palestinians. During the 33 years from 1985-2018, however, only 88 orders were issued. The subsequent years once again saw an increase in the scope of expropriation: from 2019-2022, 28 orders were issued. This increase reflects the recent change in Israeli policy in the West Bank, expressed among other things in growing calls to officially annex large sections of the occupied territories.





The conclusion of this study is evident: under the guise of its legal obligation to ensure the wellbeing of the Palestinian population in the West Bank, Israel has nevertheless expropriated extensive areas of land to promote the settlement project beginning in 1967. In some cases, it has done so while completely and blatantly ignoring its duty to ensure that the expropriated area is for the use of the Palestinian population, and in other, more sophisticated cases, it has done so by creating a dependency between the mutual interests of both Palestinian and settler populations.

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Introduction

On March 28, 1969, less than two years after the occupation of the West Bank by Israel, Israeli military commander Brigadier General (*Tat-Aluf)* Rephael Vardi signed Order 321 (Land Law Order): Purchase for Public Purposes.[2] The order is based on the 1953 Jordanian Land Law, which regulates, among other things, the state's authority to expropriate land for public purposes.[3] This authority is an essential legal principle for the management of a modern state, that claims state responsibility for, among other things, building and maintaining infrastructure that serves its citizens. Israeli law includes several mechanisms that allow authorities to expropriate land, that is, to coercively acquire land when the state deems it necessary for the public good. In the West Bank, however, Israel's authority to expropriate land for public purposes reflects the core of how Israel defines its relationship with this area and its inhabitants since 1967. On the one hand, Israel presents itself as responsible for maintaining the peace and wellbeing of the indigenous [local] Palestinian population. On the other, it promotes a draconian settlement policy, exclusively prioritizing the safety and wellbeing of settlers, whose purpose is to take over the area, resulting in constant conflict with the Palestinian population.

Order 321 reflected the dawning realization of Israeli decision makers- that Israel's military rule over the West Bank may continue for an extended period of time. Therefore, the authority on the ground, namely the military commander, must be granted the legal tools needed to manage the new reality emerging in those years when Israel built the first settlements. By the end of 1969, Israel had built nine settlements throughout the West Bank, and several others were already in advanced planning stages.[4] The deployment of the new settlements, as well as planned future settlements, demanded greater infrastructure, and therefore required Israel to expropriate extensive additional areas for that purpose, including areas beyond the areas of the existing settlements. This phenomenon, as we will see in Chapter 2, culminated in the early 1980s, when most of the official settlements in the West Bank had already been built.[5]

2. Land Law Order (Purchase for Public Use) (Judea and Samaria) (No. 321), 1969 (H & Arabic). Referred to as "Judea and Samaria," the Hebrew name for the West Bank used in official government documents.

3. The Jordanian Land Law (Purchase for Public Use) (No. 2), 1953 (H).

4. These settlements were Kfar Etzion, Hebron, Argaman, Mekhola, Mevo Horon, Kalia, Rosh Tzurim, Masua, and Gilgal.

5. That is, the settlements officially built by the Israeli government in violation of international law, as opposed to "outposts" established even without official government approval and without a valid and detailed plan, albeit in most cases with government funding and close support. See Adv. Talia Sasson, (Interim) Opinion on Unauthorized Outposts (2005) (H).

"The Second Stage in Blazing the "Alon Road" in the Samaria Desert Has Begun"

תאריך הורדה: 28 דצמבר 2022. מקור: עמוד 1, דבר, 6 ספטמבר 1974 *** מתוך אתר "עיתונות יהודית היסטורית", הספרייה הלאומית ואוניברסיטת ת"א

הוחל השלב השני בפריצת „כביש אלון" במדבר־שומרון

מאת גבי אילן, סופר „דבר"

השבוע הוחל בפריצת השלב השני של „כביש אלון" במדבר שומרון, מ־מעלה־אפרים עד מעלה־אדומים. הפריצה החלה, בעבודת ידיים, מכונות ו־פיצוצים, סמוך לתחילת

המעלה התלול למגדל בני־פדיל, במקומה של דרך ירדנית ישנה.

כזכור, פירסמו אשתקד עתונים אמריקאיים בפוצים בצורה סנסציו־נית על פריצת התוואי לקטע הרא־שון של הכביש, ממעלה־אפרים ועד עמק הגיתית („האמבטיה"). הם טענו שהכביש מסמן פתוח־אויתר את תחומי השטח שישראל תשאיר בתגרת־בטחון במרדות הרי שומ־רון המזרחיים. עם סיום עבודת ה־פריצה הקשה בקטע זה התחילה עתה הפריצה כלפי דרום ובסופו של דבר יקשר הכביש בין הישו־בים שקמו במדבר שומרון. עוד לפני תחילת הפריצה דרומה יצרי־חב ותכופל התנועה מן הנקודה ה־זמנית של מושב מצאלי („מעלה־אפרים"), עד לאינור אנדרטת ה־נופלים בחירבת בני־פדיל.

קטע הכביש החדש עובר באחרי־טבע זנוח, ובעיקר בואדי עוג'א, שהוא אחד משכיות הנוף במדבר

(סוף בעמ' 2, טור 8)

A few weeks after the occupation of the West Bank in June 1967, Israel, unilaterally and in violation of international law, annexed about 70,000 dunams of the area in order to expand Jerusalem's municipal area under its own sovereign territory. The annexed area included some 1,200 dunam of land from the Beit Hanina and Qalandia villages, on which the Atarot Industrial Park would be built, inside the redrawn northern border of the city's municipal area. Several years later, however, it turned out that the accelerated development of "unified Jerusalem" would require additional and much larger industrial areas. To find them, the planners looked eastwards, into West Bank areas that remained beyond the annexed territory.[6] This was the Khan al-Ahmar area, south of which lay a broad desert valley inhabited and grazed by Bedouins of the Jahalin tribe, who had relocated to the West Bank, then under Jordanian rule, after their expulsion by Israel in the early 1950s from the northwestern Negev desert.[7] Khan al-Ahmar attracted the attention of the Golda Meir and Yitzhak Rabin governments (1969-1977) to seek sites for new industrial parks that met the demand in the Jerusalem area. These efforts were coordinated by Minister Israel Galili, Head of the Ministerial Committee on Settlement, a special government committee that spent many of these early years extensively discussing the building of settlements in all the occupied territories (including the Golan Heights, the Gaza Strip and Sinai).

6. After the annexation of the West Bank, the government tasked Major General Rehavam Zeevi with proposing several alternatives regarding the borders of the annexed area. Zeevi's maximalist proposal covered a territory of some 200,000 dunams from the Gush Etzion settlement bloc [cluster] south of Jerusalem to the southern edges of Ramallah to the north. This area also included the Ma'ale Adumim area to the east. The proposal was rejected by the government, which settled for a less extensive area.

7. Benny Morris, *Israel's Border Wars, 1949-56* (Oxford: Clarendon Press, 1993).

Israel's governments were actively balancing contradictory interests and pressures from home and abroad during those years. On the one hand, there were growing voices in the Israeli public, echoed by several senior members of the government, particularly in the ruling Labor Party, to build and expand settlements. On the other hand, Israel was under international pressure to avoid building and expanding settlements, especially after the 1973 war. In an attempt to test the waters, the idea was raised to build and establish Ma'ale Adumim as what was then called a "workers' camp." After all, an industrial park was going to be built there to serve "unified Jerusalem" and its environs, and what could be more rational than to allow its "construction workers" to reside nearby?[8] On January 24, 1975, Galili wrote to Rabin a letter titled "A Workers' Camp in Ma'ale Adumim", urging the prime minister to expropriate land for the sake of the "camp", and warned against the implications of delaying the expropriation:

> I highly recommend starting on the matter without delay, according to plan. In meetings that you and I have had with members of the [Gush] Emunim [settlers' movement] regarding settlements in Samaria, we called upon them to bolster the settlements in the Golan, in the Jordan Valley and in Rafah area (the northwestern area of Sini - south to the Gaza strip), mentioning that a positive decision on Ma'ale Adumim is also on the agenda. Our statement on this matter had a positive impact in relation to the [public] unrest, and I am certain that the delay in building the camp will be widely publicized and lead to undesirable initiatives…. I'm convinced that we must begin immediately…. I distinguish temporary residences from permanent housing. Temporary residences may be dealt with by the Settlement Department [of the Jewish Agency] and permanent housing – by the Ministry of Housing. In any case, given its sensitivity – the issue requires a rapid solution because after all, the matter is already gaining momentum… becoming an issue with negative political ramifications… The government has decided on a ministerial committee for land expropriation in the areas of Anatot and Ma'ale Adumim. The Minister of Justice has recommended that it be chaired by the Minister of Finance. I have drawn the Minister of Agriculture's attention to this matter, and he will therefore certainly be in touch with you.[9]

Little over three and a half months passed before it became clear that the establishment of the "workers' camp" that Galili was pushing for required a very large area. On April 1, 1975, the Military Commander of the West Bank signed an order to expropriate over 28,000 dunams from seven different Palestinian communities: Al-Izariya, Abu Dis, Khan al-Ahmar, Nebi Musa, Anata, Issawiya, and A-Tur. Through this order – which was and still is the largest expropriation order ever issued in the West Bank – along with a smaller order issued in

8. See "The Hidden Agenda: The Establishment and Expansion Plans of Ma'ale Adummim and Their Human Rights Ramifications". *B'Tselem and Bimkom*, December 2009.

9. ISA, File 7032/14-א, pp. 8-10.

1977,[10] Israel took over much of the open area between Jerusalem and Jericho, including sections from the historic road between the cities (today, Highway 1).[11] This laid the legal foundation for the official declaration of the establishment of Ma'ale Adumim a few years later, under the first Begin government (1977-1981).[12]

"Members of the Ma'ale Adumim Settlement Group Celebrate the Founding of the New Settlement"

מתנחלי מעלה אדומה מתפללים בסוכה, שהקימו במקום במסגרת טקס העלייה על הקרקע, שהיה אתמול.
(צילם: חנניה הרמן)

חברי גרעין מעלה אדומים חגגו יסוד היישוב החדש

עדיין לא הוחלט אם המקום הוא מחנה ארעי או יישוב קבע

מאת יוסף וקסמן

תוך מחלוקת אם מעלה אדומים הוא יישוב חדש, או רק „מחנה לעובדים" — חגגו אתמול חברי גרעין מעלה אדומים את חג יסוד היישוב החדש.

לרגל החג התאספו אתמול אחה"צ מאות מחברי הגרעין ואוהדיו על נשיהם וילדיהם על הגבעה שעליה הוקמו 38 הדירות הראשונות.

בטכס הובררו, כי 19 משפחות וארבעה רווקים ורווקות קיבלו אישור ממשרד השיכון להתגורר במעלה אדומים.

באישור שהוציא משרד השיכון, בחתימת הממונה על האיכלוס במחוז ירושלים נאמר, כי „ועדת איכלוס מקרית, בישיבה מ־12.9.75 קיבלה דיון בבקשתך והחליטה לאשר את מועמדותך לדיור במעלה אדומים". באישור זה לא נאמר, שהמדובר הוא ב„מחנה לעובדים במעלה אדומים" ונם לא „ביישוב מעלה אדומים" אלא סתם מעלה אדומים.

חברי גרעין מעלה אדומים משוכנעים, כי כיוון שראשוני המשתכנים שהותר להם לגור במקום הם חברי הגרעין, ו־שלא כולם יעבדו במקום, הרי אין ספק כי למעשה מדובר ביישוב.

„אנו באנו לציין את שם־חת הקמת היישוב החדש", אמר אחד מראשי חברי הגרעין. ואכן, שמחה לא חסרה בחגיגה שנערכה בסימן חג הסוכות. האישים הרבים שהוזמנו לסכס לא באו אמנם ומכל 120 חברי הכנסת שהוזמנו מנו נראה במקום רק אחד: ח"כ עקיבא נוף, שהוא עצמו חבר הגרעין...

38 הדירות שהוקמו במעלה אדומים אינן עונות כלל ועיקר לצרכי משפחות, שכן בכל דירה רק חדר אחד קטן עם פינת בישול ועוד חדרון שירותים ומקלחת. לא ברור כיצד חושב משרד השיכון לפתור את בעית שיכונן של משפחות עם ילדים בדירות מסוג זה ובין אלה שאושרו למגורים יש משפחות עם שלוש שה ילדים אפילו, עובדה שהיתה ידועה לועדת האיכלוס.

לסופר מעריב נודע עוד, כי בצד מבני המגורים החל משרד השיכון בהקמת בנין גדול, שיועד על ידי לחדר אוכל, ואולם בניה זו הופסקה לאחר שחברי הגרעין אמרו, כי כיוון שמדובר בהקמת יישוב למשפחות ולא לעובדים בודדים בלבד, אין צורך בחדר אוכל ויש להקים את המבנה שישמש בית כנסת וגן ילדים.

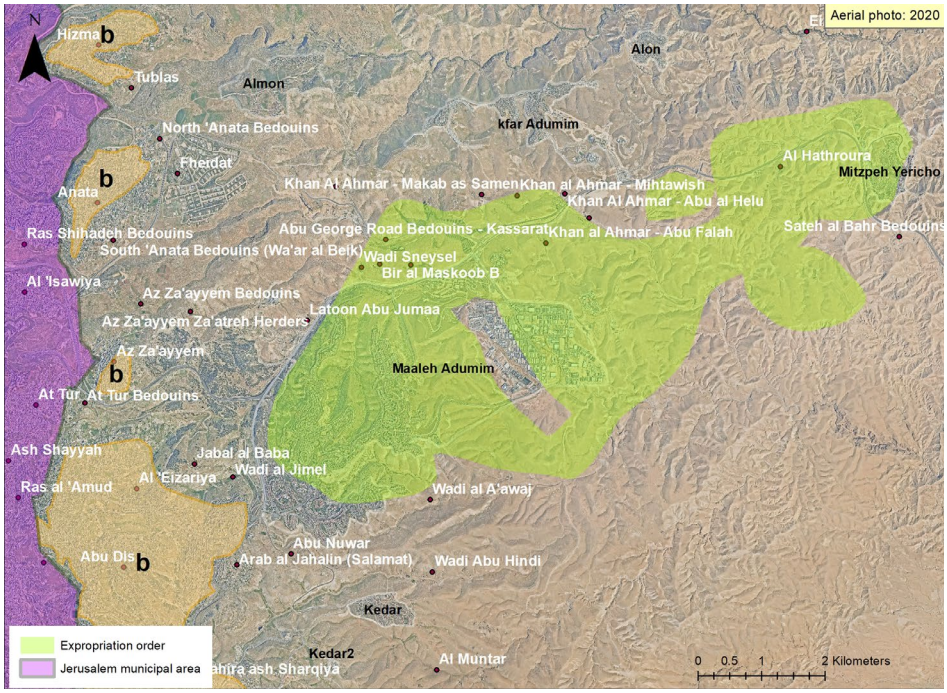
10. That order covered 2,455 dunams

11. Nevertheless the road ordinarily remains available for Palestinian use.

12. א. הת/20 , July 26, 1977. "It is decided: The joint Settlement Committee of the government and the World Zionist Organization recognize the settlements of Elon More, Ofra and Ma'ale Adumim as settlements to all intents and purposes; and tasks the settlement institutions to treat them accordingly".

Blazing a road near Ma'ale Adumim, 1975. Photo by Moshe Milner (National Photography Collection)

Even now, over 47 years after the first expropriation order for Ma'ale Adumim was signed, the built-up area of the settlement, the Mishor Adumim Industrial Park neighboring it on the east, and the Mitzpe Jericho settlement, most of whose area is included in that order, does not exceed 7,000 dunams – less than a quarter of the expropriated area. In subsequent years, Israel transferred additional, extensive areas to the west of the Ma'ale Adumim settlement, after having declared them "state land". These areas, located between Ma'ale Adumim and East Jerusalem (Area E-1), increased the settlements' municipal area to about 47,000 dunams.[13]



Aerial photograph from 2022 showing the expropriations for Ma'ale Adumim.

13. The Ma'ale Adumim website (H). According to the Civil Administration's maps, the settlement's municipal area is approximately 46,640 dunams.

This report is the first to review the expropriation orders issued by Israeli commanders in the West Bank since 1967, totaling over 300. Their accumulated area exceeds 74,000 dunams, after accounting for overlaps between different orders. These land expropriations are supposed to be used only – or at least also – by the Palestinian population of the West Bank. However, many of them have been issued exclusively for Israeli settlers. It is important to note that in this context, the use of expropriation orders for the purpose of building a new settlement or expanding an existing one has been and remains an unusual step that – except in the case of Ma'ale Adumim – was taken in only two other locations: Ofra and Har Gilo. Ofra was also established in 1975, inside an abandoned Jordanian military base built near the historical road between Ramallah and Jericho. As in the case of Ma'ale Adumim, the cover story of a "workers' camp" was used for building Ofra (25-29). The other instance of land expropriation used for the expansion of an existing settlement was in 1978, when an expropriation order was signed for an area of about 10 dunams to be included in the settlement of Har Gilo, built about a decade earlier on the lands of the inhabitants of the town of Beit Jala. This was land of the Russian Church, on which, among other things, the Har Gilo Field School operated for decades.[14]

The expropriation orders issued in 1975-1978 for Ma'ale Adumim, Ofra and Har Gilo may have been exceptional in terms of their declared purposes, given their *explicit* intent to serve the settlers alone, but they represent 41% of the area expropriated by Israel for "public purposes". This figure begs two important questions to examine:

1. What are the "public purposes" for which land may be expropriated?
2. Who is the "public" for which the "purposes" of these orders serve?

It is worth noting that this document does not refer to expropriations in East Jerusalem, i.e. the area annexed unilaterally by Israel in 1967.[15] Since 1967, Israel has expropriated nearly 23,400 dunams in this area to build new neighborhoods and settlements. Unlike the expropriations in the rest of the West Bank that are controlled directly by the military, the expropriations in East Jerusalem have been carried out through expropriation orders signed by finance ministers.

14. Today the expropriated area is part of a Border Patrol base, which rents local buildings from the Har Gilo Field School. Zafrir Rinat, "The Social and Environmental Awareness of the Society for the Protection of Nature Stops at the Green Line", *Haaretz*, March 17, 2021 (H).

15. B'Tselem, "Statistics on Land Expropriation in East Jerusalem", January 2011.

Structure of the Report

The present document consists of two main chapters. The first discusses the legal aspects of land expropriation for "public purposes" in the West Bank, held by Israel under "belligerent occupation" since June 1967. In this chapter, we will describe the conditions required for land expropriation in the West Bank and review the development of Israel's High Court rulings regarding that matter. We will also discuss the development of the concept of "local population" – a key concept for understanding the legal basis of the expropriation order. Towards the end of the legal chapter, we discuss the procedure of revoking expropriation orders in cases where the expropriated land has not been used.

It is important to clarify that the point of departure of this document is that all settlements in the West Bank, including East Jerusalem, are *illegal*, since they violate the international law that prohibits the occupying power from transferring its civilian population into the occupied territory.[16] The primary rationale for this prohibition is the understanding that transferring civilian populations to an occupied territory inevitably creates a conflict of interest between the occupying power's duty to meet the needs of the local population subjected to military rule, and its desire to serve the interests of the settler population. As seen below, this conflict of interest is clearly evident in the considerations behind many of the expropriation orders issued in the past 55 years.

The second chapter provides an extensive analysis of the expropriation orders themselves. In this chapter we will also address the question that has the most significant legal implications in this context: For what purposes have these expropriation orders been issued, and do these purposes indeed serve the needs of the Palestinian population? In this chapter, we will discuss several case studies that shed light on the way Israel has used expropriation orders for a variety of purposes.

Sources and Methodology

The main source of information for this report is the geographic information system (GIS) layers provided by the Civil Administration in response to Freedom of Information requests that we have submitted over the years.[17] In recent years, the Civil Administration began publishing various layers on its website, including the layers of expropriation orders.[18] The most up-to-date GIS layers from the Civil Administration include the following data:

16. Article 49 of the Fourth Geneva Convention, 1949, regarding the Protection of Civilian Persons in Time of War. According to the conventional interpretation in international law, this prohibition also includes *voluntary* transfer of the population of the occupying power into the occupied territory. See Frances Radai and Ido Rosenzweig, "The Legality of the Settlement Project according to International Law – True or False?", August 2, 2012, Israel Democracy Institute (H).

17. A GIS layer consists of a visual representation that can be polygonal, linear or point-like, along with a table with information that may be edited and entered according to the layer editor's needs.

18. The layer currently seen on the Civil Administration website was uploaded on August 26, 2022.

- Expropriation Order Number
- Date of issue
- Territory in dunams (a dunam equals 0.2471 acres)
- Purpose of the order
- Category of the order
- Governorate
- In the few cases where the order had been revoked, it is stated in the comments

In the course of our work, we compared the layers transferred with the layers of expropriation orders published by the Civil Administration and with official periodic publications by the Civil Administration. This comparison indicated that the GIS layers transferred by the Civil Administration excluded seven orders published by the military in various channels,[19] which we included in our database. Nevertheless, we cannot rule out the possibility that additional orders have not been included in our database because they had not yet been made available by the Civil Administration.[20]

In the next stage, we reviewed each of the orders to answer the following questions:

- Has the order been implemented?
- If so, is the implementation consistent with its map?
- Has the order been implemented to meet the needs of the Palestinian population, the settlers, or both?
- What is the category of the order? To which subcategory of "public purposes" has it been assigned by the military?

