



Extra-territorial obligations of the State to uphold economic, social and cultural rights

5W: State Institutions Operating Extraterritorially to Carry out Population Transfer and Colonization

Source: Angie Balata and Joseph Schechla, Housing and Land Rights Network – Habitat International Coalition, based on various legal materials, reports, documents and published works.

States breaching their ETO: Israel (primarily responsible) and some 50 secondarily responsible States (+ 12 federated U.S. states) hosting operations of these institutions in their jurisdiction

Signature: Types of extra-territorial State obligations breached:

4. cross-border issues, with obligations to respect and protect

Primary State: Respect; i.e., to refrain from violating economic, social and cultural rights, particularly, the rights to adequate livelihood, property, adequate housing, water, participation in culture, and failure to implement the over-riding covenanted principles of self-determination, nondiscrimination, rule of law, application of maximum available resources, progressive realization and international cooperation; Protect; i.e. failure to protect indigenous Palestinians' rights holders from the conduct of third parties actors under the State's jurisdiction and/or effective control, including the failure to exercise due diligence to prevent, investigate or prosecute ESCR violations and violations related breaches of *all* the over-riding principles of application in ICESCR: self-determination, nondiscrimination, rule of law, application of maximum available resources, progressive realization and international cooperation. Failure also to fulfil ESCR while also failing to ensure *each* of the seven over-riding principles of application.

Respect, protect and fulfill civil and political rights, in particular, the right to nationality, right to effective participation, right to self-expression, right to information.

Breach of general principles of international law, including nonaggression, nonapplicability of the acquisition of territory by force, pillage, population transfer and principles related to nationality, including the breach of States rights associated with nationality (e.g., citizen's owing allegiance to the State of their citizenship/nationality). That is in addition to any breach of domestic legal prohibitions against foreign recruitment, acts of disloyalty¹ or laws and regulations governing the conduct of foreign agents within a State.

Description

The Jewish National Fund (JNF) was incorporated in 1901 as a private London-based company² under its Hebrew name, Keren Kayemeth L'Yisrael (KKL), as a colonial instrument of the World Zionist Organization (WZO) mandated to acquire and colonize land for persons of "Jewish race or descendency."³ The WZO has a sister organization, the Jewish Agency for [the Land of] Israel (JA), which was founded in 1921 as a channel of financial contributions with a more-acceptable name for the majority of Jews in North America who were not Zionist. Historically, WZO/JA and JNF have sought recognition as international public bodies in the form of proto-State institutions of the foreseen State of Israel. The intimately relationship of WZO/JA and JNF already with the Palestine (Mandate) Administration manifested as a shadow government in Palestine, leading up to the proclamation of the State of Israel.⁴ The WZO/JA and JNF; however, violated its public body obligations while embodying the increasing political and military dimensions of the Jewish colony in Palestine,⁵ funding much of the ethnic cleansing of the country's indigenous people.

In 1949, a month after UN Resolution 194 of 11 December 1948, the Israeli State, represented by Prime Minister Ben Gurion, illegally "sold" 1 million dunams of Palestinian refugees' land.⁶ Additionally, the JNF agreed to pay an additional £1 7,250,000 to the State and the Jewish Agency to assist in settling immigrants on the land.⁷ By 1958, the JNF owned 17% of the surface area controlled by the State and the population transfer project was realized.

Since their inception, WZO/JA and JNF have been the principal bodies promoting and implementing the concept of "Jewish nationality" as a superior civil status in Israeli law and conferring the exclusive benefits that those bodies provide.

"Jewish nationality" remains the unique status that confers full rights to be enjoyed in Israeli-controlled territory, even for those otherwise unconnected with the country. Such is the lynchpin of State of Israel's system of institutional discrimination. Meanwhile, mere Israeli citizenship is an inferior status without Jewish nationality, primarily depriving the indigenous people.

In 1952, the Israeli Knesset adopted the Status Law, fusing these "national" institutions to the State of Israel. In 1953, the JNF became both registered as an Israeli company with all its English assets transferred to it under the JNF Law (1953)⁸ and formally part of the new State of Israel, which symbiosis the Status Law also formalized for WZO/JA and the State). Subsequent Israeli legislation related to acquiring and managing (mostly Palestinian) land and property for development within Israel, and illegally imposed since 1967 in the occupied Palestinian territory (oPt), follows the discriminatory "principles of the JNF." Those principles explicitly exclude all those without "Jewish nationality" from its benefits. For that reason of acquisition of land and property, the "national institutions" reject Palestinian refugees rights to return and reparation. Meanwhile, the State of Israel also subjects all public planning and construction policies and functions to those institutions or otherwise applies their discriminatory criteria to the disadvantage of other citizens, in particular indigenous Palestinians.

