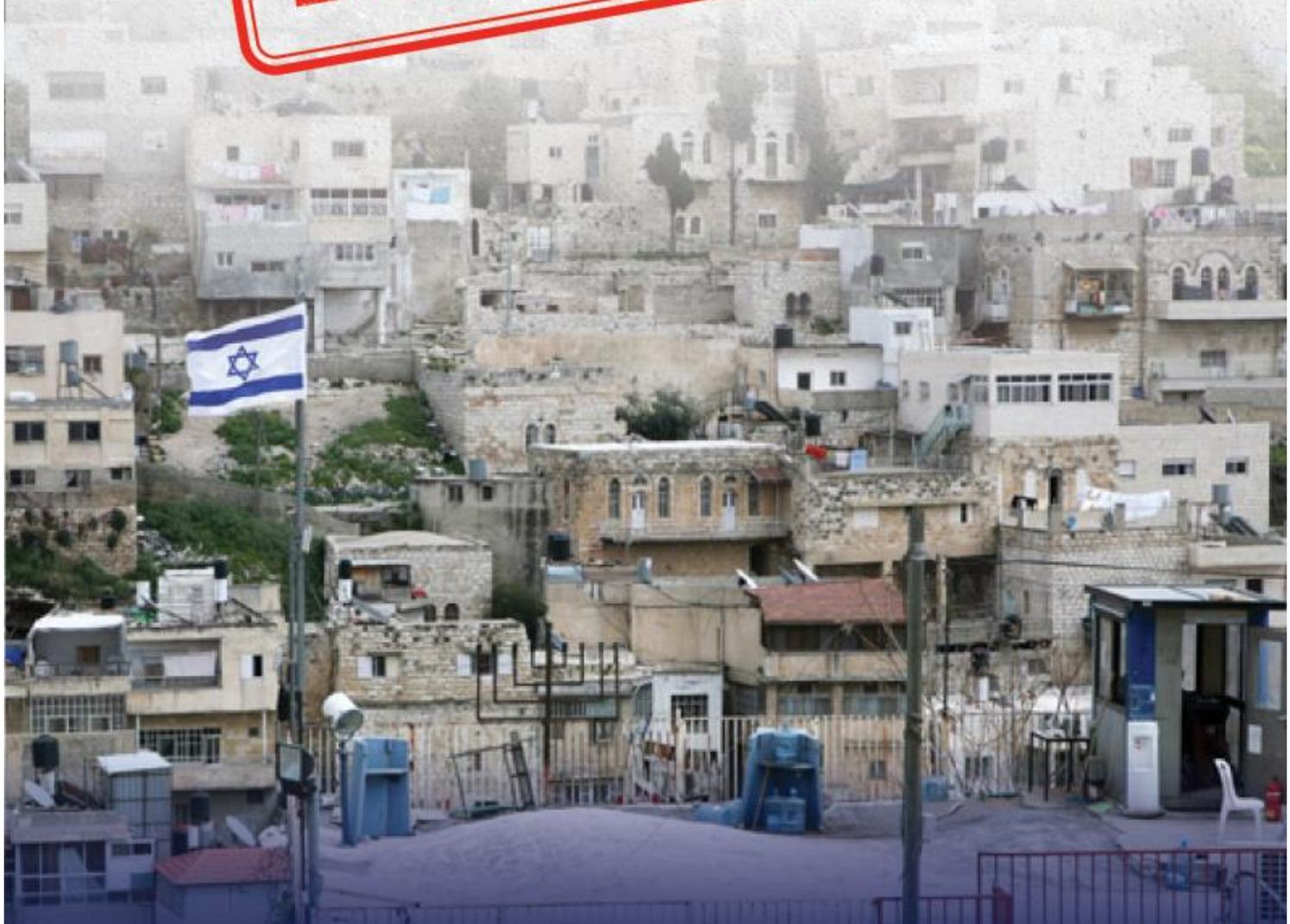


**JULY 2020**

**ANNEX AND  
DISPOSSESS**



**USE OF THE ABSENTEES' PROPERTY LAW TO DISPOSSESS  
PALESTINIANS OF THEIR PROPERTY IN EAST JERUSALEM**

**PEACE NOW**

## Annex and Dispossess

### Use of the Absentees' Property Law to Dispossess Palestinians of their Property in East Jerusalem

Hagit Ofra<sup>1</sup>, Peace Now, June 2020

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<sup>1</sup> This report could not have been written without the help of Danny Seidemann, one of the greatest experts on Jerusalem issues, and of the people who exposed the mechanism to take control of Palestinian properties in East Jerusalem and led the fight against it since the 1990s.

Some of the documents exposed in the report were revealed by Akevot institute: [www.akevot.org.il](http://www.akevot.org.il)

## Summary

One of the potential consequences of annexing the West Bank to Israel, in part or in full, is the application of the Absentees' Property Law on the annexed territories. [The Absentees' Property Law](#) was enacted in Israel in 1950, to contend with the extensive territories and assets owned by Palestinians who became refugees during the 1948 war. The law ruled that the government may take control of these assets and make use of them at will, through the Custodian of Absentees' Property.