Chapter 2 will address extensively the arrived conclusions by analyzing all orders according to these criteria.

Finally, although some of the expropriation orders discussed below have been issued in order to build water and sewage infrastructure, Israel also uses the Order on Authorities Related to Water Laws (Judea and Samaria)(Order 92), which authorizes the official appointed by the military commander to expropriate and maintain land according to the purposes of the order in question.[21] This is also true of additional specific expropriation orders issued on the

19. These expropriation orders were published in periodic files called "manifests, orders and appointments" (MOAs), made available on the Military Advocate General website.

20. It is reasonable to assume that not all expropriation orders are included in the Civil Administration layer, given the fact that the numbering of orders issued each year is supposed to be consecutive. Nevertheless, the numbers of the orders included in the layer are often nonconsecutive. We have no explanation for this phenomenon.

21. Freedom of Information requests we submitted in 2016 to obtain these ordiers were rejected by the Civil Administration and Mekorot (National Water Carrier of Israel).

basis of local (British and Jordanian) antiquities laws.[22] At present we have no information about the orders issued by the power of these decrees.

Ariel in 1980. Photo by Herman Hanania (National Photography Collection)

22. Article 11 of the Jordanian Antiquities Law, 1966; Mandatory Antiquities Order (No. 51), 1929.

Chapter 1: The Legal Situation

The Legality and Reasonability of Expropriation

The authority to expropriate land in the West Bank for public purposes is derived from The Jordanian Land Law (Purchase for Public Use)(No. 2), 1953.[23] Ever since the occupation of the West Bank, Israel has been using the Jordanian law to expropriate land, as part of its duty to honor the laws applicable in occupied territory, according to Article 43 of the Hague Convention.[24] Over the years, Israel has amended and adjusted the law several times for its implementation by the Military Government.[25] For example, the government's authorities of expropriating land following Jordanian law have been relegated to the "authorized agency" appointed by the regional commander. Also, the articles that refer to the obligation to publicize a decision on expropriation in an official newspaper and to provide it to the landowners have been amended (Articles 3(1), 5, 6).

Jordanian law stipulates an orderly and gradual procedure for the coerced purchase (i.e., expropriation) of individual plots of land and their transfer to state ownership through the appointed "Custodian of Government Acquisition and Abandoned Property in the West Bank," a position adopted in June 1967.[26] Land purchase decisions can be temporary, or may concern part of the individual's rights (such as possession and use derived from the ownership of the land in question), and in some cases can restrict the owners' use of the land.[27] The legal obligation to publicize expropriations in an official newspaper and to inform and compensate the landowner to be reimbursed, as stipulated in the Jordanian law, was revoked by an Israeli military edict in 1969. Following the 1981 ruling of the High Court of Justice *Tabib case*, the order was amended and stipulated that expropriations would have to be made public only in periodical files called "manifests, orders and appointments" (MOAs), and that those affected by the expropriation would be informed.[28]

23. Based on the Mandatory Land Order (Purchase for Public Purposes), 1943.

24. Laws of War: Laws and Customs of War on Land (Hague IV); October 18, 1907.

25. Comparison of the texts of the Land Law Order (Purchase for Public Purposes) (Judea and Samaria) (No. 321), 1969, and the Order (No. 949) from 1981.

26. The procedure is detailed in Articles 3-9 of the law, which refer to the publication of an ad about the expropriation, an appeal to the government, the government's decision on the purchase, the approval of the transfer, the publication in an official newspaper, records filed in the Land Registry, compensation to the local rights holder of the real estate, and the registration of the land under the name of the expropriator.

27. Article 4(1).

28. HCJ 202/81 *Tabib et al. v. Minister of Defense,* Ver. 36(2), 622; the amendment was enacted in Order No. 949.

At the end of the expropriation procedure, the state becomes the owner. According to the state's position in the *HCJ Silwad case*, where expropriation procedures carried out by Jordanians were discussed in order to establish the military base that would later become the Ofra settlement, the expropriation is valid even when documentation of all its stages is incomplete. This is because there is sufficient evidence provided for the completion of the Jordanian procedure, which requires a published notification regarding the expropriation for the Land Registry and the establishment of the object of the expropriation (i.e., the basis on which the land is being expropriated).[29]

According to Jordanian law, the land expropriation process is carried out by the "founder," or initiator of the expropriation: the government, a municipal council, a local council, a company, a partnership, a corporation, or any individual who serves a public purpose. Article 9 of the Land Law requires the initiator to negotiate and reach an agreement with the landowner, as far as possible, for the purchase of the land acquisition. Should the parties fail to reach an agreement, the Military Appeals Committee is authorized to discuss appeals regarding the appropriate amount of compensation for the expropriation, according to criteria determined in Article 15(2) of the Jordanian law (such as the value of adjacent land), whereas the authority to discuss appeals on the validity of the expropriation itself is given to the HCJ.[30]

The Civil Administration's expropriation authority is drawn from Article 43 of the Hague Convention Regulations, which requires the military government to take all measures to restore and ensure public order and safety in the occupied area. This authority is subject to local law and Israeli administrative law. In addition, as determined in the *HCJ Iskan case* (which reviewed the Highway 443 land expropriation), this authority must be exercised for the benefit of the local population, and not exclusively for the national, economic, and social interest of the occupying country.[31] Despite this explicit ruling, after the outbreak of the Second Intifada (in October 2000), the military prevented Palestinians in the West Bank from using Highway 443 for security reasons. The HCJ ruled that in this situation,

29. HCJ case 419/14 *Silwad Municipality, Ramallah Governorate v. Minister of Defense* (January 6, 2020).

30. In the Jordanian law, the authority was relegated to the local court, and was transferred by order, according to Article 3(5), to the Military Appeals Committee. Appeal 63/14 (Judea and Samaria Area) *Muhammad Abed Wattab et al. v. Netivei Israel Ltd.* (July 6, 2022); Appeal (Judea and Samaria Area) 21/18 *Dr. Yali Haran v. Civil Administration in the Judea and Samaria Area* (March 31, 2020).

31. HCJ case 393/82 *Jamiyat Iscan Al-Mualimun Al-Ta'awniya Al-Mahduda Al-Masuliya, Cooperative v. Commander of IDF Troops in the Judea and Samaria Area,* Vol. 37(3) 785 (1983), pp. 794-795. This is the known approach as it arose recently in HCJ case 55845/21 *Abu Sirhan v. Commander of IDF Troops in the West Bank* (pending) (hereinafter, *HCJ Abu Sirhan case*) regarding the matter of expropriating land for building a water reservoir that is part of a system designed to purify sewage in the Kidron Valley (in Arabic, Wadi al-Joz and Wadi a-Nar) and transfer some of the purified water to irrigate Palestinian agriculture in the Jericho area. The court issued a conditional order requiring the state to explain how the implementation of the expropriation order in question (1/21) would also serve the Palestinian population, whose water infrastructure is not at all connected to waste treatment facilities.

where the road no longer serves the local population, the military commander was not authorized to order the expropriation to begin with, and therefore revoked the sweeping restrictions on movement.[32] In practice, however, the court allowed the state to determine "security arrangements" that prevented the Palestinians from using the road, which was initially paved to improve Palestinian access to Ramallah, among other purposes.

Highway 443 paved on Order 18/79 and closed to Palestinians during the Second Intifada

Let us now distinguish land expropriation from requisition (seizure): whereas land expropriation is designed to serve public purposes, and transfers the ownership to the state permanently, land seizure is the temporary transfer of possession to the military commander, and is supposed to serve strictly security needs (hence its temporary nature) – this is in accordance with Article 52 of the Hague Regulations that allows for the requisition of private property for the needs of the occupying military.[33] Until the late 1970s, dozens of settlements were established based on requisition orders. At the same time, Ma'ale Adumim and Ofra were initially established on the basis of expropriation orders for public purposes. After the *HCJ Dwaiqat case* (Elon Moreh) ruled that a civilian settlement could not be established due to a security requisition order, Government Decision 145 was made.[34]

32. HCJ case 2150/07 *Abu Saffiya v. Minister of Defense,* Ver. 63(3) 331 (2009).

33. See HCJ case 390/79 *Dwayqat v. Government of Israel,* Ver. 34(1)1 (1979) (hereinafter *HCJ Dwayqat case* or *Elon Moreh*); HCJ case 606/78 *Ayyub v. Minister of Defense,* Ver. 33(2) 113 (1979).

34. Ruling 145 of the 18th Government (November 11, 1979).

The use of orders requisitioning private land for building settlements then became less frequent, but did not cease altogether. The state then began to build them mainly on land declared as state land or formally registered as such prior to June 1967. Conversely, the use of expropriation orders to build new settlements stopped after the expropriations for Ma'ale Adumim and Ofra in 1977,[35] due to the position of Attorney General Yitzhak Zamir from 1980, according to which no private Palestinian land could be expropriated for public purposes in order to build settlements: "The decision to expropriate land by force of the Jordanian law in order to build new Israeli settlements stands on shaky ground from a legal perspective… There is serious doubt as to the legality of using the Jordanian law in order to expropriate private land for the purpose of Israeli settlements".[36] Nevertheless, Israel continued to use expropriation orders to serve the various needs of settlements and settlers, primarily road construction, while presenting them as land expropriations designed to serve the Palestinian population as well. The court, for its part, approved the expropriation of land for this principle reasoning, although the state's arguments were often unrealistic, as seen below on p. 42.[37]

Recently, the issue of expropriation for settlement purposes has been raised again when Attorney General Avichai Mandelblit approved the expropriation of private land in order to pave a road leading to the illegal outpost of Harasha. His legal opinion relied, among other things, on the verdict of Justice Salim Jubran in the *HCJ Ziada case*, which referred to settlers as part of the area's "local population," rendering their welfare as the concern of the military commander. This position, as stated by the Attorney General, diverged from "the traditional legal position accepted for many years, according to which the expropriation of private land for public purposes that serve Israeli settlement may be allowed only when it also serves

35. In the case of the expropriation of land of the Palestinian village of Susiya for the purpose of building the eponymous archeological site, the expropriated area was subsequently included in the jurisdiction of the Susiya settlement, as detailed below on p. 53. In the case of Har Gilo as well, the expropriation order was issued in order to expand the settlement established about a decade earlier.

36. Opinion by Attorney General Prof. Yitzhak Zamir on "The Legal Law on Land Purchase for Public Purposes" (May 12, 1980). See also opinion by Eyal Zamir, "State Land in Judea and Samaria", Legal Review 36 (1985).

37. See B'Tselem, *Land Grab: Israel's Settlement Policy in the West Bank* (May 2002) (hereinafter, B'Tselem, Land Grab); B'Tselem , *The Ofra Settlement: An Unauthorized Outpost,* (December 2008) (hereinafter, B'Tselem, Ofra); HCJ case 281/11 *Head of Beit Iksa Council v. Minister of Defense* (published in the Judicial Authority Website (JAW) on September 6, 2011), an appeal against land expropriation in the West Bank in order to construct the Tel Aviv-Jerusalem railway, which does not serve the local Palestinians. The state argued that the railway may serve the Palestinians in the future in being one element out of a comprehensive plan for railway infrastructures in the region. The HCJ rejected the appeal by stating that even had a violation of the rule of law been assumed following the expropriation, it's damage did not exceed, in the overall balance of things, the damage caused to the interests of the railway, of third parties, and the public interest, to an extent justifying the discussion of the appeal, despite the delay in its submission. Ronit Levin-Schnurr, "Amona, Mamona, and Isura: HCJ case 794/17 *Ziada v. Commander of IDF Troops in the West Bank*", *Online Law – Human Rights – Brief Reports on Court Rulings* 72, 40 (January 2018; *HCJ Tabib case*; *HCJ Jamiyet Iskan case*; Professional Team on Formulating an Outline for Regulating Construction in the Judea and Samaria Area (Headed by Dr. Haya Zandberg), *Summary Report* (2018) (hereinafter, Zandberg Report).

the Palestinian population". In the summary of his opinion he stated that in light of the final verdict, there is no longer any legal principle that impedes the promotion of a regulated access road to the Harasha outpost by way of expropriation for public purposes, subject to criteria based on proportionality and reasonability.[38] Note that afterwards, as part of a request for an additional hearing in the *HCJ Ziada case* given its precedents, including the allowance to take possession of private Palestinian land for the exclusive benefit of settlers, Supreme Court President Esther Hayut stated that "indeed, as noted by the plaintiffs, it appears that the verdict contradicts previous law in this context, and presents both renewal and difficulty".[39]

After the hearing in the *HCJ Ziada case*, the court addressed this issue directly as part of the petitions against the Regulation Law. Supreme Court President Hayut ruled with the majority opinion:

> **"Indeed, as this court ruled, the military commander is entitled by the power of his authority according to Article 43 of the Hague Regulations to consider the benefit of the local population in its entirety as well, including the Israeli population in the area (the Abu Safia issue, in paragraph 20). However, as far as we are concerned with the question of "public purpose" according to the expropriation laws applicable in the area, I do not find that these allow the expropriation of private land owned by Palestinians or claimed to have proprietary relations, for the purpose of building and expanding Israeli settlements, and for that purpose alone."[40]**

Thus, the court reverted to the traditional legal position whereby Palestinians' private land must not be expropriated to serve the needs of the Israeli settler population exclusively.

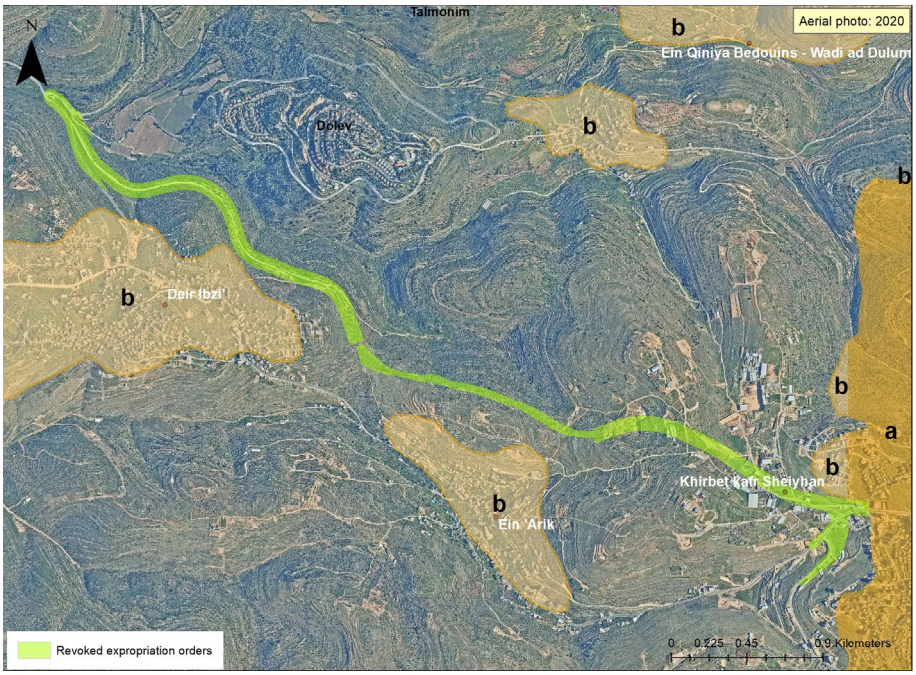
38. Clauses 25-27, 33 of the verdict by Justice Jubran in HCJ case 794/17 *Ziada v. Commander of IDF Troops in the West Bank* (published in Nevo, October 31, 2017) (hereinafter, *HCJ Ziada case*); Additional HCJ Hearing 9367/17 *Ziada v. Commander of IDF Troops in the West Bank* (published in Nevo, May 30, 2018) (hereinafter, *AHCJH Ziada case*); Dr. Gil Limon, "Regulating the Access Road to the Harasha Settlement" (November 8, 2017); Clause 9 of the Attorney General's response in the HCJ case 1308/17 *Silwad Municipality v. Knesset* (published in the JAW, June 9, 2020 (hereinafter: Regulation Law).

39. Clauses 7-9 of Justice Hayut's ruling in the *AHCJH Ziada case*. Nevertheless, the request for an additional hearing was rejected for the reason that the court's statement in *HCJ Ziada case* was an *obiter dictum* and that since this was a theoretical question, even if the additional hearing was accepted, this would not change the results of the previous procedure.

40. Clause 70 of Justice Hayut's ruling in the verdict on the Regulation Law.

Revoking Expropriation Orders

Beyond the legality and reasonability of the expropriation, the ruling also addressed the question of retroactive revocation of expropriated land, once the state has decided not to exercise its purpose, or due to considerable delay in its realization. This issue was raised in the case of the villages of Dir Abzi', Ein Arik, and Bitunia, 750 dunams of inhabited land expropriated in 1998 and 2001 in order to pave a bypass road that was supposed to connect several settlements west of Ramallah with Jerusalem. Construction work on the site began in the late 1990s, but was suspended following the outbreak of the Second Intifada in 2000. In 2007, settlers submitted a petition to the HCJ demanding that the road construction continue. The state responded that it had no intention to pave the road, for security reasons, due to the disproportionate damage to the property of the Palestinian population, and the presence of archeological sites along the designated route. The court approved the state's intent to abandon its initial paving plan, as abandoning it was reasonable and appropriate.[41] Subsequently, in 2010, Palestinian landowners submitted a petition to revoke the expropriation orders. Following this petition, the state consented to revoking the expropriation order and the petition was withdrawn.[42]



The expropriation orders were revoked in 2012 after the state withdrew from its intention to pave a bypass road on the land of Dir Abzi', Ein Arik, and Bitunia.

41. HCJ case 6379/07 *Dolev Settlement Council v. Commander of IDF Troops in the Judea and Samaria Area* (published in Nevo, August 20, 2009).

42. HCJ case 3013/10 *Head of the Ein Arik Village Council v. Commander of IDF Troops in the Judea and Samaria Area* (published in Nevo, July 3, 2012).

Conversely, in another expropriation order signed in April 1975 covering 1,300 dunams belonging to the village of Anata, among others, for the purpose of building Ma'ale Adumim, the state refused to revoke the expropriation of some of the area where, according to the petitioner's claim, the expropriation had not been exercised for some forty years. It is noted that in other parts of the expropriated area (which is over 28,000 dunams in size), the Ma'ale Adumim settlement and Mishor Adumim Industrial Park were built, whereas in the area applicable to the appeal, olive groves had been planted by settlers from the nearby Kfar Adumim settlement, and this area was transferred to legal jurisdiction. After the state had refused to revoke those parts of the expropriation where no settlements were built, the landowners appealed, relying among other things upon the *HCJ Karsik case* verdict, which determined that wherever the essential public purpose expropriated land no longer exists, the expropriation must be revoked and the land in question returned to their original owners.[43] The petitioners argued that although the Karsik verdict applied to land within the State of Israel, this was a doctrine outlined in basic principles in Israeli law regarding the status of property rights, as opposed to seizure for public purposes, and as such, could be used as an interpretive source for applicable law within the West Bank as well.[44] In the end, the court decided to reject the appeal for the main reason that most parts of the expropriation order had already been implemented. The court determined that although implementation was delayed for a long time, and although no detailed plans for the remaining land in question had yet been drawn, this land represented only one percent of the total area of the expropriation order, and was an integral and essential part, as it was located in a strategic location within the area. The verdict stated that "the petitioners' land was expropriated as part of a complex and extensively planned framework that included the establishment of the city of Ma'ale Adumim, the Mishor Adumim Industrial Park, and the settlement of Kfar Adumim. Implementing such a complex set of plans is gradual and requires time, so that its realization must be assessed from a broad perspective that takes its complexity into consideration".[45]

Regarding the applicability of the Karsik doctrine and the subsequent amendments made in Israeli law regarding land in the West Bank, the court ruled that the military commander was not directly subordinate to Israeli law, but rather to the local laws, and particularly the Jordanian law (Article 20 of the Jordanian Purchase Law), which does not require the land to be returned if the expropriator was a state authority. However, the court ruled that the applicability of obligation to return land to original owners in cases of non- realization of the expropriation purpose by the military commander should not be determined, and left this matter for further consideration.