While the "national institutions" have been described officially and carrying out "the essential task of the State," that also involves their active role in the recruitment and transfer of Jewish population from other countries. In their respective and coordinated ways, the WZO/JA, JNF and their affiliates have carried out their population-transfer program while registered as tax-exempt charities in some 50 States outside of Israel, they are, in fact, a institutions of State

within Israel.⁹ They function as Israeli public bodies,¹⁰ and their officers travel on Israeli diplomatic passports.¹¹

Following a successful 1968 challenge to the WZO/JA tax exempt status, the institutions were required to register instead as foreign agents. The 1970 Zionist Congress announced its reformed as “an organization of organizations” (i.e., a network). Moreover, since then, WZO and JA formally divide their activities geographically, with JA prioritizing demographic transformation inside the Green Line (esp. Galilee and Naqab), with WZO specialized in colonizing the oPt and Syrian Golan. Today, the Jewish National Fund (JNF) handles approximately 1 billion shekels each year and employs thousands of workers globally. While it has a diversified portfolio of influence, including education, tourism and agriculture, most of its influence is focused on real estate, via the Israel Lands Administration (ILA).¹² The JNF branch in the United States annually issues tens of millions of tax-free contributions to the State of Israel.¹³

Territorial HR

The discriminatory principles of the WZO/JA and JNF charters have defined the criteria of Israeli domestic law and institutions concerned with land, property, agriculture, forestry, housing and development. Therefore, no constitutional or legislative contradiction exists to impede or remedy past, present or future violations by the mentioned institutions of State.

The State party is obliged to apply the relevant rights domestically, including livelihood, housing, property, water, etc., within the over-riding principles of application: self-determination, nondiscrimination, gender equality, rule of law (including reparations for victims), application of the maximum of available resources, nonretrogression/progressive realization and international cooperation.

One of the underlying, and increasingly scrutinized, issues concerning the JNF, and its affiliate institutions, is the overt and expressed discrimination practiced towards persons of Palestinian Arab origin. The most celebrated case and definitive expression of this discrimination was in the Katzir-Qaadán case, in which the Qaadán couple wanted to purchase a house in the Katzir settlement but were denied. The settlement was situated on land belonging to the Jewish Agency and administered by the ILA and as per the mandates of these organizations land was not to be sold to non-Jewish persons. The Qaadáns took their case to the Supreme Court and in 2005 Justice Aharon Barak ruled in favor of the Qaadáns, writing that "Being a democratic Jewish state, as the Basic Law on Human Dignity and Freedom asserts, Israel must act in accordance with the principle of equality."¹⁴ Moreover Judge Barak rendered the following judgment:

A. "We hold that the State of Israel was not permitted, by law, to allocate State land to the Jewish Agency for the purpose of establishing the communal settlement of Katzir on the basis of discrimination between Jews and non-Jews.

B. The State of Israel must consider the petitioners' request to acquire land for themselves in the settlement of Katzir for the purpose of building their home. The State must make this consideration based on the principle of equality, and considering various other relevant factors - including those factors affecting the Jewish Agency and the current residents of Katzir. The State of Israel must also consider the numerous legal issues. Based on these considerations, the State of Israel must determine with deliberate speed whether to allow the petitioners to make a home within the communal settlement of Katzir."¹⁵