Should the law be applied to annexed territory, Israel could take over expansive territories throughout the West Bank without expropriating them or offering compensation. According to the map of Trump's plan for instance, approximately 543,000 dunams (roughly 134,000 acres) in the territory intended for Israeli annexation, are privately owned by Palestinians, and constitute about 30% of the area. These are vast swaths of territory owned by tens of thousands of Palestinians.

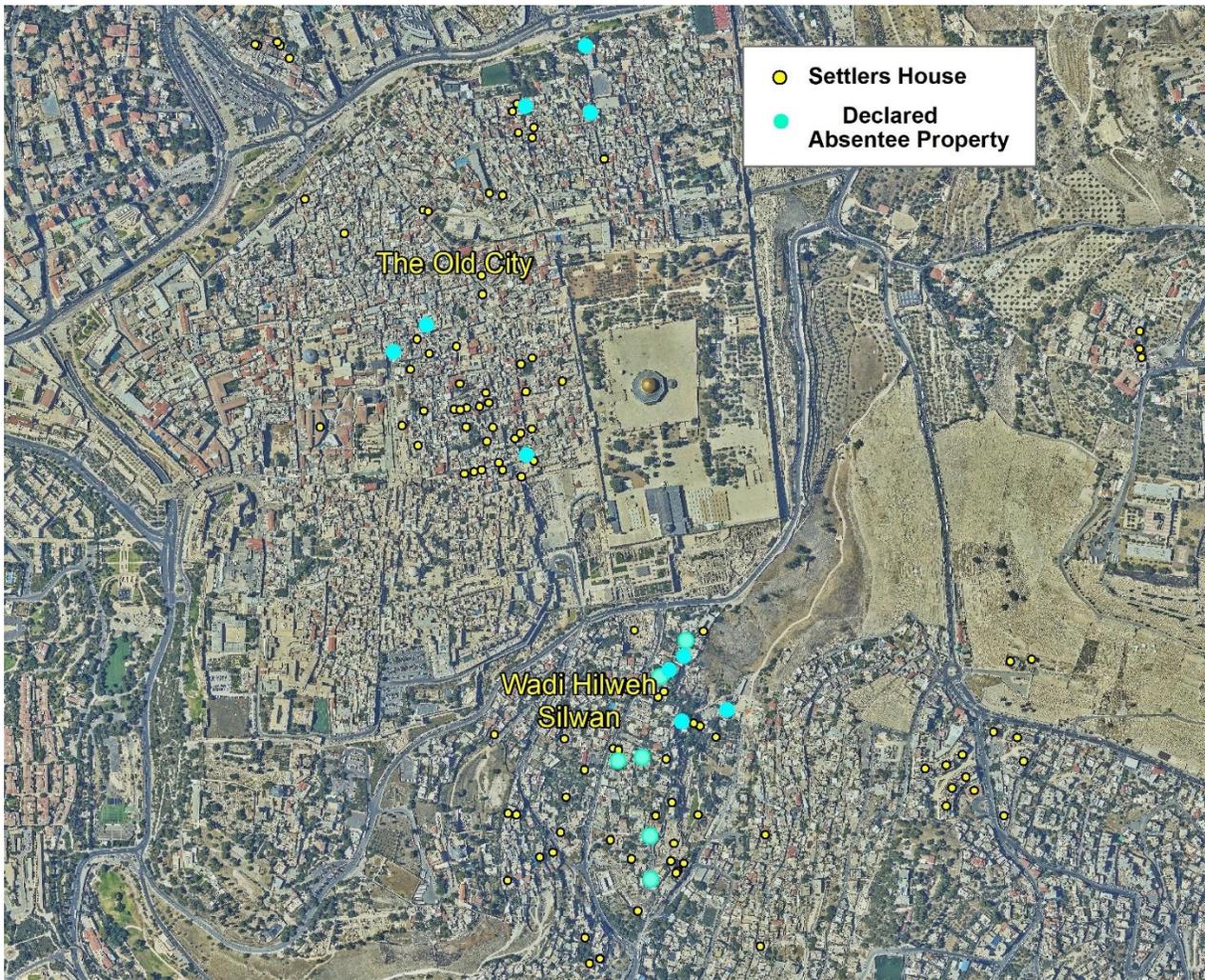
The Israeli government will likely claim that it does not intend to declare Palestinian assets absentees' property, yet Israel's conduct in East Jerusalem following the occupation in 1967, indicates that from the moment the law is applied, it may always be used in some political constellation. This report reveals how a secret government mechanism established under the Likud government in the 1980s, enabled the transfer of dozens of Palestinian assets in Silwan and the Muslim Quarter to settlers, through use of the Absentees' Property Law, among other means.