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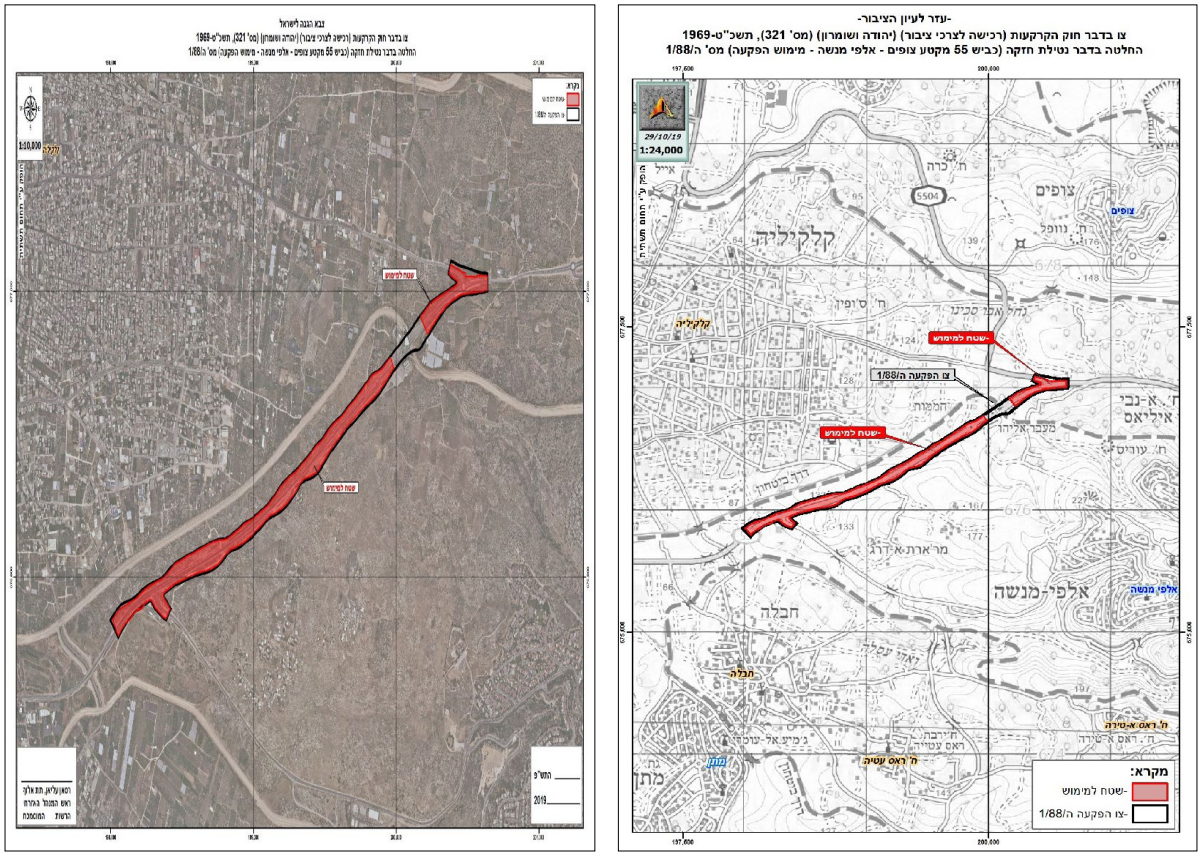
43. HCJ case 2390/96 *Karsik v. State of Israel,* Ver. 55(2) 625 (2001).

44. HCJ case 3240/15, *Head of Anata Council v. Commander of IDF Troops in the West Bank* (published in Nevo, January 7, 2019) (hereinafter: *HCJ Anata case*).

45. Ibid., Clause 32 of Justice Baron's verdict.

In recent years, the Civil Administration began publishing decisions to take possession (implement expropriation orders) of expropriations that were not implemented or only partially implemented. In these notices, the Civil Administration states its intent to exercise the expropriation within a given period of time. This notice does not offer the owners of the expropriated land an orderly procedure to appeal an expropriation. We assume that these notices are intended to provide the state with additional protection in cases where appeals are submitted against the engagement of work in the area of expropriation as a result of the elapse of time since the issuing of the original order and the implementation of the order.



Notice from December 23, 2019 on the intent to exercise Order 1/88 and pave a road east of Qalqilya .

Jordanian Expropriation Orders: The Ofra Case

The "Work Camps" in Samaria Demand Permanent Settlement Status

תאריך הורדה: 8 דצמבר 2022. מקור: עמוד 14, מעריב, 24 אוקטובר 1976 *** מתוך אתר "עיתונות יהודית היסטורית", הספרייה הלאומית ואוניברסיטת ת"א

בארץ

„מחנות העבודה" בשומרון דורשים מעמד של ישובי קבע

„ב־10 חודשי חיינו כאן למדנו שמוסדות הממשלה נוהגים בנו במדיניות של ‚תנו להם להתנוון'"

● מעלה אדומים: „אנשים מצפים רק לאור ירוק, כדי לבוא ולהתיישב בעיר החדשה"
● עפרה: „שמעון פרס הודה שיש לנו לבזיחה הזאת ששמה ‚מחנה עבודה'"
● קדום: „להוריד אותנו בכוח — זה כמו לומר שמורידים את הגבינה"

מאת יוסף וקסמן

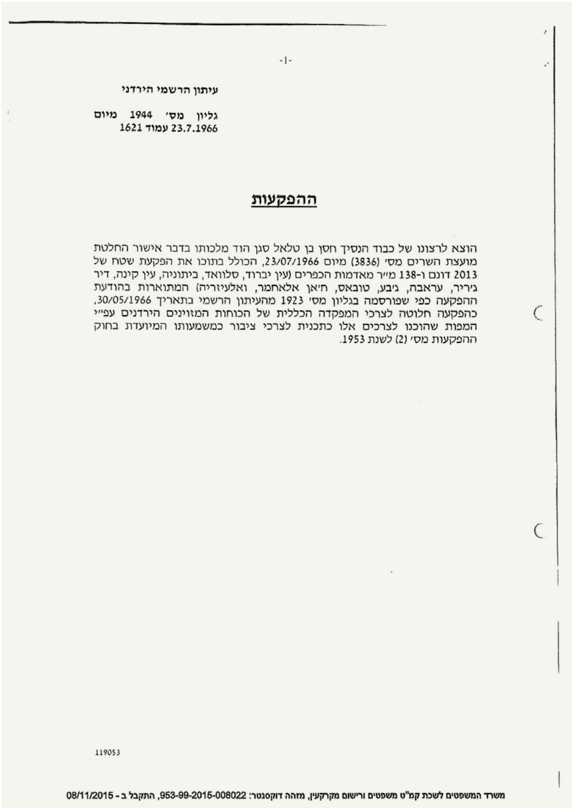
אהבה

הכרה

During the years of Jordanian control of the West Bank (1948-1967), the Jordanian government seized the rights to possession and use of land in three parallel ways. The first was the aforementioned 1953 Land Law (see p. 17). The second and quicker way was expropriation for "military and security needs", based on the Jordanian Defense Regulations (Regulation 2, 1939); the authority to expropriate land for these needs was vested in the prime minister and expropriation would take effect only after his decision and the seizure of possession. The third way was expropriations for archeological excavations.[46] We do not have complete information about the number of Jordanian expropriations or the size of

46. Zandberg Report, p. 31.

the territory expropriated. Following a petition filed in 2014 against the state's intention to legalize the Ofra settlement, the state revealed that the 1966 Jordanian documents, among other things, were used to expropriate some 260 dunams from the inhabitants of the Palestinian villages of Ein Yabrud and Silwad in order to build a military base near the historical Ramallah-Jericho road.[47] Nine years later, the Ofra settlers took over the abandoned Jordanian base and turned it into the first Israeli settlement in the Ramallah area.



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עיתון הרשמי הירדני

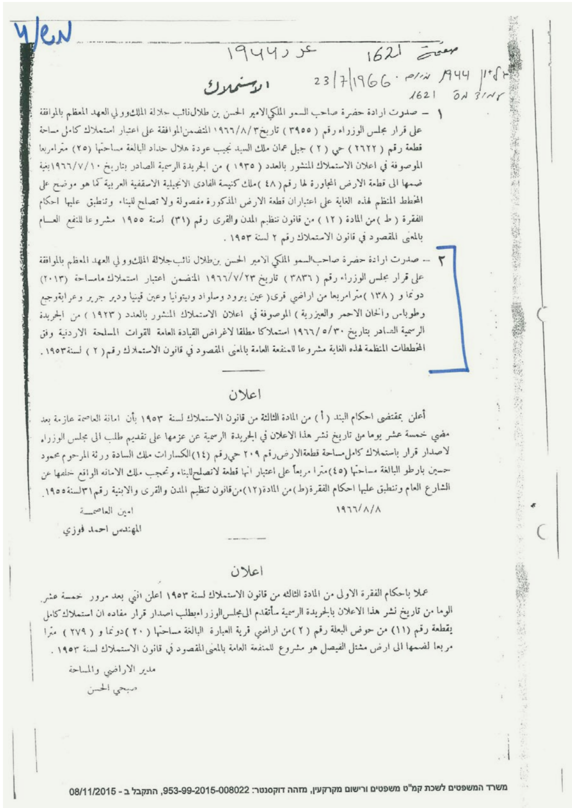
גליון מס' 1944 מיום
23.7.1966 עמוד 1621

ההפקעות

הוצא לרצונו של כבוד הנסיך חסן בן טלאל סגן הוד מלכותו בדבר אישור החלטת מועצת השרים מס' (3836) מיום 23/07/1966, הכולל בתוכו את הפקעת שטח של 2013 דונם ו-138 מ"ר מאדמות הכפרים (עין יברוד, סלוואד, ביתוניה, עין קינה, דיר גיריר, עראבה, גיבע, טובאס, ח'אן אלאחמר, ואלעיזריה) המתוארות בהודעת ההפקעה כפי שפורסמה בגליון מס' 1923 מהעיתון הרשמי בתאריך 30/05/1966, כהפקעה חלוטה לצרכי המפקדה הכללית של הכוחות המזוינים הירדנים עפ"י המפות שהוכנו לצרכים אלו כתכנית לצרכי ציבור כמשמעותו המיועדת בחוק ההפקעות מס' (2) לשנת 1953.

119053

משרד המשפטים לשכת קמ"ט משפטים ורישום מקרקעין, מזהה דוקסנטר: 953-99-2015-008022, התקבל ב - 08/11/2015



صفحة 1621 عدد 1944
الاستملاك

١ – صدرت ارادة حضرة صاحب السمو الملكي الامير الحسن بن طلال نائب جلالة الملك وولي العهد المعظم بالموافقة على قرار مجلس الوزراء رقم (٣٩٥٥) تاريخ ١٩٦٦/٨/٣ المتضمن الموافقة على اعتبار استملاك كامل مساحة قطعة رقم (٢٦٢٢) حي (٢) جبل عمان ملك السيد نجيب عودة هلال حداد البالغة مساحتها (٢٥) مترا مربعا الموصوفة في اعلان الاستملاك المنشور بالعدد (١٩٣٥) من الجريدة الرسمية الصادر بتاريخ ١٩٦٦/٧/١٠ بغية ضمها الى قطعة الارض المجاورة لها رقم (٤٨) ملك كنيسة الفادى الانجيلية الاسقفية العربية كما هو موضح على المخطط المنظم لهذه الغاية على اعتبار ان قطعة الارض المذكورة مفصولة ولا تصلح للبناء وتنطبق عليها احكام الفقرة (ط) من المادة (١٢) من قانون تنظيم المدن والقرى رقم (٣١) لسنة ١٩٥٥ مشروعا للنفع العام بالمعنى المقصود في قانون الاستملاك رقم ٢ لسنة ١٩٥٣ .

٢ – صدرت ارادة حضرة صاحب السمو الملكي الامير الحسن بن طلال نائب جلالة الملك وولي العهد المعظم بالموافقة على قرار مجلس الوزراء رقم (٣٨٣٦) تاريخ ١٩٦٦/٧/٢٣ المتضمن اعتبار استملاك ما مساحة (٢٠١٣) دونما و (١٣٨) مترا مربعا من اراضي قرى (عين يبرود وسلواد وبيتونيا وعين قينيا ودير جرير وعرابة وجبع وطوباس والخان الاحمر والعيزرية) الموصوفة في اعلان الاستملاك المنشور بالعدد (١٩٢٣) من الجريدة الرسمية الصادر بتاريخ ١٩٦٦/٥/٣٠ استملاكا مطلقا لاغراض القيادة العامة للقوات المسلحة الاردنية وفق المخططات المنظمة لهذه الغاية مشروعا للمنفعة العامة بالمعنى المقصود في قانون الاستملاك رقم (٢) لسنة ١٩٥٣ .

اعلان

أعلن بمقتضى احكام البند (أ) من المادة الثالثة من قانون الاستملاك لسنة ١٩٥٣ بأن امانة العاصمة عازمة بعد مضي خمسة عشر يوما من تاريخ نشر هذا الاعلان في الجريدة الرسمية عن عزمها على تقديم طلب الى مجلس الوزراء لاصدار قرار باستملاك كامل مساحة قطعة الارض رقم ٢٠٩ حي رقم (١٤) الكسارات ملك السادة ورثة المرحوم محمود حسين بارطو البالغة مساحتها (٤٥) مترا مربعاً على اعتبار انها قطعة لا تصلح للبناء وتحجب ملك الامانه الواقع خلفها عن الشارع العام وتنطبق عليها احكام الفقرة (ط) من المادة (١٢) من قانون تنظيم المدن والقرى والابنية رقم ٣١ لسنة ١٩٥٥ .

١٩٦٦/٨/٨ امين العاصمة
المهندس احمد فوزي

اعلان

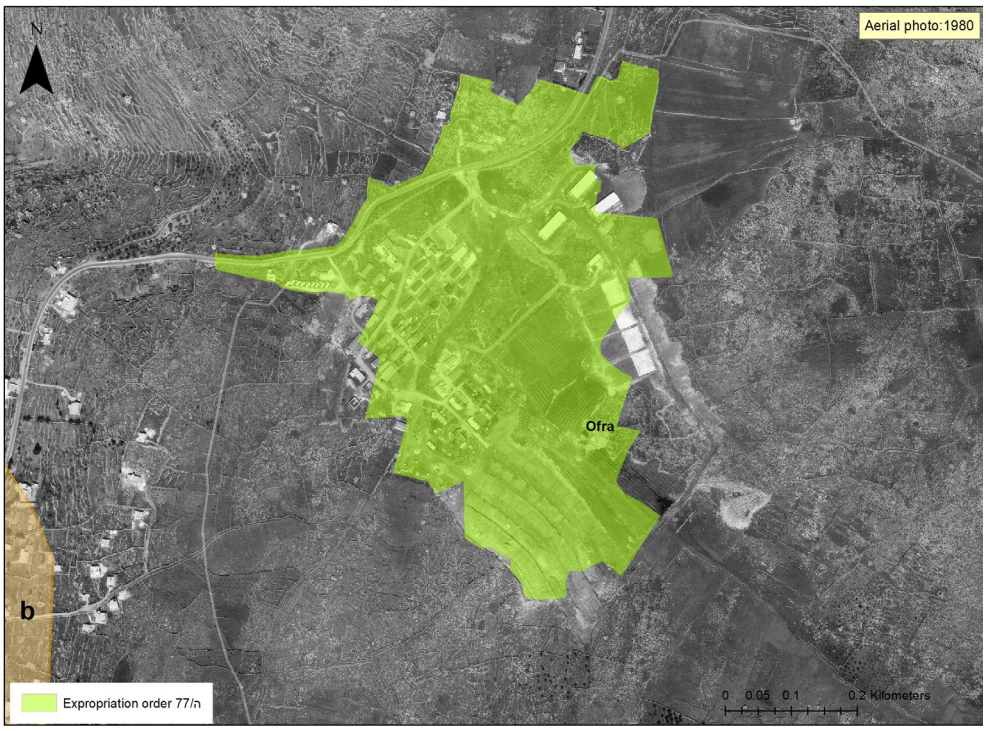
عملا باحكام الفقرة الاولى من المادة الثالثه من قانون الاستملاك لسنة ١٩٥٣ اعلن انني بعد مرور خمسة عشر يوما من تاريخ نشر هذا الاعلان بالجريدة الرسمية سأتقدم الى مجلس الوزراء بطلب اصدار قرار مفاده ان استملاك كامل القطعة رقم (١١) من حوض البعلة رقم (٢) من اراضي قرية العبارة البالغة مساحتها (٢٠) دونما و (٢٧٩) مترا مربعا لضمها الى ارض مشتل الفيصل هو مشروع للمنفعة العامة بالمعنى المقصود في قانون الاستملاك لسنة ١٩٥٣ .

مدير الاراضي والمساحة
صبحي الحسن

משרד המשפטים לשכת קמ"ט משפטים ורישום מקרקעין, מזהה דוקסנטר: 953-99-2015-008022, התקבל ב - 08/11/2015

The Jordanian government's announcement of its decision to expropriate areas for military bases in various locations in the West Bank, July 23, 1966.

47. HCJ case 419/14 *Municipality of Silwad et al. v. Minister of Defense et al.*



Aerial photograph of Ofra, 1980.

In the case of Ofra, however, it quickly became obvious that the settlers' plans were not limited to the area expropriated by the Jordanians. An aerial photograph of the settlement from 1980, five years after its founding, suggested that the settlers began building their houses on the private land of the inhabitants of Ein Yabrud (located outside the area of the expropriation order), several hundred meters to the west.

Aerial photograph of Ofra, 1990.

While the Ofra settlers in 1980 were pirating private Palestinian land that remained outside the Jordanian expropriation order area, the Israeli government was also discussing the possibility of taking over additional private land of the inhabitants of Ein Yabrud and Silwad. The discussions were held by the Ministerial Committee on Settlement, headed by the Minister of Agriculture at the time, Ariel Sharon. The committee sought to solve the lack of state land around the young settlements. In a discussion of this matter held on May 22, 1980, then Education Minister Zevulun Hammer said: "It says here that up to about two km around were checked. I suggest we be informed what happens next. I mean, there may be a solution one way or another, and then we may decide to blaze roads, it is allowed after all". Deputy Minister of Agriculture for Settlement Matters Uri Baron answered Hammer: "I was on the committee that examined this issue for a range not of 2 km but of 8 km and there's no [solution] – it's all regulated area". (i.e registered in the Tabu). Minister of Agriculture Sharon was much less interested in the issue of legality and land ownership; he was mainly concerned with the possibility that the Palestinians would build on their private land, located on the hill near the settlements:

> "This rocky hill, I don't understand why it cannot be included in the plan, so as to first stop the construction in the area. A certain perimeter needs to be taken there and closed within a planning line, so that they don't build around it. Obviously, they will build and continue building down to where the settlement fence is located today."[48]

It would eventually turn out that Sharon's fears were unfounded. The Palestinian landowners did not build on the hill. Those who did were the second-generation settlers, founding the illegal outpost of Amona on the very same hill. Amona was finally evacuated in early 2017, eight years after the owners of the stolen land had appealed to the HCJ demanding that the trespassers be evacuated.[49] The founding of the Amona outpost in the late 1990s was yet another step in a plan to take over thousands of dunams of private land, in a radius of several kilometers around Ofra. The most criminal demonstration of this process was the construction of hundreds of houses on Palestinian-owned land within the Ofra settlement.[50] The database prepared by Brigadier General (res.) Baruch Spiegel (Spiegel Report), which the state had refused to publicize officially at the time but was leaked in 2009, reveals for the first time the extent of the takeover of private land around Ofra:[51]

48. ISA, "Minutes of the Meetings of the Ministerial Committee on Examining the Land Problem of the Settlements in Judea, Samaria and the Gaza Strip".

49. "HaMakor: Amona Case – This is How the Outpost That's Rocking the Nation Was Built", *13tv*, December 20, 2016; HCJ case 9949/08, *Miriam Hassan Abd Al-Karim Hamad v. Minister of Defense* (published on the Judicial Authority Website, February 1, 2017).

50. See also B'Tselem, Ofra.

51. Uri Blau, "Secret Israeli Database Reveals Full Extent of Illegal Settlement", *Haaretz*, Jan 1, 2009.

> Construction without approved plans:
> The entire settlement is not regulated by valid master plans. Most of the construction in the settlement is on land registered (in the Tabu) as private, without any legal basis and no possible legalization.
>
> 1. The older settlement –over 200 permanent residential buildings, agricultural buildings, public buildings, ground preparations (for construction), plantations within the older settlement areas (for which a 221 Plan was submitted, and not promoted due to an ownership problem).
>
> 2. The Ramat Zvi neighborhood – south of the older settlement – consisting of about 200 permanent buildings as well as ground preparations and developments for additional permanent construction, all on private lands that had been expropriated.[52]

Expropriations, Seizures, Declarations, Closures, and Construction ban orders

Apart from expropriation orders, the Israeli authorities issue additional orders as part of their land regime in the West Bank. The following is a short description of some of the main orders Israel uses for this purpose:

Seizure orders. Since 1967, military commanders have issued over 1,300 seizure orders for "security purposes", used to "temporarily" seize some 112,000 dunams. Of these areas, nearly 40,000 dunams have been seized for "settlement" purposes. Namely, for the establishment of dozens of settlements from the late 1960s to the early 1980s. An additional 25,600 dunams were seized for a variety of purposes related to military needs, such as bases and military facilities. Over 25,000 dunams were seized by the military to build the Separation Barrier. About 4,000 dunams were seized in order to protect settlers and settlements, including security roads, fences and various security measures along roads and around settlements.[53]

Declarations of state land. Following the *HCJ Elon More case* ruling, which significantly restricted Israel's ability to seize new land for settlement construction, the military began to declare very broad swathes of the West Bank as "state land". Since the early 1980s, the military has declared some 800,000 dunams as such. About 700,000 of them are currently located in Area C (representing 61% of the West Bank), which has remained under full Israeli control even after the Oslo Accords.