In spite of this the Qaadans have yet to be able to purchase and build a home in Katzir. However, this is by no means a unique situation. In another case, Adalah petitioned the Supreme Court in October 2004 "...demanding the cancellation of an Israel Land Administration (ILA) policy and a Finance Ministry regulation which effectively permits the marketing and allocation of lands open only to Jewish individuals. Adalah argued that the policy is incompatible with the principle of equality, discriminates against the Palestinian minority on the basis of nationality, and would lead to the further creation of racially-segregated, Jewish-only areas." ¹⁶ The JNF responded to the petition claiming that "...the JNF will demonstrate that its activities in purchasing land by means of the funds of the Jewish people, for the benefit of the Jewish people, and in their allocation to Jews is in complete accord with the founding principles of the state of Israel as a Jewish state and that the value of equality, even if it applies to JNF lands, would retreat before this principle."¹⁷ And despite the Attorney General's concession to the discriminatory policies of the JNF and its illegality, neither he nor the state has been willing to prevent the JNF from continuing their discriminatory practices. In fact, the state has offered to compensate the JNF in equal amounts of land whenever a non-Jewish citizens win an ILA tender for JNF lands, thus ensuring that the JNF continues to hold on to 13% of total land in Israel.¹⁸ To complicate things further, on 18 July 2007, MK Uri Ariel submitted the "Jewish National Fund Law" bill to the Knesset which proposes further racist additions to the original Israeli Land Administration Law (1960). The proposed changes include a new provision entitled "Management of the Jewish National Fund's Lands." Under the additional provision, "Despite whatever is stated in any law, leasing of Jewish National Fund's lands for the purpose of the settlement of Jews on these lands will not be seen as improper discrimination."¹⁹ Moreover, "For the purpose of every law, the association documents of the Jewish National Fund will be interpreted according to the judgment of the Jewish National Fund's founders and from a nationalist-Zionist standpoint"²⁰ The bill was passed in the Knesset with a 64-16 majority vote.

JNF illegal practices within Israel can be summarized as follows²¹:

1. ethnic cleansing and destruction of property: beginning prior to 1948, the JNF has been directly involved in the settlement planning policies of the Jewish leadership with the goal of establishing more than 100 settlements in order to absorb between 1-1.5 million immigrants within a space of three years. This contravenes the Nuremberg Charter and is categorized as a war crime. With the departure of the British in 1948, the JNF, through its local connections with both settlements and terrorist units (i.e. Haganah), arranged for the forced expulsion of the Palestinians. With the declaration of the state, JNF director, Yosef Weitz, headed a Transfer Committee whose job was to destroy as many villages as possible under the cover of military operations, implant settlers and prevent the cultivation of the land by the indigenous Palestinian population. By the end of the JNF campaign in the early years, it had plundered and stolen the lands of 372 villages, affecting approximately 54% of UN registered refugees currently in exile.
2. discrimination and apartheid: through its mandate and relationship with the state, the JNF has been directly responsible for ensuring that an apartheid structure, via it being an instrument of institutionalized discrimination, pervades the state structure. The discriminatory policies of the JNF have ensured that nationality, i.e. Jewish nationality, supersede Israeli citizenship and, as such, the perpetual relegation of Palestinians inside Israel to second-class citizens. The result of which has been that Palestinians are forced to pay taxes, to vote and abide by the State's laws without reaping any benefits as citizens, including the right to own property.

States Hosting Population Transfer Institutions

Foreign Agents Registration Act of 1938, the Federal Regulation of Lobbying Act of 1946 and Federal Regulation of Lobbying Act (1995)

Extraterritorial HR

In their Concluding Observations, UN treaty bodies serially have registered their concerns over the discriminatory nature and governmental functions of JNF and Israel's other "national institutions" as incompatible with human rights treaty obligations.²² In their concluding 1998 observations, the CESCR noted "...with grave concern that the Status Law of 1952 authorizes the World Zionist Organization/Jewish Agency and its subsidiaries, including the Jewish National Fund, to control most of the land in Israel, since these institutions are chartered to benefit Jews exclusively. Despite the fact that the institutions are chartered under private law, the State of Israel nevertheless has a decisive influence on their policies and thus remains responsible for their activities. A State party cannot divest itself of its obligations under the Covenant by privatizing governmental functions. The Committee takes the view that large-scale and systematic confiscation of Palestinian land and property by the State and the transfer of that property to these agencies constitute an institutionalized form of discrimination because these agencies by definition would deny the use of these properties to non-Jews. Thus, these practices constitute a breach of Israel's obligations under the Covenant."²³

Moreover, the ICJ has ruled in 2004 that the Fourth Geneva convention applies to the occupied territories. Thus to avoid international reprimand, the JNF has operated in the occupied territories through its subsidiary, Himnuta, in order to "buy" land with forged documents. Operating as a strictly private company, Himnuta's financial statements and actions have not been publicized. However, in 2004 scandal occurred when it was discovered that Himnuta illegally purchased West Bank lands for more than NIS 20 million (\$4million) without the knowledge of its Palestinian owners.