52. See the Kerem Navot website for Spiegel's complete database (H).

53. See "Seize the Moral Low Ground: Land Seizure for 'Security Needs' in the West Bank", Kerem Navot, December 2018 (hereinafter, Seize the Moral Low Ground, Kerem Navot).

Closure orders. While the precise number of the thousands of temporary closure orders issued by the military to this day is unknown, the number of permanent closure orders has reached only several dozen. However, the territories in question are huge. In a report published by Kerem Navot in March 2015, we showed that about one-third of the West Bank, areas defined as "military zones," are closed off to Palestinians. This serves several purposes: Firing zones (blocked to Israelis as well), settlement jurisdiction areas, areas adjacent to the border with Jordan, and the area declared as the "Seam Zone", located between the Separation Barrier and the Green Line. Unlike expropriation or seizure orders, closure orders do not apply to permanent residents living within the closed areas, nor do they touch upon the issue of ownership or the right to use privately-owned land in the closed areas -- these lands are reserved (supposedly in coordination with the military) for privately owned use.[54]

Construction ban orders are issued by the dozens by the military to prevent construction mainly along roads in the West Bank and parts of the Separation Barrier, totaling some 460,000 dunams.

54. See "A Locked Garden: Declaration of Closed Areas in the West Bank", Kerem Navot, March 2015 (hereinafter, A Locked Garden, Kerem Navot).

Chapter 2: The Expropriation Orders

Between 1972-2022 the military commanders of the West Bank signed 313 expropriation orders. The total area of these expropriated lands, including several orders rescinded over the years, was about 75,600 dunams, or about 74,000 dunams after offsetting for overlaps in different expropriation orders. The numerical data regarding the order areas presented below are calculated according to the size of the areas prior to this adjustment.

The Distribution of the Expropriated Area Based on Land Ownership Status [55]

The ownership status of the lands included in the expropriation orders were examined in relation to several different ownership categories: regulated and registered privately-owned land, regulated and registered state land, unregulated and unregistered private land, and unregulated land declared by Israel as state land. The examination shows that most of the expropriated land is currently not included in any of the categories mentioned. The reason is that in large sections of the West Bank, in which about two-thirds of the land have not been regulated to date, the Civil Administration had not mapped the status of land ownership.[56] Presumably, much of this area is defined by the Civil Administration as "survey land," or land that the Israeli authorities consider to be state land, despite not having been registered or declared as such.[57]

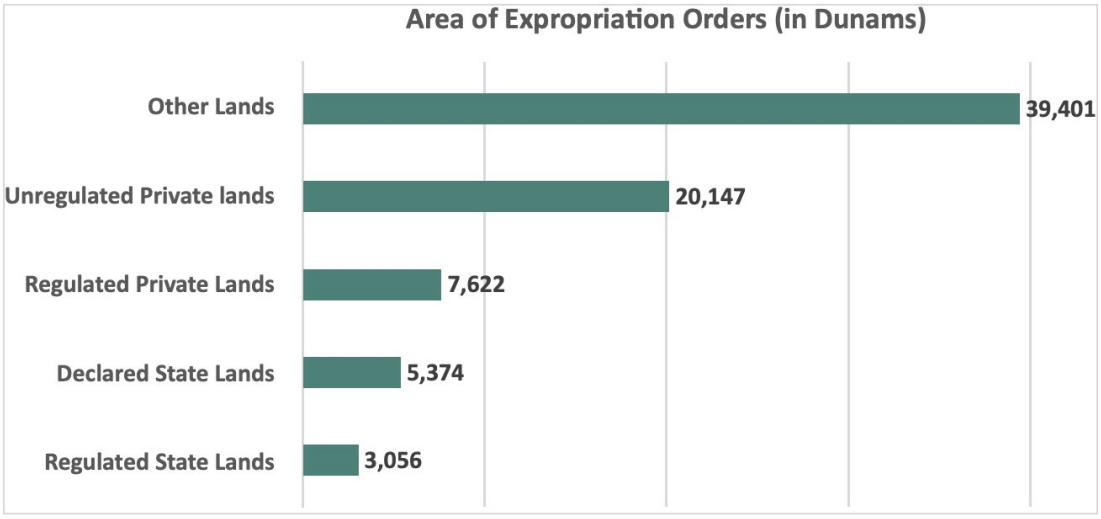
Thus, the question arises, why does the state bother to expropriate land that it considers to be state land in the first place? A possible answer may be found in the state's response to a petition submitted in regards to the intent to expropriate 644 dunams of the land belonging to the village of Al-Ubeidiya, lying east of Bethlehem. This land is an arid desert area considered by the state as mostly "survey land". The state's response suggested that

55. The division into ownership types and the data presented here rely on GIS layers provided to us by the Civil Administration over the years. The use of the terms "state land" or "declared state land" is purely technical and should not be construed as recognition of Israel's right to use this land for its own purposes.

56. The settlement of land in the West Bank was in fact suspended upon its occupation and officially terminated in 1968 by the Order Concerning Settlements of Land and Water (Judea and Samaria) (No. 291). Article 3(a) of the Order states that "Any settlement and any procedure carried out according to such a settlement shall be postponed".

57. This should be interpreted cautiously, as the Civil Administration refuses to share the GIS layer of "survey land" in the West Bank. For more on this, see "Out of Order: Civil Administration Eviction Orders from 'State Land', 2005-2018", Haqel and Kerem Navot, December 2019, pp. 26-28.

even in cases where the state believes that expropriation is apparently unnecessary, it takes this step "for the sake of caution": "The area that was eventually decided to be expropriated is an arid desert area, defined as 'desert pasture' in the fiscal map, and its expropriation was carried out for the sake of precaution alone. Moreover, the southern part of the project is located within the area declared as state land in 1989".[58] Another response was given in the Zandberg Report, which stated that the use of expropriation in cases of this kind arise from public need, which for the sake of efficiency and simplicity, dictates the purpose for the use of expropriation procedures for all of the land within the expropriation perimeter, including publicly owned land.[59]



Distribution of Orders by Years

Examination of the number of orders issued every year shows that during the terms of the three first Likud governments (1977-1984), 179 orders were issued, which is about 56% of all expropriation orders issued to this day. In contrast, during the decade in which the Labor Party was in power (1967-1977) – when the first thirty settlements were built – only 18 such orders were issued.

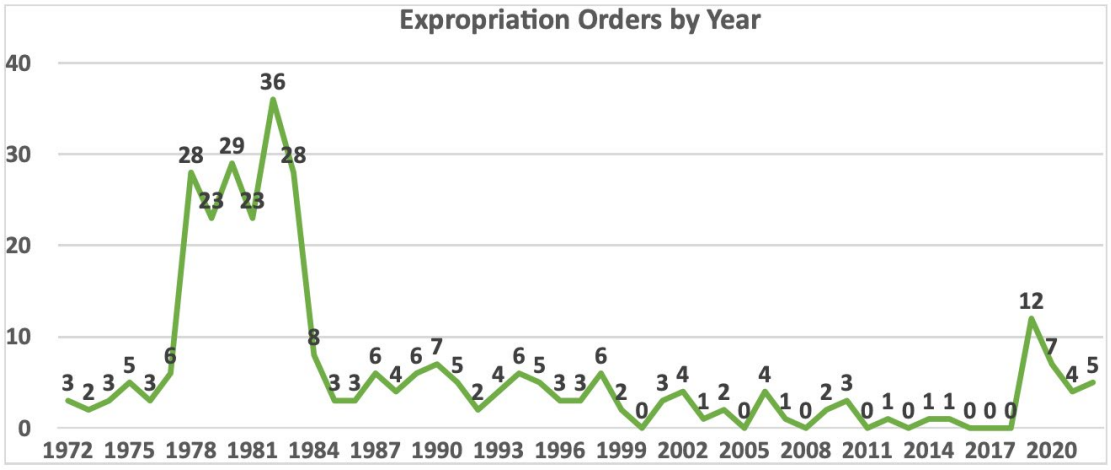
The sharp increase in the number of expropriation orders issued in 1977-1984 reflected the changes in the Israeli settlement policy following the political upheaval of May 1977, when the Likud won the elections for the first time. Indeed, in 1977-1984, more than seventy new settlements were built in the West Bank.[60] This sharp increase entailed massive land

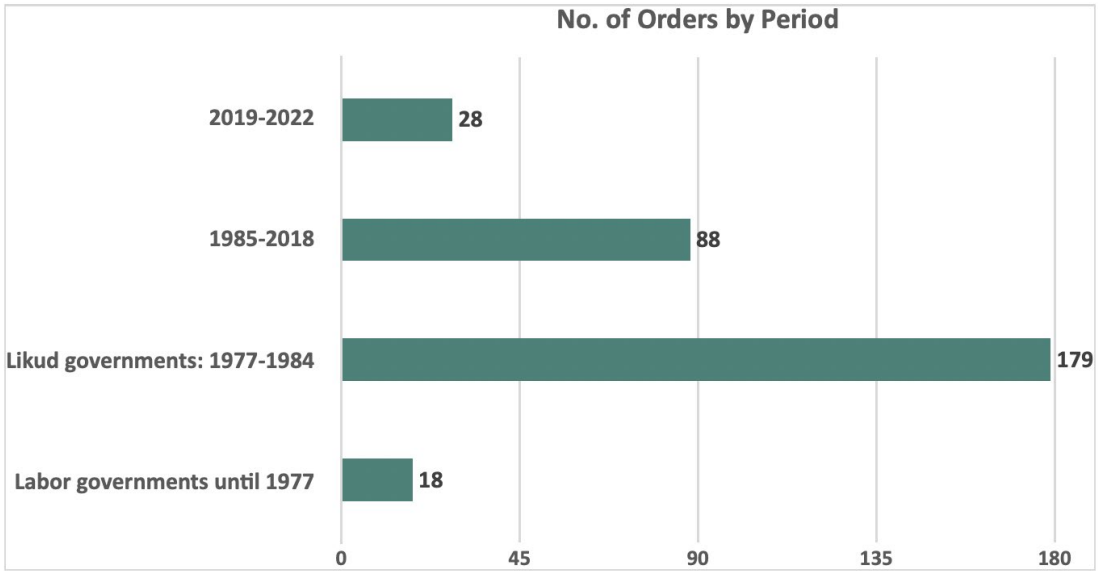
58. Paragraph 28 in the state's response on November 27, 2022, *HCJ Abu Sirhan case*, see above on p.

59. Zandberg Report, see above on p.

60. B'Tselem, Land Grab, p. 14.

expropriations, mainly for the purpose of paving access roads to the settlements, and in some cases, upgrading the existing road system, used by both settlers and Palestinians. However, during the 33 years between 1985-2018, only 88 expropriation orders were issued, since apparently the previous expropriations had sufficed. Since 2019, the number of orders has increased again: in 2019-2022, 28 orders were issued. This increase reflects the recent shift in Israel's attitude towards the West Bank, apparent in the recent massive infrastructural investments designed to significantly increase the number of settlers and to promote annexation, if not officially than at least in practice.





Begin to Submit Proposal to Approve Building of Reihan and Dotan for the Government's Approval

תאריך הורדה: 20 דצמבר 2022. מקור: עמוד 3, מעריב, 16 ספטמבר 1979 *** מתוך אתר "עיתונות יהודית היסטורית", הספרייה הלאומית ואוניברסיטת ת"א

בגין יביא לאישור הממשלה הצעה לאשר הקמת ריחן ודותן

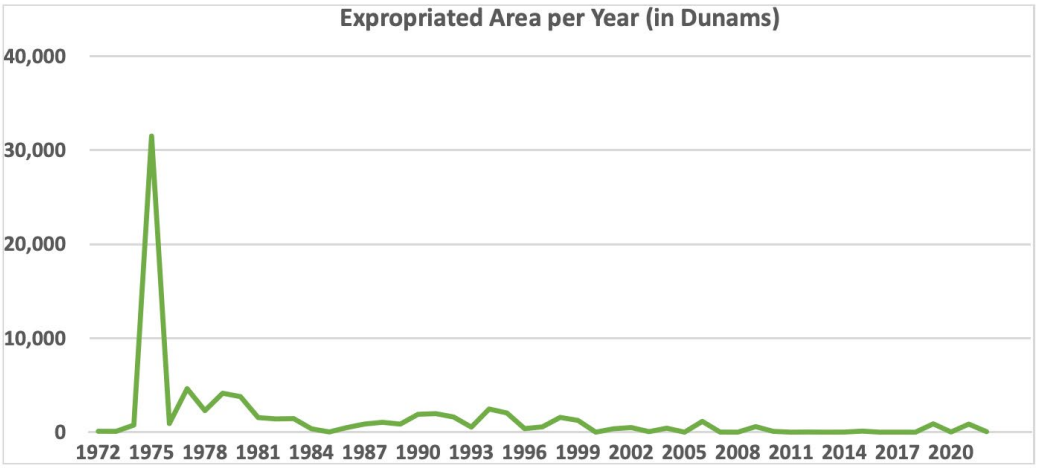
מאת סופרו המדיני של „מעריב"

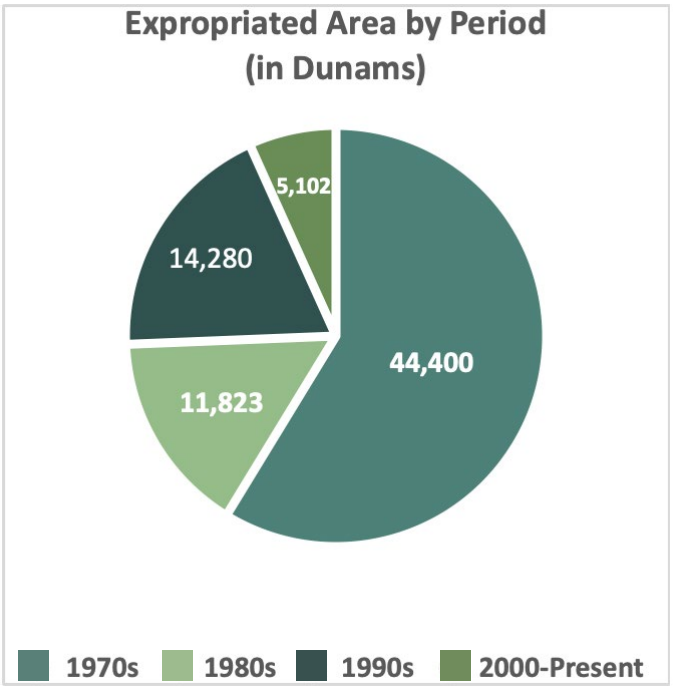
ראש הממשלה, מנחם בגין, עומד להביא היום לאישור הממשלה הצעה בדבר הקמתן של שתי התנחלויות בשומרון ריחן ודותן ובכך לשים קץ לויכוח אם מדובר בהרחבת התנחלויות הקיימות (על רקע ערעורו של סגן ראש הממשלה, פרופ' יגאל ידין) או בהקמת התנחלויות חדשות.

לפי צעד זה נראה, כי מר בגין מעדיף שלפני שסגן ראש הממשלה ישמיע את ערעורו, תקבל הממשלה החלטה חיובית בדבר הקמתן של ריחן ודותן.

Distribution of Expropriated Area by Years

As mentioned above, the entire area included in expropriation orders amounts to about 75,600 dunams (before offsetting overlaps). The year in which the largest area was expropriated by far to any other year, was 1975, the year in which the first order for the Ma'ale Adumim settlement was issued, covering an area of about 28,000 dunams (Expropriation Order 1/4/75). From a broader perspective, we can see that nearly three-quarters of the area included in the orders was expropriated by the late 1980s, another almost fifth of the area was expropriated in the 1990s, and the remaining 7% within the past 22 years.





The "Category" of the Expropriation Orders According to Civil Administration Definitions

In the GIS layer of expropriation orders provided by the Civil Administration, each order is classified according to an indication of its "category." Each category is designated by a number, and is not always explicitly indicated in the layer. Within our analysis of each layer, we examined the characteristics of each category, as summarized in the table below, along with the total number of orders of each category and their sizes. The following methodological

notes are pertinent to understanding the table:

1. In one case where we failed to determine the category, we wrote “unknown”.
2. In several cases where we believed the category listed in the Civil Administration’s table was similar or identical to another listed in the same table, we considered them a single category.
3. The GIS layer of the Civil Administration is full of errors in defining the categories of some of the orders (i.e. some orders were classified under an erroneous category). Nevertheless, we chose to present them as they appeared in the layer, while noting these errors in the footnotes.

The List of Categories in the GIS Layer

Category no.	Characteristics	No. of orders	Size (in dunams)
Not specified	Not specified	30	2,650
1	Waste disposal sites	2	367
2	Archeological site (Susiya)	1	286
3	Water booster pump in a Palestinian village	1	0.7
4	Unknown	1	1
5	Archeological site (*Shalom Al Israel* Synagogue in Jericho)[61]	1	2
6	Wastewater oxygenation basins for settlements	2	14
7	Drinking water reservoirs in settlements	18	143
8	Public park for Palestinians (in Bethlehem)	1	6
9	Access roads to settlements, Palestinian villages and district roads[62]	52	6,414
10	Partial withdrawal from an expropriation (in Hebron)	1	259
11	Exercising a Jordanian expropriation (Ofra)	1	265
12	Parking lots	4	19
13	Expropriations for building and expanding settlements (Ma’ale Adumim and Ofra)[63]	3	30,696

61. It is not clear to us why this order was defined as a category distinct from that of the order in Category 2.

62. It is not clear to us why some of the roads included under this category have not been included under Category 14, which includes a large group of roads.

63. The category number of the expropriation for expanding the Har Gilo settlement was not at all specified in the GIS.

Category no.	Characteristics	No. of orders	Size (in dunams)
14	Roads (some for Palestinians, some for settlers, and some for both)[64]	142	31,613
15	"Education tax committee in Bethlehem"	1	11
16	"Garbage dump"[65]	3	1,416
17	Sewage treatment facilities in Palestinian cities	2	126
18	An eclectic collection of categories[66]	3	56
19	Phone exchanges in settlements + "Community center in Jiftlik"[67]	3	7
20	Wastewater plants in the Ariel and Ma'ale Michmash settlements	2	39
21	Civil Administration facility in Qalqilya (cancelled) + wastewater plant in Beit Horon[68]	2	1
22	Wastewater pipes inside settlements	7	34
23	Water drillings + wastewater facilities in settlements[69]	8	62
24	Water drillings + Jerusalem-Tel Aviv railway[70]	6	291
25	Housing for poor Arabs in the Old City of Jerusalem + Jerusalem-Tel Aviv Railway[71]	2	694
26	Electricity facilities	2	4
27	Bus and transportation stations for Palestinians	2	77
28	Electricity facilities[72]	4	11
29	Meteorological station in Jericho	1	0.2
30	Electricity facilities[73]	1	31
31	Pumping station	1	3
32	Communication facility + pumping station[74]	3	7

64. The rationale for separating this group of orders from those under Category 9 is unclear to us, as there is considerable overlap between the groups in the purposes of the expropriations.

65.It is not clear to us why these orders have been included under a category separate from the orders under Category 1.

66. These three categories do not form a single coherent category and could have been included under other, existing categories. This was an obvious error on the part of the editors.

67. The order for the community center was probably misplaced under this category.

68. This was an obvious error on the part of the editors.

69. This was an obvious error on the part of the editors.

70. This was an obvious error on the part of the editors.

71. This was an obvious error on the part of the editors.

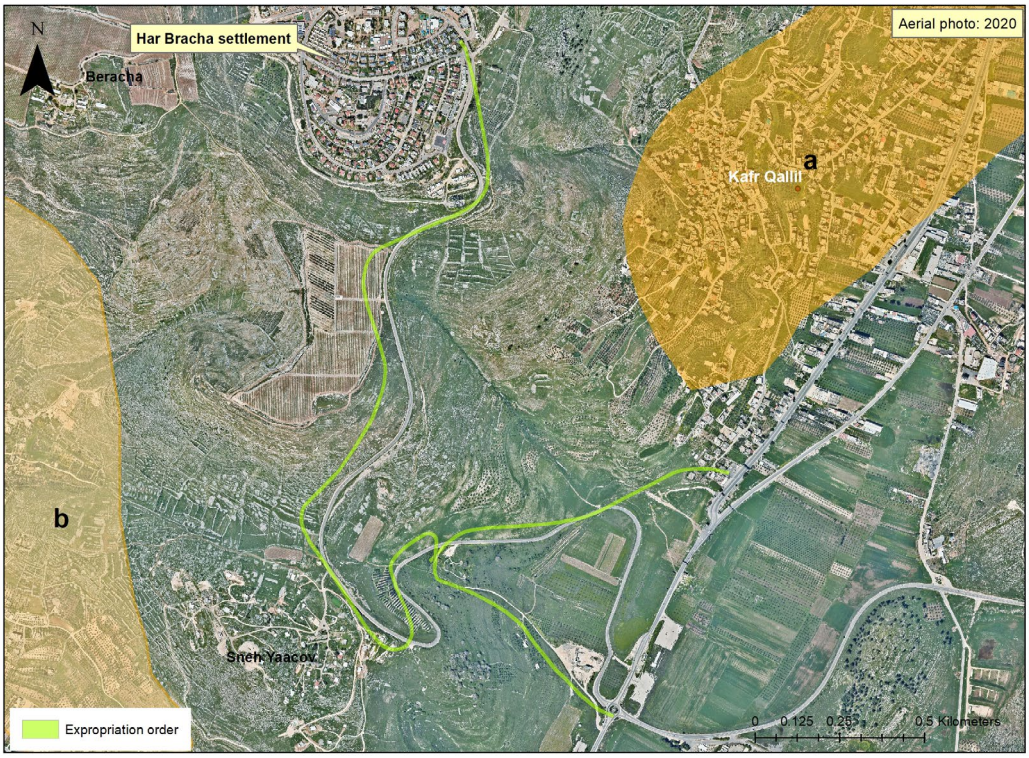
72. It is unclear to us why these orders are considered a category separate from those in Category 26..

73. It is unclear to us why these orders are considered a category separate from those in Categories 26 and 28.

74. This was an obvious error on the part of the editors.

The analysis of the categories yields the following conclusions:

- In terms of both the number of orders (142) and their total size in dunams (31,613), the group of expropriation orders issued for roads is the largest. Note that together with expropriation orders for road construction, Israel sometimes issued "temporary" seizure orders "for security purposes" for what it designated as "security roads". But the distinction of "civilian" from "security roads" often seems arbitrary (for further information on the correlation of expropriation and seizure orders for the purpose of road construction, see below on p. 40).[75]
- The second largest category of orders in terms of size are those issued for the establishment of Ma'ale Adumim and Ofra. Although this group includes only three orders, their area is 30,969 dunams. Most of this area (28,230 dunams) is included in Order 1/4/75.
- The orders from the third largest group in terms of size are those issued for access routes to the settlements, some of which also serve as access routes to Palestinian villages. These 52 orders cover an area of 6,414 dunams.



Orders 14/82 and 34/82 were issued for the construction of the road to the Bracha settlement. The military and settlers have prevented Palestinians from using this road for most of the time since the outbreak of the Second Intifada.

75. Over the years, seizure orders covering an area of about 3,000 dunams have been issued for the purpose of constructing bypass roads, "Seize the Moral Low Ground," Kerem Navot, p. 69.

Jews and Arabs Will Travel Together in Peace on the Road Bearing Yigal Alon's Name

תאריך הורדה: 28 דצמבר 2022. מקור: עמוד 6, מעריב, 24 פברואר 1981 *** מתוך אתר "עיתונות יהודית היסטורית", הספרייה הלאומית ואוניברסיטת ת"א

„יהודים וערבים יעברו יחדיו בשלום בכביש הנושא את שמו של יגאל אלון"

נחנך הכביש המקשר את מעלה אדומים עם המרכז האזורי מעלה אפרים ✶ בקרוב יושלם כביש חוצה יהודה

מאת יוסף וקסמן

„יהודים וערבים, שיחיו יחד ובהבנה ובשלום, יעברו בדרך זו, הנושאת את שמו של יגאל אלון, שהקדיש את חייו למען עמנו ולמען ארצנו" — במלים אלה סיכם אתמול ראש־הממשלה מנחם בגין, את דבריו בטקס חנוכת דרך אלון, המחברת את אזור ירושלים עם בקעת בית־שאן ומהווה כביש בטחון, העוקף את השומרון ואזור עין רכסי ההרים.

בטקס נכחו רות, אלמנת יגאל אלון ובנם עמוס, שר הבינוי דוד לוי, סגן שר הבטחון מרדכי צפורי, הרמטכ"ל רב אלוף רפאל איתן, ישראל גלילי ויצחק רבין מראשי מפלגת העבודה ורבים מחבריו ומוקיריו זכרו של יגאל אלון. ראש הממשלה אמר, כי זהו כביש העובר בדרך ארץ המרדפים ומחבר את ירושלים עם צפון הארץ — ובעתיד יחבר את אזור ירושלים גם עם הנגב. „אנו נקרא לדרך זו, בשלמותה, על שמו של יגאל אלון והוא ראוי לכבוד זה, כי הקדיש את חייו למלחמה למען גאולת העם והארץ".

ראש הממשלה הודה לשר הבינוי, לסגן שר הביטחון, לרמטכ"ל ולמנהל מע"צ, על עבודתם המסורה שאיפשרה את חנוכת הכביש.

את הטקס פתח רעו וידידו של יגאל אלון, השר לשעבר ישראל גלילי, שאמר, כי „דרך היא יותר מכביש. זוהי דרך אל השתרשות, אל ביטחון, אל שלום. וזכה יגאל אלון, כי תיקרא דרך בארץ המרדפים, הצופה על הבקעה, על שמו. ראוי הוא לכבוד הזה, אשר העם וממ־שלתו מעניקים לו ולא בכדי".

גלילי סיפר, כי לאחר מלחמת ששת הימים החווה יגאל אלון את הדרך ונסע בה מירושלים לביתו בגוש עציון בקעת הירדן וכך למד להעריך את הזמרחב הזה כחיוני לביטחונה של ישראל ולשלומה. ישראל גלילי הוסיף, כי יגאל אלון רצה לשלב דרך זו במסגרת תוכניתו של ארץ־ישראל שלמה מבחינה אסטרטגית ומבחינה

רות אלון, אלמנתו של יגאל אלון, גוזרת את הסרט בטקס חנוכת הכביש. לידה (משמאל לימין) ראש הממשלה מנחם בגין, חשר דוד לוי, ישראל גלילי ויצחק רבין. (צילם: קלאודיו פייפבלט)

יהודית דמוגרפית, תוך כיבוד צרכי האוכ־לוסיה הערבית ביהודה ושומרון שבגדה ה־מערבית.

רות אלון התכבדה בגזירת הסרט ולאחר מכן יצאו המשתתפים לסייר בדרך החדשה עד מעלה אפרים.

כביש חוצה יהודה

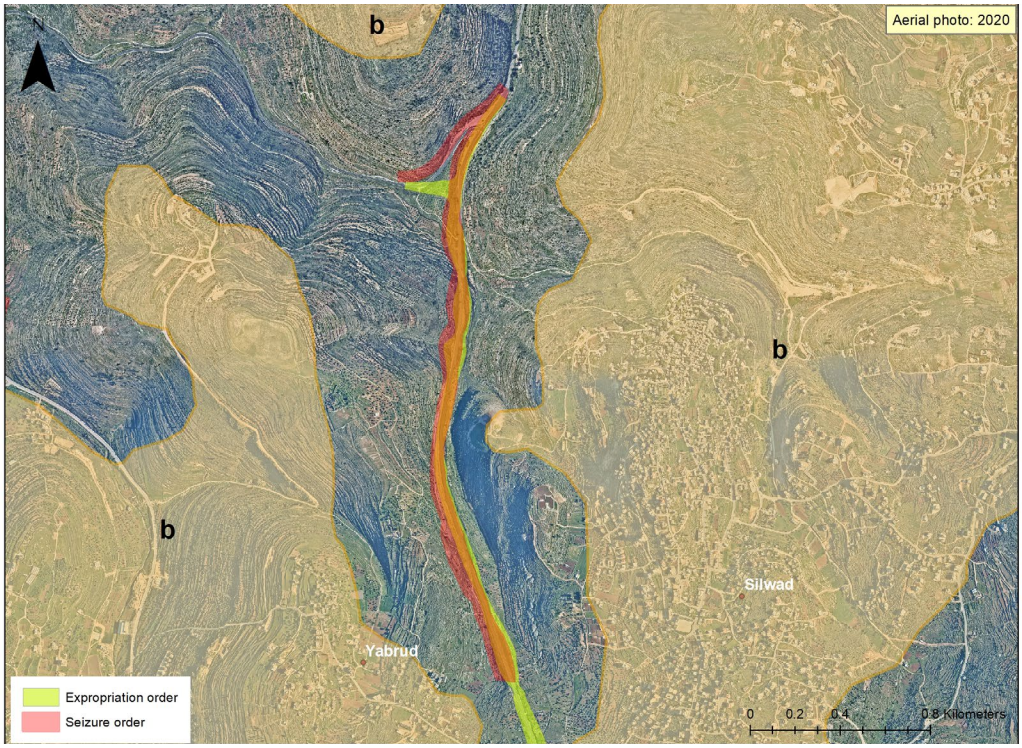
מערכת כבישים נפרצת ונסללת באזורי יהו־דה ושומרון, לפי החלטת הממשלה שהתקבלה לי־אחר הסכם השלום עם מצרים — זאת גילו אתמול דוברים מטעם צה"ל בסיור עיתונאים שנערך בכביש חוצה יהודה.

מערכת כבישים אלה כוללת את כביש חוצה יהודה, כביש חוצה שומרון, כביש טובאס־מחולה, כביש אלון שנחנך אתמול עד מעלה אפרים והמשכו שייסלל לכיוון צפון ולכיוון דרום, כביש מדבר יהודה וציר שועפת־מעלה אדומים.

עד כה הסתיימו רוב העבודות בכביש חוצה יהודה שסלילתו הסופית עם אספלט תושלם בשד כחודש.

Overlap and Synchronization of Expropriation and Seizure Orders

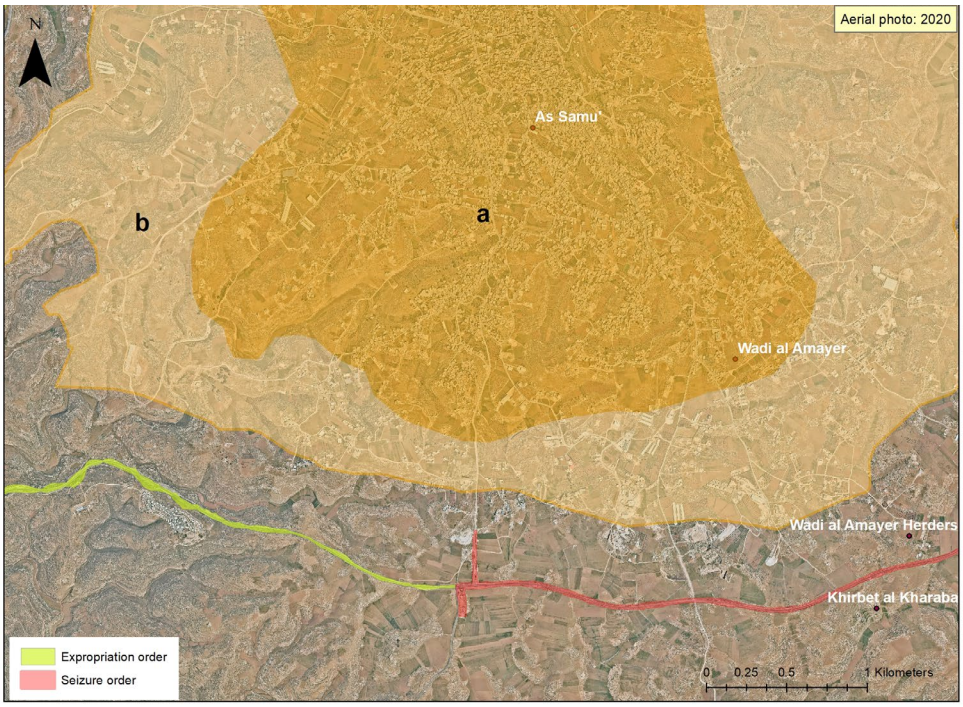
There is an overlap of 2,130 dunams between expropriation orders for public purposes and "temporary" seizure orders for security purposes. In most cases, such overlap stems from various purposes emerging in different periods, while ignoring previous orders already issued in the area in question. In several cases, the overlap between expropriation and seizure orders is due to orders issued for constructing the same road. That is to say, certain stretches of roads had been both expropriated and seized for the same purpose, probably due to lack of coordination.



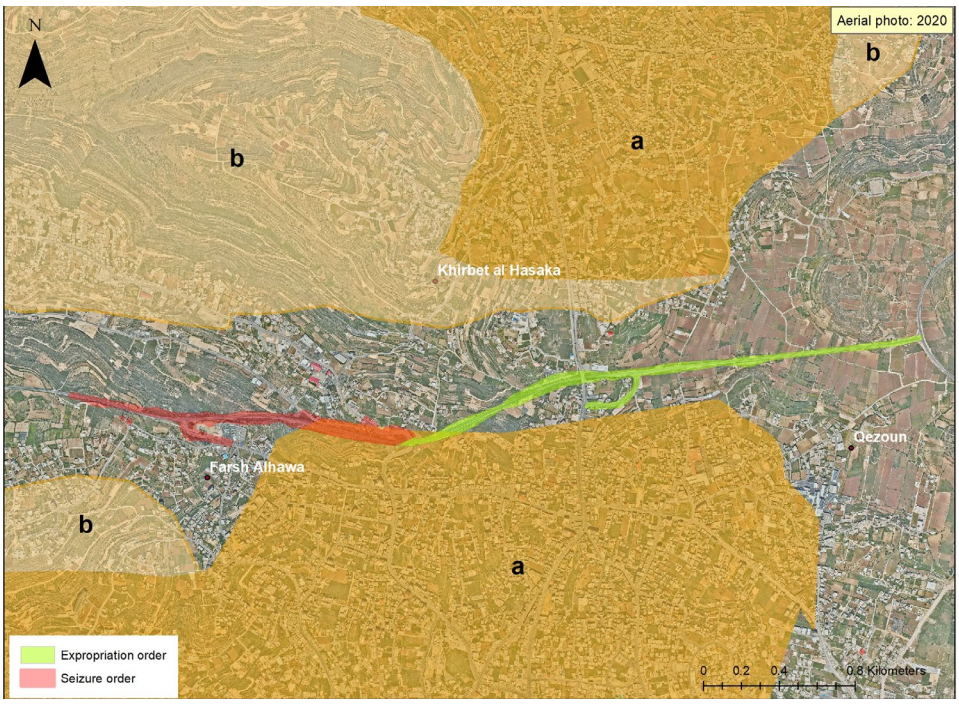
Section of the Ramallah Bypass (Highway 60) paved on an expropriation order from 1995 a a seizure order from 1996.

In some places, a sequence of expropriation and seizure orders, forms together an entire route of a bypass road. There appears to be no reasoning for the need to expropriate a part of the road for "public purposes" and seize other parts for "security purposes". In certain cases, this is due, perhaps, to the military's desire to face minimal legal delays, assuming that seizure orders are less subject to review by the HCJ.[76]

76. "Forbidden Roads: Israel's Discriminatory Road Regime in the West Bank", B'Tselem, August 2004, pp. 5-8.



The eastern ring road around the South Hebron Hills (Road 317), partly paved by expropriation orders from 1983 and 1996 and partly by a seizure order from 1996.



Halhul Bypass (Road 35), paved partly by expropriation orders from 1978 and 1996 and partly by a seizure order from 1996.

In 2002, the military commander signed Order 04/02 to expropriate some 194 dunams from Abu Dis in order to pave Road 417 that would connect Kedar and Ma'ale Adumim. The road was primarily designed to shorten the drive between the two settlements and spare the settlers the need to pass through Abu Dis. The new road became more urgent for the settlers when the Second Intifada broke out. Indeed, within less than two years after signing the order, a 3.5-km road was paved. In theory, it was also supposed to serve every Palestinian seeking to travel from the north or east of the West bank to its south and the other way around. However, in practice, it remained closed to Palestinian traffic, which instead continued to be channeled through Abu Dis, which suffers from extreme traffic congestion. At the same time, traffic on Road 417 is sparse, as it serves only about 1,600 settlers of the Kedar settlement almost exclusively. In April 2022, the military intended to open the road to Palestinian traffic and thereby shorten the commute of tens of thousands of Palestinians. This plan, however, fell through due to harsh opposition by the Kedar settlers.[77]

Ma'ale Adumim-Kedar Road (417), paved by Expropriation Order 04/02, has remained closed to Palestinian traffic ever since

77. Hagar Shezaf, "Israeli Settlers Block Reopening of West Bank Road to Palestinians after Two Decades", *Haaretz*, April 18, 2022.

The Target Population of Expropriation Orders

As seen in the Table on p. 36-37, the question of the order categories is related to another key question: For which population is the order intended? In Chapter 1 (18-21), we discussed the fundamental legal issue according to which the legality of each expropriation order needs to be examined: Does it (also) serve the Palestinian population? In order to answer this question, we examined the purpose of each order and its implementation (to the extent to which it was implemented), and accordingly, classified the orders into three groups:

1. Orders initially issued for settlers only, or used in practice by settlers exclusively, such as expropriations for the sake of building settlements (Ma'ale Adumim, Ofra, and Har Gilo), access routes thereto, and water and sewage facilities nearby.

2. Orders initially issued for Palestinians only, or used in practice by them exclusively, such as housing for the poor in the Old City of Jerusalem (which have never been built), a public park in Bethlehem, and access routes within Palestinian towns and villages. As may be expected, most of these orders were issued prior to the Oslo Accords.

3. Orders initially issued for the two populations, or that are actually serving both, such as bypass roads, access roads to settlements that also lead to Palestinian villages,[78] water well drillings and electric switching stations.

Before proceeding to the data in detail, several methodological notes are worth emphasizing:

1. The purpose of five orders could not be determined. To the best of our knowledge, these orders have not been implemented.

2. The declared purpose of the expropriation order is not always fulfilled. These orders are thus classified according to the implementation of their actual use.[79]

3. In the dozens of cases in which the order has not been implemented (see below on p. 51-52), it is classified based on its declared purpose.

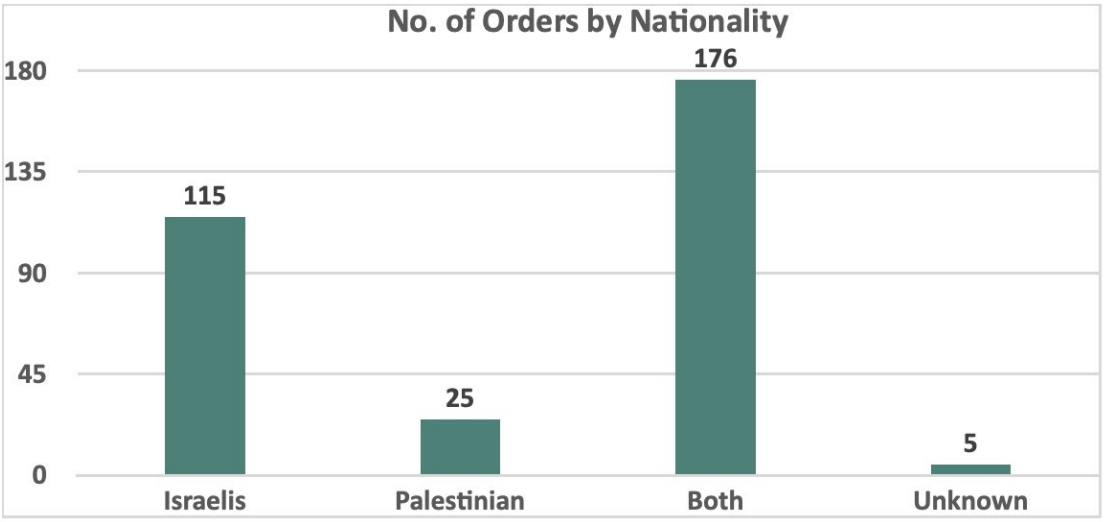
The expropriation order issued for the establishment of Ma'ale Adumim, used also for building the Mishor Adumim Industrial Park (1/4/75/ה), has been classified as issued for Israelis, even though thousands of Palestinians are employed in that industrial park. This is because the interest guiding the Ministerial Committee on Settlement, which ordered the

78. One exemplary case being the access road to the Migdalim settlement which also serves the village of Qusra, paved on the area expropriated subject to Order 78/30/ה.

79. A good example is Highway 443 on which we elaborated in Chapter 1 (see above on p. 18-19). Although that road has been initially designed to serve both Palestinians and Israelis, and has indeed served both for several years - in practice, it has not served most of the Palestinian population of the West Bank for the past 20 years (apart for those living in East Jerusalem who enjoy much greater freedom of movement), and it is therefore classified as an order serving only "Israelis".

expropriation, was the realization of Israeli settlement expansion.