The WZO/JA and JNF also have assumed to themselves the task of representing "the Jewish people" extraterritorially; however, there is no method consistent with international law that makes the State of Israel, WZO/JA, or JNF the representative of Jewish persons who are not also citizens of Israel. Nonetheless, the Gol official statements and law asserts this extraterritorial claim.²⁴

The JNF budget is approximately \$250 million.²⁵ A variety of sources form the bulk of JNF revenues, most of which are outside the state. Jews in the Diaspora were key to ensuring the original illegal annexation of lands possible. Between 1910 and mid-1948 American Jews contributed, through the United Jewish Appeal, \$85,760,732 and a further total of \$9 million were contributed by British, Canadian, and South African Jews. In addition, American banks also played a crucial role in the ensuing atrocities. For example, the Bank of American National Trust and Saving Association of San Francisco gave the JNF a loan of \$15 million, an unusual move for a bank to extend loans to a British entity (at this time the JNF was still registered in London) to establish illegal settlements in a foreign country on land owned neither by the State or by the JNF.²⁶ Recently, the JNF has been collecting donations via its "Blue Box" program but also through the sale of illegal projects and settlements on Palestinian lands.²⁷ For example, the JNF has individuals, families and/or communities outside of Israel are procured to donate money to build reservoirs, parks, promenades, etc. within Israel. In addition, various governments have given money from public funds for

various research or development projects initiated by the JNF.²⁸ For example, since 1990, the US government has given the JNF \$1 million per year for its research budget.²⁹

The JNF is registered in over 50 countries as a "charity," despite its foreign-State function and affiliation, and despite its central role in managing the acquisition of territories and properties by force for the purpose of population transfer. Its actions have essentially dispossessed the indigenous population of Palestine of their historical homelands and continues to do so with the help of mass injections of money from its global offices. Consistent with the post-WW2 International Military Tribunal rulings, population transfer is also codified in the Rome Statute of the International Criminal Court (17 July 1998) as a crime against humanity, article 7, and as a war crime, under article 8. As such, the JNF mandate also contravene charity status laws in the countries in which it operates. In light of this, the duplicitous claim to 'development' and environment, as is often claimed by the JNF for its donors, constitutes both mass fraud and the violation of both international human rights and humanitarian law, and by extension the laws of the countries in which it operates.