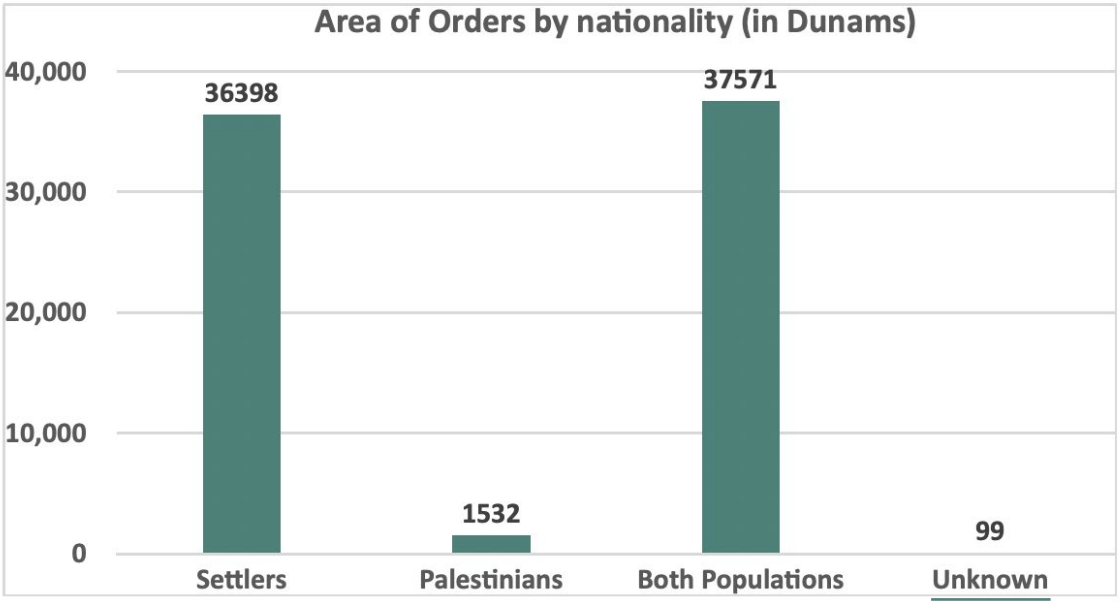
Analytic findings: Over half (55% or 176) of the orders serve both populations. Over one-third (115) serve the settlers alone. The smallest group, 25 orders (8%), serves the Palestinians alone.[80] This data indicates that Israel, who in theory is committed to expropriating land only where the Palestinians also benefit from the expropriation, has issued a great part of the orders for the benefit of Israelis alone, or that in practice, expropriation orders are used by Israelis exclusively. This is in direct violation of the *HCJ Iskan case* verdict.



When the entire expropriated area is divided by the same criteria, greater question marks arise regarding the legality of the orders: Apparently, little less than half of the area (36,398 dunams) was expropriated for settlers or is in practice used by settlers exclusively. A slightly larger area (37,571 dunams, or 49%) has been expropriated for, or is actually used by both populations, whereas the area expropriated for, or actually used by the Palestinian population alone is a mere 1,532 dunams (2%). Let us recall that over 30,000 dunams of the entire area of land expropriated for settlers have been expropriated during the years 1975-1978 for Ma'ale Adumim, Ofra and Har Gilo.

To conclude, it can be stated that little over half of the total area of expropriated land (51%) meets the standards of the *HCJ Iskan case* verdict, in that these expropriations serve the Palestinian population of the West Bank, whether exclusively or as well as the settler population.

80. The total number of orders in this analysis is 321, although there are only 313 orders in actuality. This is because several orders are split between the three groups, as they were classified according to actual use. These expropriations have been issued for bypass roads, with sections of the expropriated areas used exclusively by Palestinians or settlers, and others (the vast majority) used by both.



The Road Bypassing Al-Arroub Refugee Camp and Beit Ummar Village

In 2003, plan number 20/901/יוש was published for the first time – a detailed plan for the development of Highway 60 in the section bypassing Al-Arroub and Beit Ummar. Objections submitted to the Subcommittee for Objections of the Supreme Planning Council in the Civil Administration were discussed up until 2010, and some of them were accepted. In 2011-2012, the plan was approved and made public to take effect. On April 3, 2019, the "Order 1/19/ה Acquiring Ownership and taking over Possession (Al-Arroub Bypass Road)" was made public, which ordered the expropriation of some 401 dunams in order to implement the plan for Highway 60. Authorities, institutions and landowners in the area submitted their objections to the Civil Administration. When these objections were rejected, a petition was submitted to the HCJ. The petitioners claimed, among other things, that the expropriation order and the implementation of the relevant plan must be revoked and the route of the highway reexamined, since the expropriation order was issued long after the plan was submitted and approved for publication, and changes had taken place on the ground during that time. Therefore, a reexamination of the plan prior to its execution was justified, given that construction of the road was expected to cause significant damage to the petitioner's properties.

The court rejected the petition outright without looking into the petitioners' substantial arguments, stating that the petitioners actually sought to attack the plan itself (rather than the expropriation) for reasons already discussed previously in the context of the objection to the plan in previous years. Justice Mintz also noted that the time that had elapsed from

the approval of the plan to its initial implementation could not in itself serve to revoke the decision to execute it, since the nature of planning processes such as these are expected to take decades to complete.[81]

Haj Mahmoud Iyad Issa of Beit Ummar – Interview, March 9, 2023

"I'm 67 years old, I have been working my land for 55 years, I have eight children, 95% of my livelihood depends on this land. In 2020 they told us you can't pass through here because we want to make a road for the settlers. We submitted documents, but nobody responded… Now they closed everything and placed two gates to prevent access … The grape vines are 30 years old, each producing ten boxes full of grapes… I can't prune or till, I can't come and go…. We ask whoever has a conscience just to open the road for us so that we can access our land… The bulldozer brought by the military cut off the ropes holding the vines without warning… After four days we saw all the vines lying on the ground. My grandfather was born in 1872 and he died in 1963, he Bequeathed the land to my father who bequeathed it to me. The documents and this land have been in our possession for 155 years."

Dr. Bilal Younes, Head of the Al-Arroub Campus of the Khadouri Technical University – Interview, March 9, 2023

"The new bypass road separating the university and the Al-Arroub camp expropriated some 80 dunams of the land allocated to the Palestinian National Authority in this area. These lands serve three institutions that belong to three government ministries: the Ministry of Education and Culture, the Ministry of Agriculture, and the Ministry of Higher Education. They have been used as agricultural fields as well as for experiments by the Ministry of Agriculture…. This area has been used as a genetic storeroom for preserving the trees of Palestine and many of the plants and trees were grown in the expropriated area…. In addition, although this is an educational institution, part of the area has been allocated to the camp residents for hikes in this area. Now there is a complete separation and disconnection of pedestrian traffic between the camp and this area, used for hiking and leisure by the camp residents."

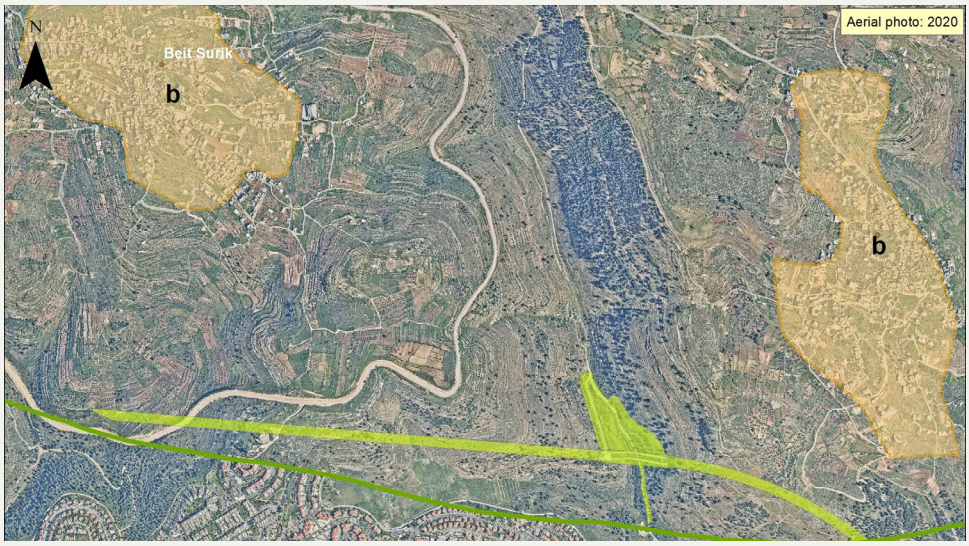
Part of the Al-Arroub-Beit Ummar Bypass Road, paved on area expropriated by Order 1/19/ה

81. HCJ case 7522/19 *Beit Ummar Municipality v. Head of Civil Administration in the West Bank* (January 5, 2020).

Part of the Al-Arroub-Beit Ummar Bypass Road, paved on area expropriated by Order 1/19/ח

Jerusalem-Tel Aviv Railway

In May 2006, the military commander of the West Bank signed two expropriation orders, 1/06 and 2/06, for constructing an express railway line between Jerusalem and Tel Aviv, part of whose route passes through the West Bank in two separate sections: Latrun and Beit Iksa. In October, the commander signed two additional orders, 1/10 and 2/10, to be used for organizing the preparation areas and access to the work sites, including tunnel digging and bridge construction. A petition submitted against these orders, based on the claim that they would only serve the Israeli population, was rejected by the HCJ.[82]



Expropriation Order 2/10 for the Rapid Jerusalem-Tel Aviv Railway.

82. See above on p. fn. 37

Highway 446

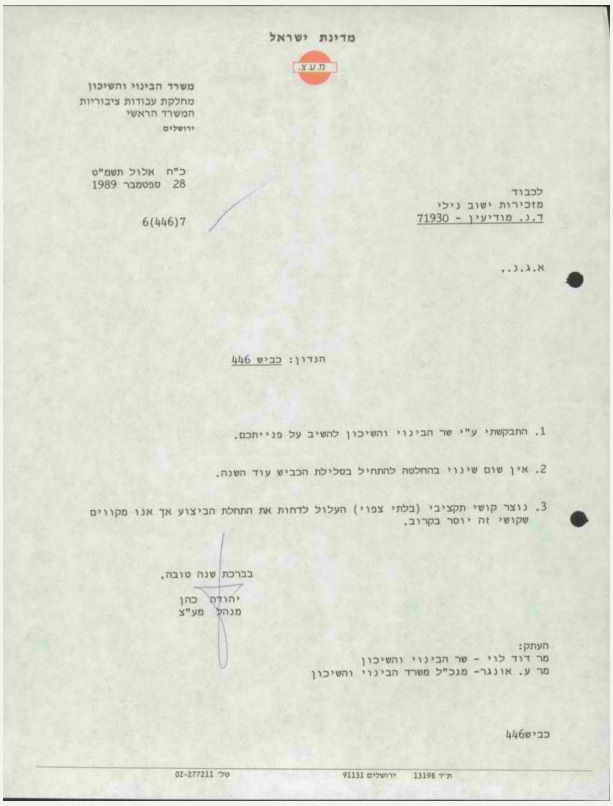
Highway 446 connects the Shilat Junction with the settlements west of Ramallah. It begins west of the Green Line and continues into the West Bank, where it has been paved over an area expropriated in 1990 (Order 1/90). The order was signed in February 1990 and included 820 dunams of land expropriated from the Palestinian villages of Ni'lin, Deir Qaddis, Shabtin, and Shuqba. The order had been preceded by extensive correspondence between settlers and politicians from the right-wing political bloc, who put pressure on the Minister of Housing and Director of the Israeli Public Works Department (Ma'atz). The letters sent in late 1989, which are documented in the ISA, reveal the motives for paving the road. The extensive correspondence shows that the concern for the transportation interests of the Palestinian inhabitants was certainly not one of them.[83]

To understand the intensity of the pressure exerted by the settlers, it is important to recall that these were the years of the First Intifada (1987-1993), and that the access road leading to the Nili and Na'ale settlements passed through the center of Deir Qaddis, from which some 1,500 dunams of land had been expropriated several years earlier to enable the establishment of those very same settlements. It is not difficult to understand why the settlers who had moved there just a few years earlier, felt uneasy about passing through the village every day, particularly in the new reality in which they found themselves, and they made certain to share their feelings with decision makers. On September 29, 1989, the settlers of Nili wrote to the Minister of Housing David Levi: "Your honor is well aware of the importance of paving this road for us to reach the nearby settlements, and we would therefore greatly appreciate your assistance in promoting the implementation of this important project". Eight days later, they were answered by the Director of the Public Works Department, on behalf of the minister: "There has been no change in the decision to begin paving the road this year. An (unexpected) budgetary difficulty has arisen, which may delay the initiation of the works, but we hope this difficulty will be resolved soon". Three weeks later, on October 17, 1989, the Nili settlers continued their attempts to pressure the government. This time, they turned to Knesset Speaker Dov Shilanski: "As a supporter and helper of the new settlement movement, we ask you to exert your influence…. We, the people of Nili who in this matter represent all the inhabitants of the new settlements in our area… It is important for the purpose of increasing the number of settlers in the area, for the benefit of the entire people of Israel, including nearby settlements within the bounds of the former 'Green Line'… to act concretely… so that work can begin this year." (Emphasis in original).

In the last week of October, a team of Knesset members rallied to continue pressuring the Minister of Housing and the Head of the Public Works Department. A few months later, this pressure bore fruit, and Expropriation Order 1/90 was signed by Head of the Civil Administration Brigadier General Shaike Erez, thereby paving the legal way for the development to begin. Note

83. ISA, 45474/2-גל

that for many years, this road was used by Palestinians as well, but this does not dispute the fact that the road had been initially paved in order to meet settler demands.



מדינת ישראל

מ ע צ

משרד הבינוי והשיכון
מחלקת עבודות ציבוריות
חמשרד הראשי
ירושלים

כ"ח אלול תשמ"ט
28 ספטמבר 1989

6(446)7

לכבוד
מזכירות ישוב נילי
ד.נ. מודיעין - 71930

א.ג.נ.,

הנדון: כביש 446

1. התבקשתי ע"י שר הבינוי והשיכון להשיב על פנייתכם.

2. אין שום שינוי בהחלטה להתחיל בסלילת הכביש עוד השנה.

3. נוצר קושי תקציבי (בלתי צפוי) העלול לדחות את התחלת הביצוע אך אנו מקווים שקושי זה יוסר בקרוב.

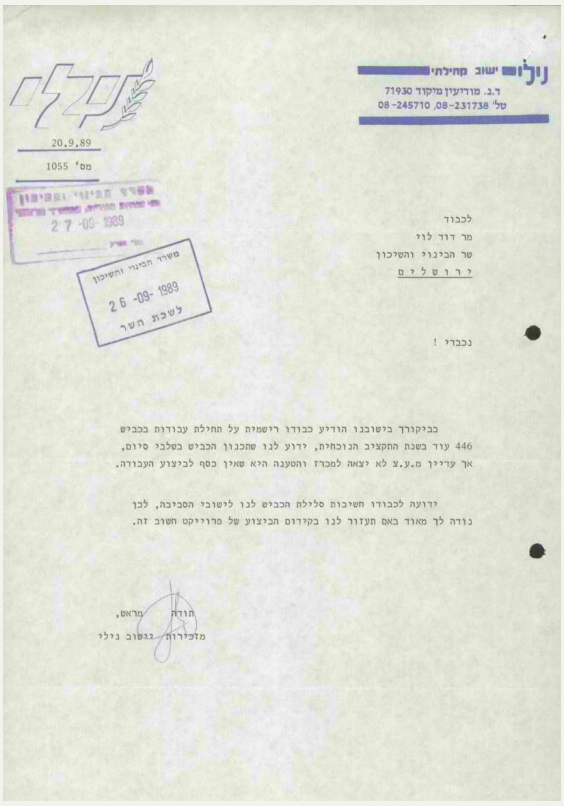
בברכת שנה טובה,

יהודה כהן
מנהל מע"צ

העתק:
מר דוד לוי - שר הבינוי והשיכון
מר ע. אונגר- מנכ"ל משרד הבינוי והשיכון

כביש446

טל' 02-277211 ירושלים 91131 ת"ד 13198



נילי ישוב מחילתי
ד.נ. מודיעין מקוד 71930
טל' 08-231738, 08-245710

20.9.89

מס' 1055

משרד הבינוי והשיכון
27-09-1989

משרד הבינוי והשיכון
26-09-1989
לשכת השר

לכבוד
מר דוד לוי
שר הבינוי והשיכון
י ר ו ש ל י ם

נכבדי !

בביקורך בישובנו הודיע כבודו רשמית על התחלת עבודות בכביש 446 עוד בשנת התקציב הנוכחית, ידוע לנו שהכנון הכביש בשלבי סיום, אך עדיין מ.ע.צ לא יצאה למכרז והטענה היא שאין כסף לביצוע העבודה.

ידועה לכבודו חשיבות סלילת הכביש לנו לישובי הסביבה, לכן נודה לך מאוד באם תעזור לנו בקידום הביצוע של פרוייקט חשוב זה.

בברכה מראש,

תודה
מזכירות - בשם נילי

נילי ישוב מחילתי
ד.נ. מודיעין מקוד 71930
טל' 08-231738, 08-245710

17.10.89

מס' 1063

22.10.89
כ ג תשרי תשמ"ט
תיק אל

לכבוד
יו"ר הכנסת מר דב שילנסקי
לשכת יו"ר הכנסת
ירושלים

חבר כנסת נכבד !

בהיותך תומך ומסייע לתחזיבות החדשה אנו מבקשים המעלת השפעתך על גורמי הממשל המוסמכים לזרז הטיפול בסלילת הכביש הארצי בית אריה - שלת, הידוע בכינוין: "כביש 446".

אנו תושבי נילי, המייצגים לעניין זה את כל אנשי התחזיבות החדשה באזורינו (מתחיהו, רמת מודיעין, חשמונאים, נעלה, טלמון, דולב, נתניאל, נווה צוף, עופרים, בית אריה) חשוב שלצורך עיבוי התחזיבות באזור, לטובת עם ישראל כולו כולל ישובים סמוכים בתחומי ח"קו הירוק" לשעבר כגון: כפר רות, שילת, מכבים, רעות ואחרים, יש צורך להתגבר על הבעיות הקיימות ולפעול באופן ממשי (הוצאת מכרזים, תחילת עבודות בפועל) לתחילת העבודות ערב בשנה זאת.

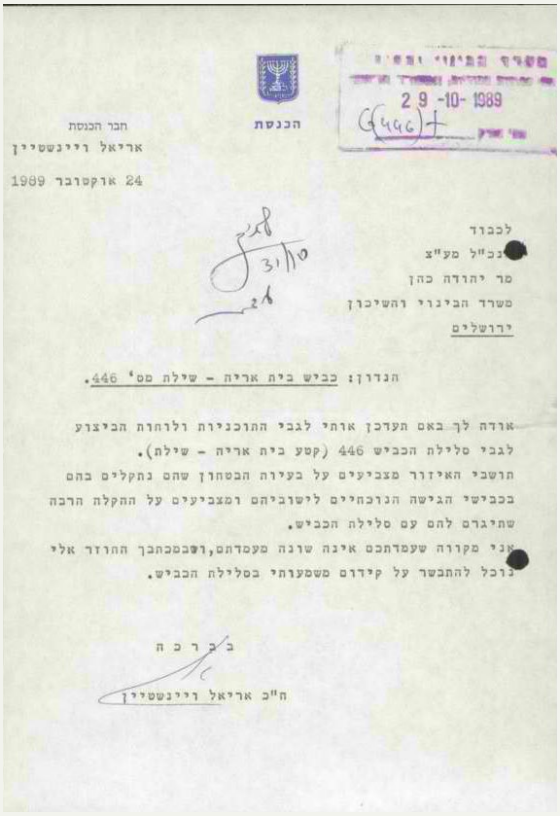
בעיות הכטחון בכביש הגישה הנוכחיים הנן אך נדבך נוסף בבניין הסיעונים המחייבים טיפול מיידי בנושא.

נשמח לארח אותך בישובנו, ואנו בטוחים שביקור מסוג זה ידגיש באופן נחרץ הצורך בכביש הנ"ל, וירתום אותך לסייע בנושא זה.

ברצוננו לבנות עמך "גשר תקשורת" בעניין זה ובעניינים אחרים.

בכבוד רב,
מזכירות ישוב נילי

Correspondence on paving Highway 446 between Nili settlers and Minister of Housing, Director of Public Works Department, Knesset speaker and rightwing leaders, September-October 1989.