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- ¹ Potentially conditions disqualifying citizenship may involve...(c) association or sympathy with persons or organizations that advocate, threaten, or use force or violence, or use any other illegal or unconstitutional means, in an effort to; (1) overthrow or influence...any state or local government...(4) prevent others from exercising their rights under the Constitution or laws...of any State. [Extract from Guideline A: Allegiance to the United States, *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (29 December 2005), at: <http://www.fas.org/sgp/isoo/guidelines.html>.
- ² Blougrund, David, "The Jewish National Fund", *Institute for Advanced Strategies and Political Studies*, No.49, September 2001, at: <http://www.israeleconomy.org/policystudies/ps49.pdf>
- ³ <http://www.palestineremembered.com/Articles/JNF/Story1513.html#1.%20What%20is%20JNF?>
- ⁴ "Report of the Anglo-American Committee of Inquiry," in W. Thomas Mallison and Sally V. Mallison, *The Palestine Question in International Law and World Order* (London: Longman, 1986), p. 100.
- ⁵ The Anglo-American Report stated that "The Jewish shadow Government has ceased to cooperate with the [Palestine] Administration in the maintenance of law and order, and in the suppression of terrorism," at 39.
- ⁶ For £1 11 million (£I = Israeli Lira = £P = Palestinian pound = Sterling £ pound = \$4.03, as cited in <http://www.palestineremembered.com/Articles/JNF/Story1513.html#1.%20What%20is%20JNF?>
- ⁷ <http://www.palestineremembered.com/Articles/JNF/Story1513.html#1.%20What%20is%20JNF?>
- ⁸ Blougrund, David, "The Jewish National Fund", *Institute for Advanced Strategies and Political Studies*, No.49, September 2001, at: <http://www.israeleconomy.org/policystudies/ps49.pdf>
- ⁹ Blougrund, David, "The Jewish National Fund", *Institute for Advanced Strategies and Political Studies*, No.49, September 2001, at: <http://www.israeleconomy.org/policystudies/ps49.pdf>
- ¹⁰ This is illustrated by the May 1999 letter from Yuval Rachlevsky, supervisor of wages at the Ministry of Finance, to the Director General of the JNF, which states "The JNF is a public body, or at least pseudo-public, inasmuch as the monies that reach it originate from assets that belong to the public (revenues from the leasing of the lands) and it is therefore actually a body that relies on the public coffers....This being the case the norms that are customary to public bodies should apply to it..." Blougrund, op cit.
- ¹¹ *Nahum Goldman Scholarship Program*, at: <http://www.ngfp.org/ngoldmann.htm>.
- ¹² Blougrund, David, "The Jewish National Fund", *Institute for Advanced Strategies and Political Studies*, No.49, September 2001, at: <http://www.israeleconomy.org/policystudies/ps49.pdf>
- ¹³ JA/USA IRS statements on file.
- ¹⁴ <http://www.haaretz.com/hasen/pages/ShArt.jhtml?itemNo=630887>
- ¹⁵ <http://www.mfa.gov.il/MFA/Government/Communiques/2000/High+Court+Decision+on+Katzir++8-Mar-2000.htm>
- ¹⁶ H.C. 9205/04, *Adalah v. The Israel Land Administration, et. al. (case pending)*., <http://www.adalah.org/eng/jnf.php>
- ¹⁷ <http://www.adalah.org/eng/publications/makan/hc9010.pdf>
- ¹⁸ http://www.adalah.org/eng/pressreleases/pr.php?file=05_01_28
- ¹⁹ <http://www.adalah.org/features/land/kkl-law-jul07-en.pdf>
- ²⁰ <http://www.adalah.org/features/land/kkl-law-jul07-en.pdf>
- ²¹ The following is summarized from: Palestine Land Society, "Financing Racism and Apartheid: Jewish National Fund's Violation of International and Domestic Law", August 2005.
- ²² E/C.12/1/Add.27, 4 December 1998, paras. 11, 35; E/C.12/1/Add.90, 23 May 2003, para. 27; CERD/C/ISR/CO/13, 14 June 2007, para. 19.
- ²³ Concluding Observations of the Committee on Economic, Social and Cultural Rights, 4 December 1998, E/C.12/1/Add.27
- ²⁴ In *George Tamarin v. the State of Israel* (1971), High Court of Israel denied a Jewish Israeli's petition to change his nationality from "Jewish" to "Israeli," asserting "there is no Israeli nation separate from the Jewish nation...composed not only

of those residing in Israel but also of Diaspora Jewry." *The New York Times* (21 January 1972), p. 14, as cited in Oscar Kraines, *The Impossible Dilemma: Who is a Jew in the State of Israel* (New York: Bloch Publishing, 1976). Extraterritorial concepts of citizenship or nationality infringe upon the sovereign rights of affected States. See letter of United States Assistant Secretary of State Phillip Talbot to American Council for Judaism Executive Vice-President Rabbi Elmer Berger, affirming that USA "does not regard [Israel's extraterritorial] 'Jewish people' concept as a concept of international law." W.T. Mallison, Jr., "The Zionist-Israeli juridical claims to constitute the 'Jewish people' entity and to confer membership in it: appraisal in public international law," *The George Washington Law Review*, vol. 32, No. 5 (1964), p. 1075.

²⁵ Blougrund, David, "The Jewish National Fund", *Institute for Advanced Strategies and Political Studies*, No.49, September 2001, at: <http://www.israeleconomy.org/policystudies/ps49.pdf>

²⁶ <http://www.palestineremembered.com/Articles/JNF/Story1513.html#1.%20What%20is%20JNF?>

²⁷ Blougrund, David, "The Jewish National Fund", *Institute for Advanced Strategies and Political Studies*, No.49, September 2001, at: <http://www.israeleconomy.org/policystudies/ps49.pdf>

²⁸ Blougrund, David, "The Jewish National Fund", *Institute for Advanced Strategies and Political Studies*, No.49, September 2001, at: <http://www.israeleconomy.org/policystudies/ps49.pdf>

²⁹ Blougrund, David, "The Jewish National Fund", *Institute for Advanced Strategies and Political Studies*, No.49, September 2001, at: <http://www.israeleconomy.org/policystudies/ps49.pdf>