הכנסת

חבר הכנסת
אריאל זיינשטיין

24 אוקטובר 1989

29-10-1989

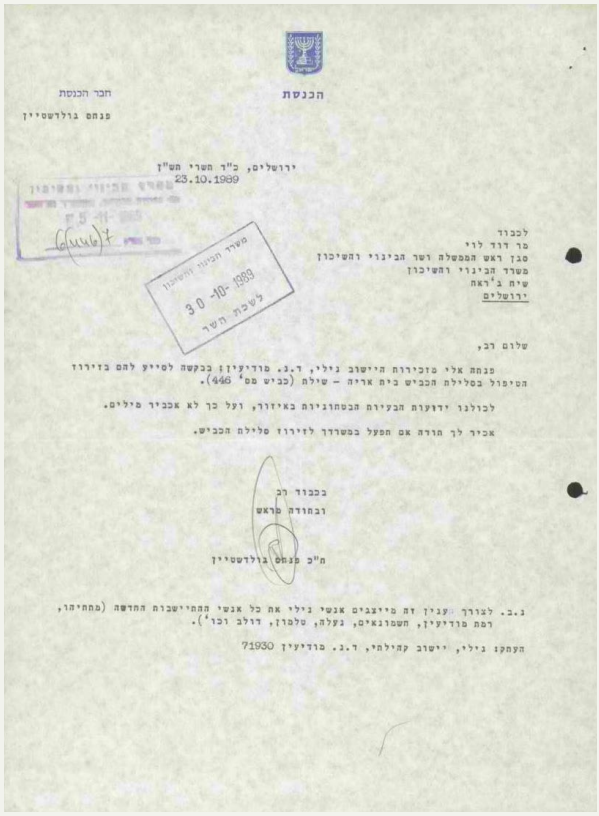
לכבוד
ב"כ מע"צ
מר יהודה כהן
משרד הבינוי והשיכון
ירושלים

הנדון: כביש בית אריה - שילת מס' 446.

אודה לך באם תעדכן אותי לגבי ההתכניות ולוחות הביצוע
לגבי סלילת הכביש 446 (קטע בית אריה - שילת).
תושבי האיזור מצביעים על בעיות הבטחון שהם נתקלים בהם
בכבישי הגישה הנוכחיים לישוביהם ומצביעים על ההקלה הרבה
שתיגרם להם עם סלילת הכביש.
אני מקווה שעמדתכם אינה שונה מעמדתם, ושבמכתבך החוזר אלי
נוכל להתבשר על קידום משפעותי בסלילת הכביש.

בברכה

ח"כ אריאל זיינשטיין



הכנסת

חבר הכנסת
פנחס גולדשטיין

ירושלים, כ"ד חשרי תש"ן
23.10.1989

משרד הבינוי והשיכון
30-10-1989
לשכת השר

לכבוד
מר דוד לוי
סגן ראש הממשלה ושר הבינוי והשיכון
משרד הבינוי והשיכון
שיח ג'ראח
ירושלים

שלום רב,

פנחס אלי מזכירות היישוב נילי, ד.נ. מודיעין בקשה לסייע להם בזירוז
הטיפול בסלילת הכביש בית אריה - שילה (כביש מס' 446).

לכולנו ידועות הבעיות הבטחוניות באיזור, ועל כן לא אכביר מילים.

אכיר לך תודה אם תפעל במשרדך לזירוז סלילת הכביש.

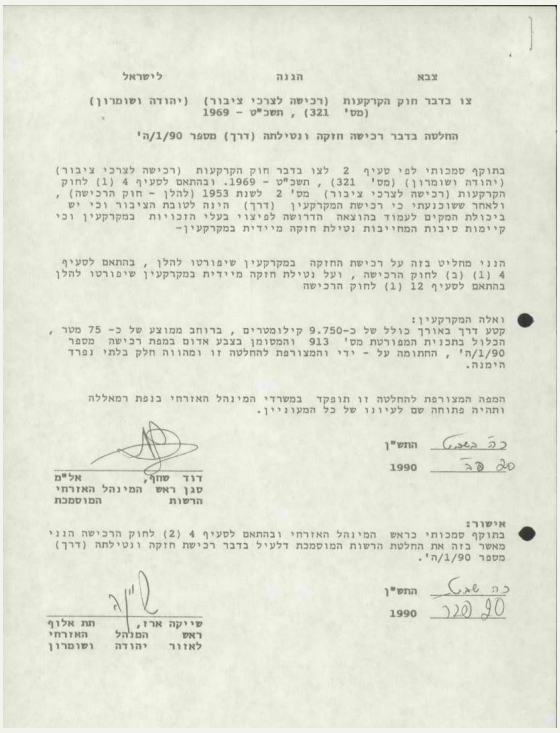
בכבוד רב
ובחודה מראש

ח"כ פנחס גולדשטיין

נ.ב. לצורך עניין זה מייצגים אנשי נילי את כל אנשי ההתיישבות החדשה (מחיתר, רמת מודיעין, חשמונאים, נעלה, טלמון, דולב וכו').

העתק: נילי, יישוב קהילתי, ד.נ. מודיעין 71930

Correspondence on paving Highway 446 between Nili settlers and Minister of Housing, Director of Public Works Department, Knesset speaker and rightwing leaders, September-October 1989.



צבא הגנה לישראל

צו בדבר חוק הקרקעות (רכישה לצרכי ציבור) (יהודה ושומרון) (מס' 321), תשכ"ט - 1969

החלטה בדבר רכישה חוקה ונטילתה (דרך) מספר 1/90/ה'

בתוקף סמכותי לפי סעיף 2 לצו בדבר חוק הקרקעות (רכישה לצרכי ציבור) (יהודה ושומרון) (מס' 321), תשכ"ט - 1969. ובהתאם לסעיף 4 (1) לחוק הקרקעות (רכישה לצרכי ציבור) מס' 2 לשנת 1953 (להלן - חוק הרכישה), ולאחר ששוכנעתי כי רכישת המקרקעין (דרך) הינה לטובת הציבור וכי יש ביכולת המקים לעמוד בהוצאה הדרושה לפיצוי בעלי הזכויות במקרקעין וכי קיימות סיבות המחייבות נטילה חוקה מיידית במקרקעין-

הנני מחליט בזה על רכישת החזקה במקרקעין שיפורטו להלן, בהתאם לסעיף 4 (1) (ב) לחוק הרכישה, ועל נטילת חזקה מיידית במקרקעין שיפורטו להלן בהתאם לסעיף 12 (1) לחוק הרכישה

ואלה המקרקעין:
קטע דרך באורך כולל של כ-9.750 קילומטרים, ברוחב ממוצע של כ- 75 מטר, הכלול בתכנית המפורטת מס' 913 והמסומן בצבע אדום במפת רכישה מספר 1/90/ה', התחומה על - ידי והמצורפת להחלטה זו ומהווה חלק בלתי נפרד הימנה.

המפה המצורפת להחלטה זו תופקד במשרדי המינהל האזרחי בנפת רמאללה ותהיה פתוחה שם לעיונו של כל המעוניין.

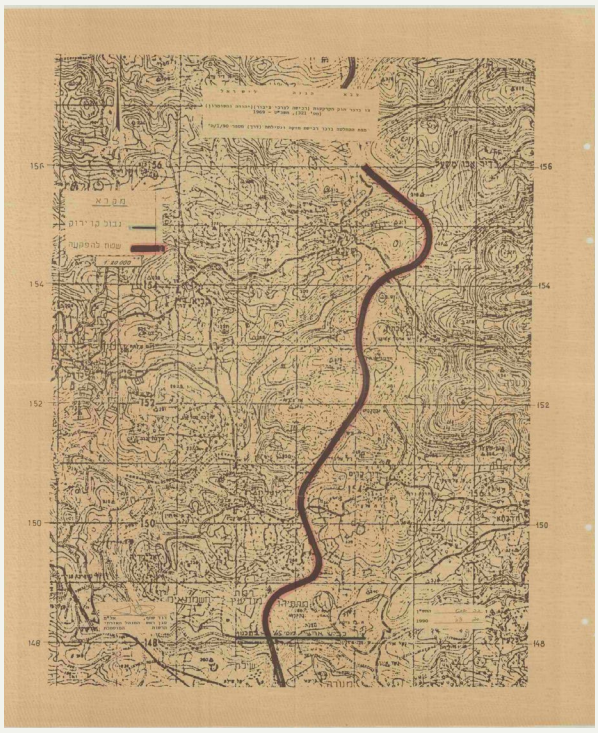
התש"ן
1990

דוד שחק, אל"מ
סגן ראש המינהל האזרחי
הרשות המוסמכת

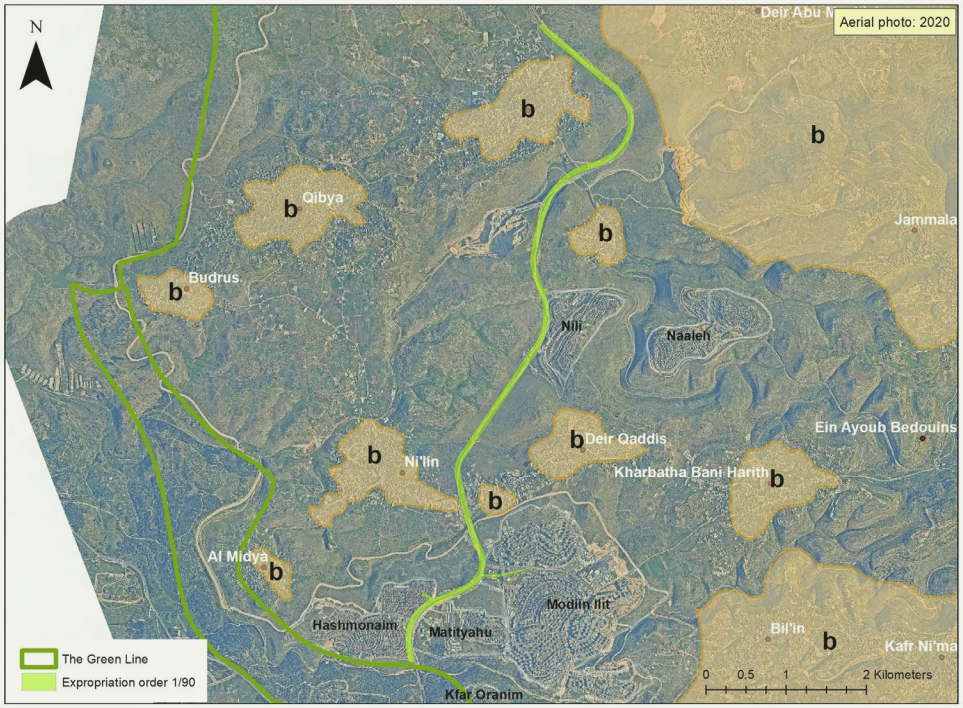
אישור:
בתוקף סמכותי כראש המינהל האזרחי ובהתאם לסעיף 4 (2) לחוק הרכישה הנני מאשר בזה את החלטת הרשות המוסמכת דלעיל בדבר רכישת חזקה ונטילתה (דרך) מספר 1/90/ה'.

התש"ן
1990

שייקה ארז, תת אלוף
ראש המינהל האזרחי
לאזור יהודה ושומרון



Expropriation Order 1/90, February 1990.



Route of Highway 446.

The Implementation of Expropriation Orders

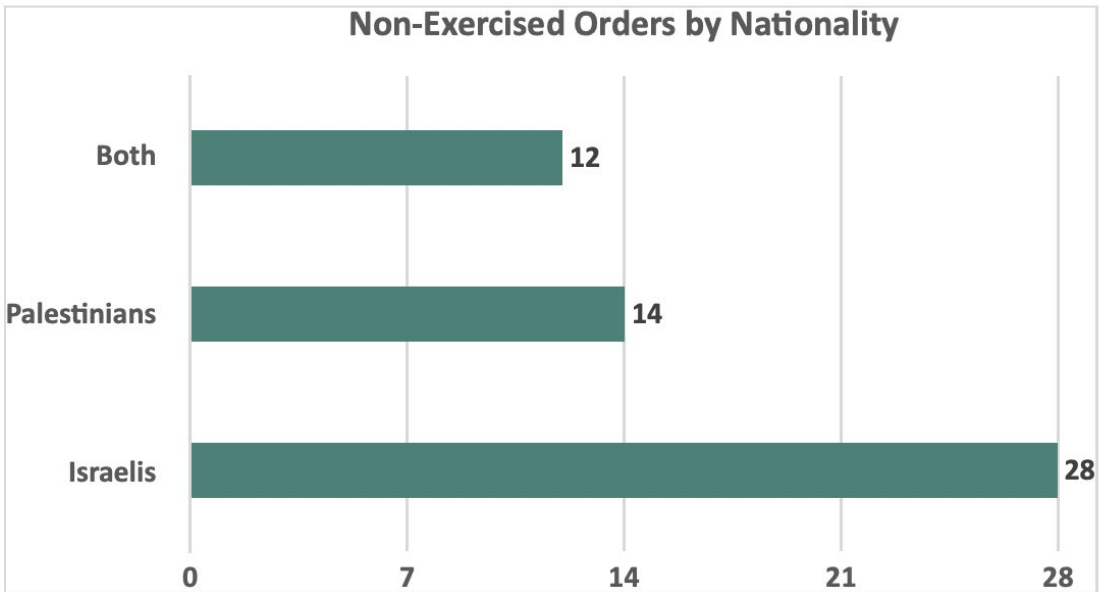
In Chapter 1, we addressed the possibility of revoking an expropriation order in cases in which it had not been implemented (see p. 22-23). Indeed, one of the questions examined is what part of the total expropriation orders were implemented. Before we answer this question, note that the criterion we use to determine whether an order has been implemented is whether work had been carried out in the expropriated area that is consistent with the expropriation purpose.[84] It was found that a great majority of the orders (243) were carried out, while 54 were not.[85] Eight orders had been partly implemented, and about 12 additional orders were unable to be determined.[86]

84. *HCJ Anata case*, see fn. 43 above, and legal discussion on p. 22 above.

85. In cases where the orders had been split across different areas, we examined whether each section of the order was implemented, and found that in four cases, part of the order was executed and part of it was not. In those cases, the same order is included in more than one group, and accordingly the total number of orders in the diagram is 317.

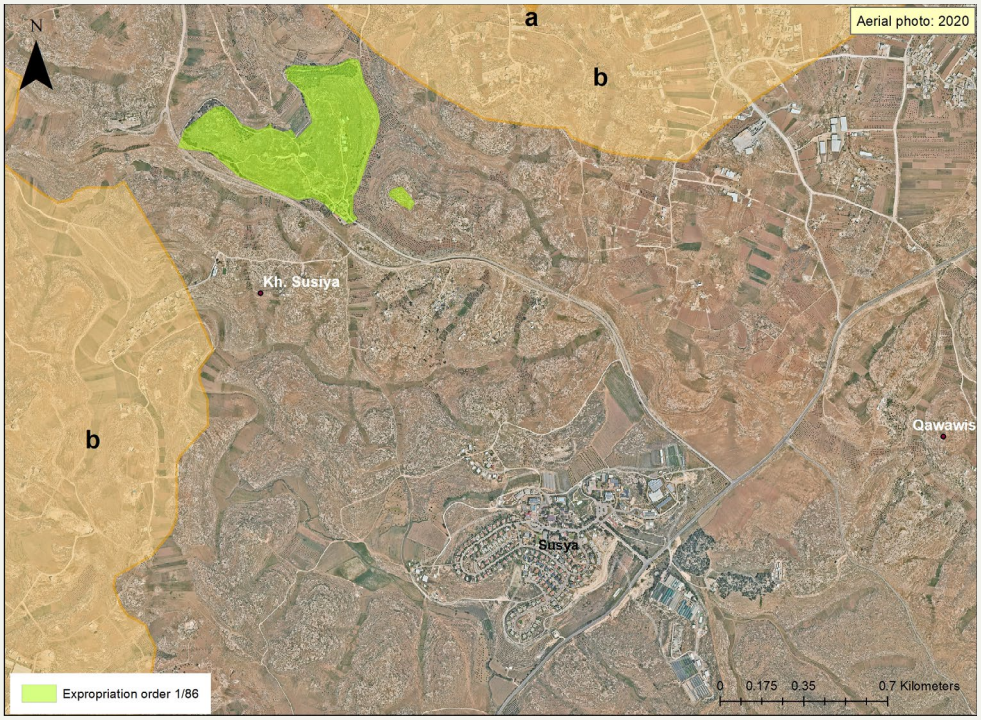
86. These are old orders for which we are unable to determine implementation.

Our distribution analysis of the 54 expropriation orders that have not been implemented indicates that 28 were designed to serve the settlers. These are mainly expropriations for the purpose of paving access roads to settlements that had not been paved along the expropriation route but along another route instead. Fourteen additional unimplemented orders had been designed to serve the Palestinian population. They include various construction and development plans. Twelve unimplemented orders had been designed to serve both populations. These include roads or road sections and water well drillings. The total area of those 54 orders is 9,035 dunams, or some 12% of the entire expropriated area.



The Susiya Archeological Site

One of the most unusual expropriation orders issued in the West Bank is 1/86, signed on September 2, 1986. Up until 2022, it is one of the only two orders issued to preserve an archeological site.[87] The size of this site is 286 dunams, and it is divided into two adjacent perimeters. The central part, 280 dunams in size, includes the Palestinian village of Khirbet Susiya, which had existed there until 1986. After the area was expropriated, the military expelled the local Palestinians, and it was declared an archeological site managed by the inhabitants of the settlement of Susiya, established about three years earlier about 2 km southeast of the site. After its expropriation, the area was officially annexed to Susiya's jurisdiction, thus becoming a military zone closed to the landowners evicted from the area.[88] Today, anyone entering the site is required to pay a fee to the association managed by the Susiya settlers.[89]



Order 1/86/ה for expropriating the land of Khirbet Susiya in order to declare it an archeological site.

"I used to live in Khirbet Susiya where I bore three of my children […]. I used

87. The second is 43/82, issued for the purpose of expropriating the area of the *Shalom Al Israel* synagogue in Jericho. Today, this area is under the responsibility of the Palestinian Authority. In addition to these two orders, Order 1/12 was issued in 2012 in order to fence the Herodion site, although the area of the site itself is not included in any expropriation order, to the best of our knowledge.

88. In March 1997, the jurisdiction areas of all settlements were declared military zones closed to Palestinians living in the West Bank. See A Locked Garden, Kerem Navot, pp. 51-53.

89. See also B'Tselem, "A Chronicle of Dispossession: Facts about Susiya", July 2015.

to live in a cave year-round on a permanent basis. I had two sheep and goat pens and two caves […]. Our life is very much connected to land and agriculture, everything was taken from the land. Nine people lived in the cave […] I had cows and an orchard. There was a hospitality tent where the elderly would gather every evening and tell stories. I was the midwife in the Khirbeh […] In the end they brought in soldiers who took our belongings out of the caves, burned our grain and ordered us to leave. I remember shouting a lot. I tried to save some of the grain. They laughed at me […] they attacked my husband. They handcuffed him, and that's how we were thrown out of our cave. (From the memories of the late Sarah Nawaj'a)."[90]

MM from Khirbet Susiya recalls life in the village and the expulsion from it:

"I was born in 1959 in the village of Khirbet Susiya. Until 1986, when I was 27 years old and freshly married, we lived in the village area […] I remember the war in 1967. I was a little kid and fear dominated the area. Our relatives from the town of Yatta came to stay with us in the caves, because they thought it would be safer at our place.

I remember how as a mere 12-year-old boy, three or four people came to the village area with maps. They looked at the ground and settled in the area where we used to play, where the synagogue is today. In those days, it was a big mound of stones and dirt bigger than the heads of the pillars standing at the entrance to the synagogue today […] As kids we used to sit on them and imagine we were riding a donkey […]. In 1986, the gate to the site was built and closed. We were not allowed inside, and we were prevented from living in our caves from that time on. All our belongings remained in the caves and we were kicked out. We lived in constant fear and we obeyed orders."[91]

90. Statement by late Ms. Sarah Nawaj'a, former inhabitant of Kh. Susiya, attached to the petitioners' response on May 24, 2016 in HCJ case 1420/14 *Susiya Village Council v. Minister of Defense* (hereinafter, *HCJ Susiya*).

91. *HCJ Susiya case* files, Statement by MM attached to the petitioners' response on May 24, 2016.

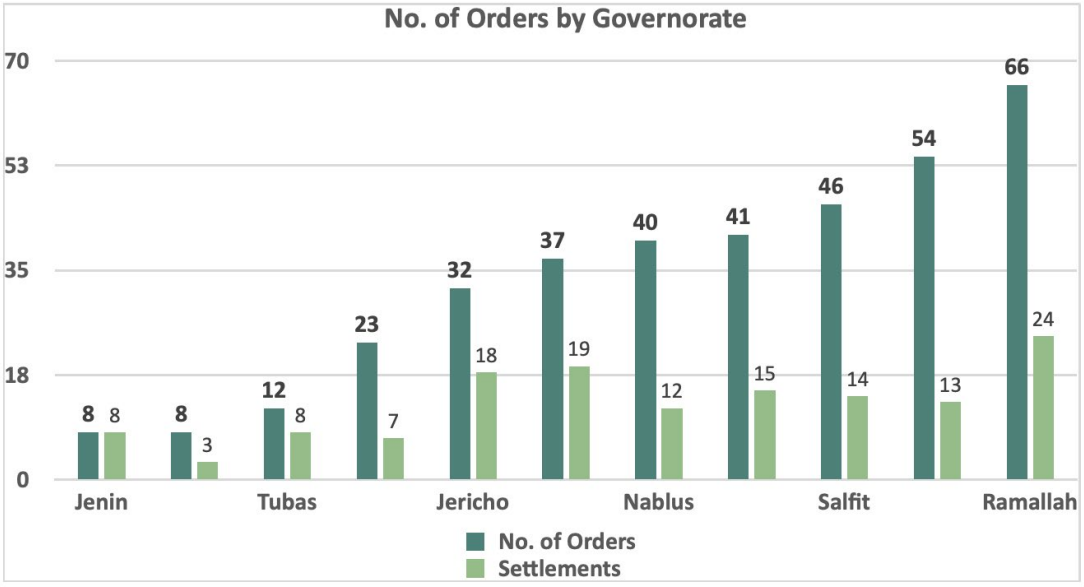
Entrance to the Susiya archeological site, expropriated by Order 1/86/ח

Orders by Governorate [92]

The distribution of expropriation orders by governorate indicates that in governorates with more settlements, more orders have indeed been issued. Conversely, in the four governorates with relatively few settlements (Qalqilya, Tubas, Tulkarem and Jenin) fewer orders have been issued. This supports the conclusion that a great many orders have been issued either mainly or also in order to serve settlers' needs.[93]

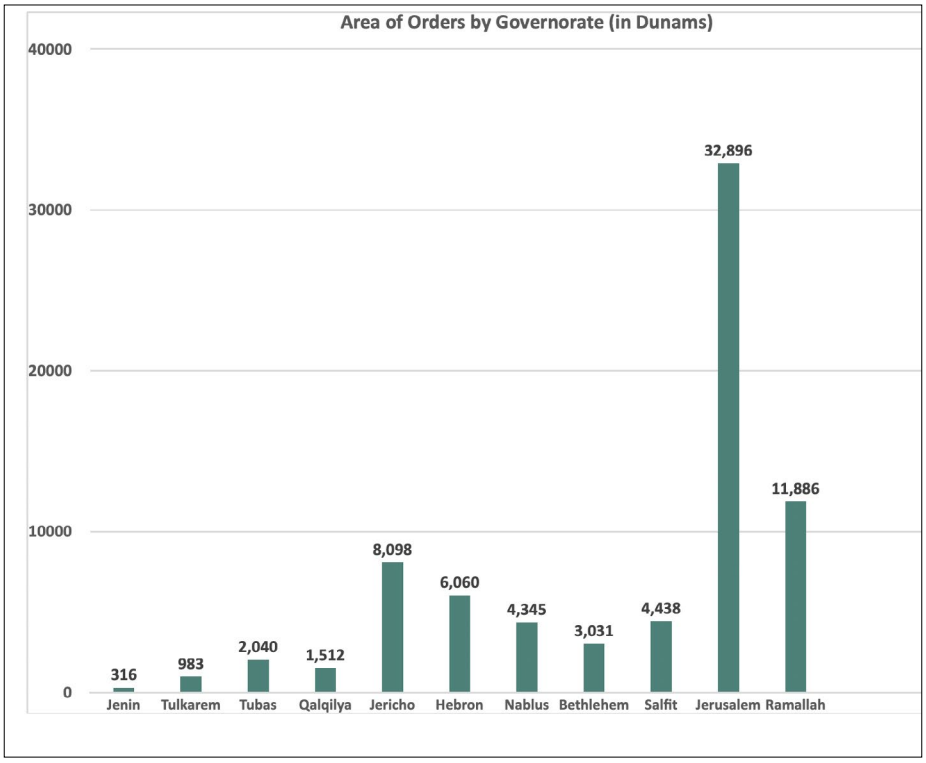
92. The number of orders in this table is 367, whereas the total number of orders is 313. This is because the area consists of several dozens of orders straddling two governorates, and are therefore counted here twice.

93. The distribution of orders and their areas by governorate is based on the administrative structure of the Palestinian Authorities, which differs from that of the Civil Administration. The number of settlements in this table (141) is based on the "Jewish settlements" layer in the GIS website of the Civil Administration, and also includes the four settlements in the northern West Bank evacuated in 2005 as part of the Disengagement Plan. There are several other ways of counting the Israeli settlements in the West Bank. The number used here does not include the Israeli settlements in East Jerusalem.



Area of Orders by Governorate

The distribution of expropriation order areas by governorate indicates that the four governorates with the lowest numbers of orders are, predictably, those where the area expropriated was the smallest. The diagram below also shows that the largest expropriated area is in the Jerusalem governorate, which includes Ma'ale Adumim, for which the largest expropriations took place in 1975-1977. The Ramallah governorate ranks next in terms of area, and first in terms of the number of orders issued. The third is Jericho. The reason for that is that the eastern part of the expropriation implemented for the establishment of Ma'ale Adumim in 1975 (1/4/75) is located in the Jericho governorate.[94]



94. 4,800 dunams out of the total 28,230 dunams of the order.

Access Roads for the Settlements of Kfar Eldad and Nokdim

In 1983, about 18.5 dunams were expropriated to pave a road to the Kfar Eldad settlement (Order 20/83/ה), and in 1991, nearly 100 additional dunams were expropriated for the expansion of the original Kfar Eldad access road and for paving an access road to the Nokdim settlement (Order 5/91/ה). These two roads serve the inhabitants of these two settlements almost exclusively. This use of the expropriated area is contrary to the promises made to the Palestinians residents in the area shortly before their land was expropriated. As indicated in the interviews below, they were told at the time of the expropriation that the road would serve them and improve their lives, and that it was not intended for settlers.

Haj Sliman Muhammad A-Zir (Age 95), Jannatah Village, Interviewed on March 9, 2023

"When the bulldozers came the people pushed them back, they arrested them. So, they [the military] went and brought the elders, and they asked the people, is this the road you are opposed to? We told them that we don't need this road. They told us that we do need it- instead of carrying the crops and the olives on the backs of farm animals, this way, we could arrive by car. They tricked us and opened the road and took the entire land… This is a road for Jews… Then they built a settlement… They don't let us reach the land. Before they told us that this road is "for us and for you" and the elder Arabs also told us that – "Why do you prevent them from paving the road? It would be good for us, we'd carry the crops in the car, going back and forth with cars"…"

Hassan Muhammad Khalikl A-Zir, Al-Fureidis, Interviewed on March 9 & 13, 2023

"I lived here when they began building the settlement. It started as an illegal outpost after a settler had been murdered in the area. They built it in the area where we lived in our village. It was the time of Eid al-Adha (Holiday of the Sacrifice) and Israeli bulldozers came… At first it was a simple dirt road, we would use it with our cattle for farming and plowing. They came to say that they wanted to pave a road. The villagers were opposed to that and drove them away and they put the heavy machinery back into the outpost built on the village land. The next day the elders of the area and the landowners and the regional commander came, opened the map, and said, "We have no plans to settle, we're paving only down to the Dead Sea and it's for tourist purposes and you will also benefit from that for your land…" Some were for it, some were against it. Those against it did not believe the military commander and told him to go do it elsewhere…. The argument between the supporters and opponents became intense. In the end they [the people] said there's a common interest, it's for the common good, pave it".

A few days later they advanced 2 km in the road, and then we were amazed to see that they had swept an area clean, enclosed it, brought in caravans and installed a water pipe and lighting and poured asphalt on the road. The outpost they had established next to our village was moved to the new settlement that was called Eldad – for which the road had been intended. This road cut us off from our land and divided the village…. Since then, the settlers began attacking us.

Later on, in 1991 another area was expropriated in order to pave a road to the Nokdim settlement, which branched off the previous road. Due to the Gulf War, the residents did not object. This road caused damage…. We have cisterns and houses and farmland. We live by grazing sheep and cultivating our land. The settlers began expanding their control, shooting shepherds and preventing the farmers from reaching their land. They would often shoot the sheep belonging to people whose names I know… People began fearing and went off grazing far from here. The people began keeping their distance from the area where the settlement was built. The settlers brought sheep and goats and began dividing the area between them and using the waterholes and the land we used to sow to feed our animals. They began grazing there…. They prevented us from bringing tractors to water the trees. When a tractor would come to plow, they would confiscate it and in this way they actually isolated us from our ancient houses in the area and from our land…. We have documents for the houses from 1942 with permits for these houses.

Access road to Nokdim, paved on Order 5/91/ח

Revoking and Amending Expropriation Orders [95]

Eleven expropriation orders were revoked by the military – two following a petition to the HCJ.[96] Their total area is about 950 dunams or around 1.2% of the total expropriated areas. Seven out of these orders were supposed to serve the two populations; three were supposed to serve the settlers only; and one was supposed to serve the Palestinians alone. In addition to revoking expropriation orders, occasionally an order is issued that amends the area of a previous order. We do not have complete information about the number of orders amended and the area taken off or added to them following the amendment.

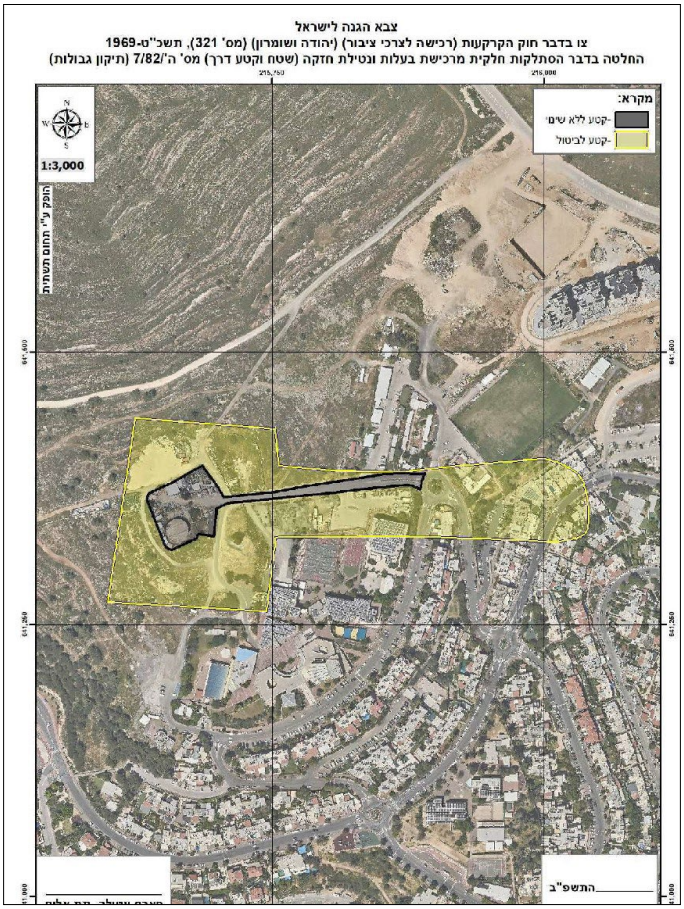
Revoked Orders

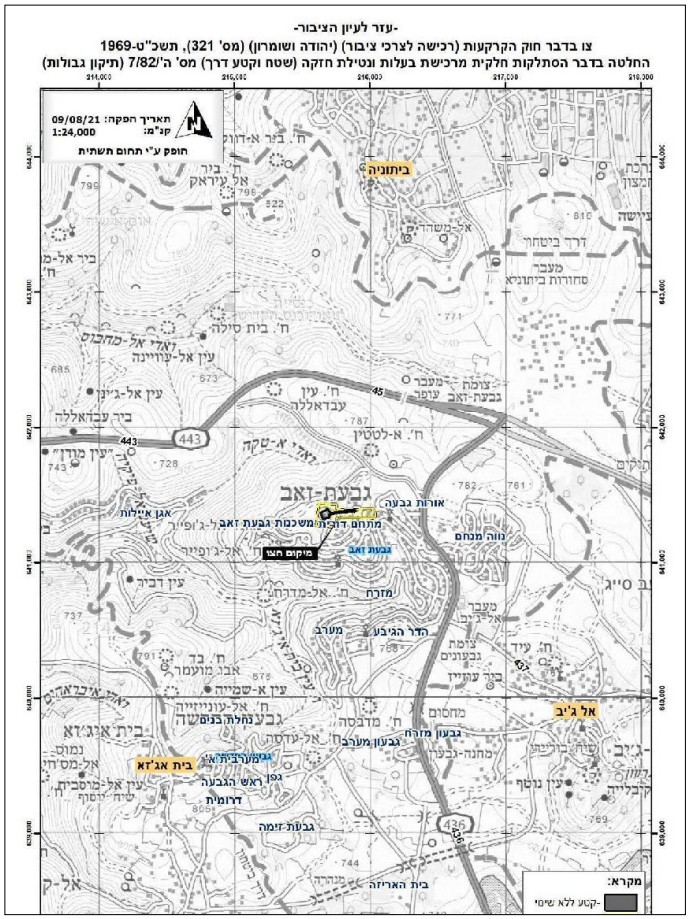
No.	Size (in dunams)	Purpose	Target Group
10/76	259	Roads within Nablus	Settlers & Palestinians
18/80	12	Access road to the Miztpe Jericho Settlement	Settlers
23/80	49	Access road to the Elon Moreh Settlement	Settlers
43/80	1	Access road to the Neve Tzuf (Halamish) Settlement	Settlers
40/82	24	Al-Bireh Bypass	Settlers & Palestinians
11/83	7	Car park near Tel Jericho	Settlers & Palestinians
1/84	6	Car park near Tel Jericho[97]	Settlers & Palestinians
3/84	4	Improving a section along the Ya'bed Road at 'Araba Junction	Settlers & Palestinians
2/89	0.5	Civil Administration office in Qalqilya	Palestinians
3/98	419	Ein Arik bypass	Settlers & Palestinians
2/01	171	Ein Arik bypass	Settlers & Palestinians

95. See in Chapter 1, on p. 22-23.

96. See fn. 42 above.

97. Almost completely overlapping Order 11/83.

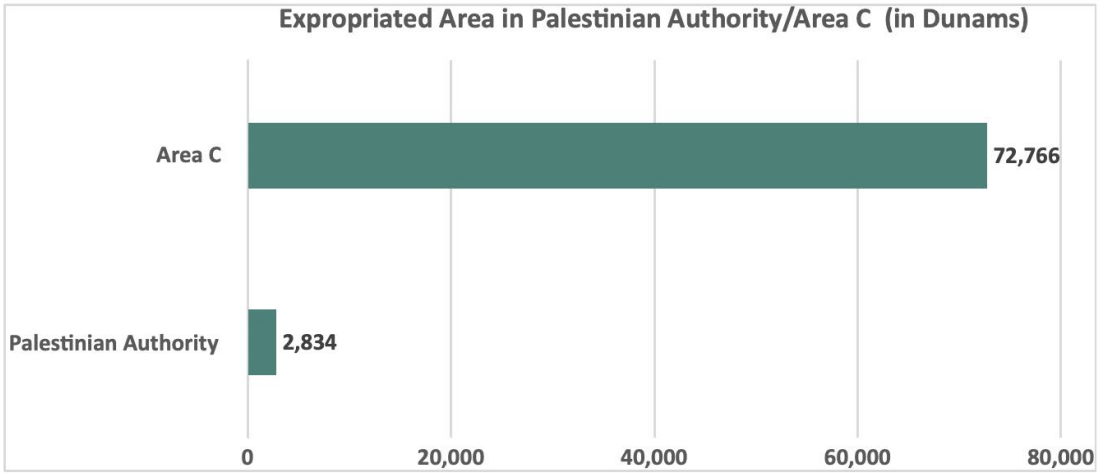


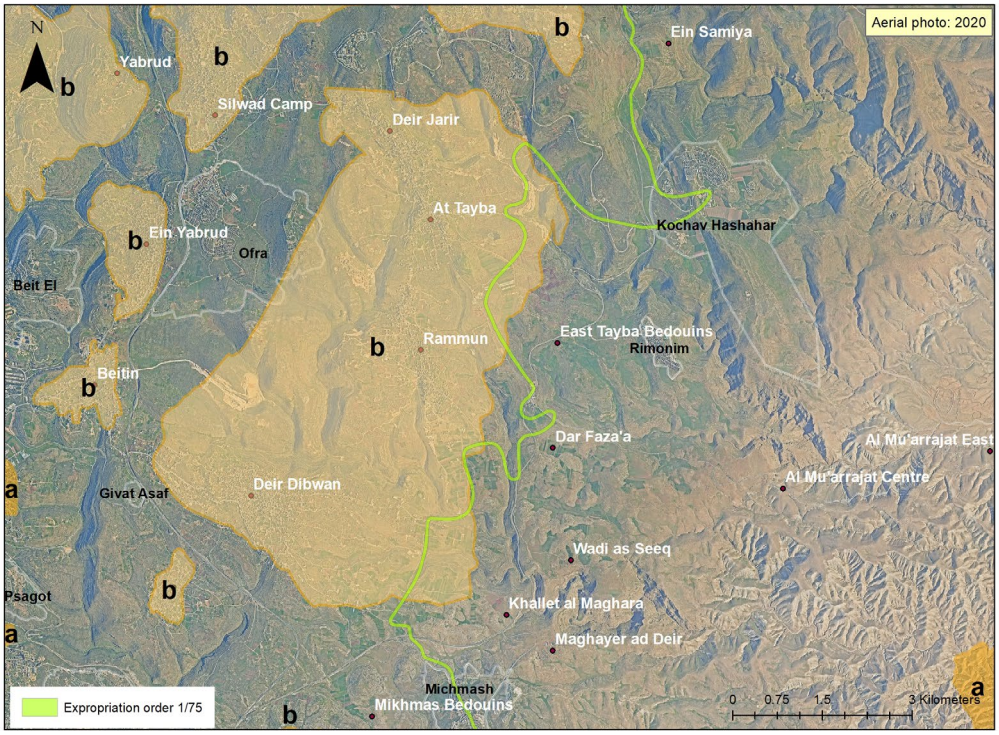


Notice from October 27, 2021 on correcting the boundaries of Expropriation Order 7/82 for a drinking water facility at Givat Zeev settlement.

Orders within the Palestinian Authority

Seventy-seven expropriation orders apply to areas controlled by the Palestinian Authority. They total 2,834 dunams (about 3.7% of the total expropriated area). The great majority of this area, apart from 11 dunams which constitute small parts of several different expropriation orders, was expropriated prior to the 1993 Oslo Accords. We do not have information on the legal status of these areas since the establishment of the Palestinian Authority.





Expropriation Order 1/75 issued to pave Alon Road, located partly within areas transferred to the civil responsibility of the Palestinian Authority in 1995 (Area B). In practice, the road was paved east of the original route, in Area C.

Summary and Conclusions

Israel's authority to expropriate land for public purposes in the West Bank is derived from the opening of Article 43 of the Hague Regulations, which requires the military government to secure public order and life in the occupied territory. Between the years 1972 and 2022, the Israeli military commanders of the West Bank signed 313 expropriation orders for public purposes. Their total area (including that of several orders revoked over the years) is about 75,600 dunams, or about 74,000 dunams after offsetting for overlaps between different expropriation orders. These orders have been issued based on the 1953 Jordanian law, which Israel, as an occupying power in the West Bank, is legally required to uphold.

Over the years, Israeli legal precedents have subscribed to the principle that the legality of expropriation orders for public purposes is assessed primarily in terms of whether the order is intended to serve the welfare of the "local population" – a term that refers primarily to the Palestinian population, for whose safety and wellbeing Israel is responsible as an occupying power. However, detailed analysis of the purposes of each of the orders indicates that over one-third of expropriation orders have either been issued originally with the purpose of exclusively serving the needs of settlers, or do so in practice. These orders have been issued, among other things, for the establishment of the settlements of Ma'ale Adumim and Ofra and for the expansion of the Har Gilo settlement, for the construction of roads used exclusively by settlers, and for the purpose of an archeological site transferred to the ownership of the settlers in Susiya after the local Palestinian population had been expelled. Combined, the area of these orders is almost half the total area expropriated by Israel for public purposes to date.

The link between expropriation orders and Israel's settlement interests in the West Bank is further evident upon examination of the years in which they were issued: nearly 60% (179 orders) were issued in 1977-1984, the years in which the great majority of settlements were established. This conclusion is further supported by the fact that over the past four years, during which the idea of "annexation" gained traction in the internal Israeli political discourse, we saw another spike in the number of expropriation orders used to build and enlarge infrastructure for the purpose of expanding and increasing settlements.

The conclusion that emerges from the data is clear: Under the pretext of fulfilling its international legal obligation to serve the needs of the Palestinians living in the West Bank, over the past decades Israel has expropriated extensive areas of land in order to promote the settlement project. In some cases, it has done so while completely and blatantly ignoring its duty to ensure that the expropriated area is for the use of the Palestinian population, and

in other cases it has done so in a more sophisticated way by creating a dependency between the mutual interests of both Palestinian and the settler populations.

Afterword

On January 11, 2023, the Head of the Civil Administration signed an order for the expropriation of about 220 dunams of land belonging to the village of Hizma in order to expand Road 437, connecting the Hizma checkpoint with Highway 60.[98] Another order was signed in February 2023 in order to expropriate an area of about 193 dunams to preserve and renovate the Archileis archeological site on the land of Al-Ujja. These orders are not included in the orders discussed herein, as they exceed the predetermined time frame (late 2022). We assume that over the next few years, additional expropriation orders will be signed, primarily in order to expand existing roads and pave new ones, as part of Israel's efforts to promote the de facto annexation of the West Bank.