This report examines various Israeli governments' use of the Absentees' Property Law in East Jerusalem, to dispossess Palestinians of their properties and to populate them with settlers.

The method worked as follows: Settler-related bodies recruited people to declare that the owners of certain properties were absentee landlords. These affidavits were passed onto the Custodian for Absentees' Property, who deemed that they were indeed absentees' assets without any further inspection. Thereafter, the absentees' assets were passed onto the JNF, which passed them onto settlers. The Palestinian families living in these properties discovered that their homes were sold by the state to settlers, upon receiving lawsuits from the settlers or

the JNF by the mail, demanding that they vacate the house. Thus a long, costly, exhausting legal battle ensued, for underprivileged Palestinian families versus powerful well-funded bodies like the JNF and settler organizations. Some of the families have been compelled to leave their homes, few have managed to save them, while others are still struggling.

The report cites numerous documents that indicate how the Absentees' Property Law was abused, and how in spite of court rulings that deemed the process corrupt and unacceptable – the assets were not returned to their owners. An analysis of various governments' policies, which is detailed in an appendix to the report, indicates that even when governments sought to reduce use of the law, the following governments always found means of changing the policy and reexpanding takeover of Palestinian assets through the Absentees' Property Law.



## Annex and Dispossess

### Use of the Absentees' Property Law to Dispossess Palestinians of their Property in East Jerusalem

#### Introduction

Ahmad Sumarin was born in Silwan in East Jerusalem in the early 1980s. Ever since he was a child he recalls his parents busy with paperwork and documents, meetings with lawyers, court hearings, visits from journalists and activists, and a heavy cloud of uncertainty looming: will we be thrown out of our home? How much longer will we be able to stay here? Where will we go? The Sumarin family has fallen victim to one of the most corrupt methods employed by the Israeli government in cooperation with settlers, to take over Palestinian property in East Jerusalem, namely the Absentees' Property Law. This law was enacted in Israel in 1950, under the special circumstances that arose at the time. It enabled the Israeli government to take over assets that had belonged to Palestinians up until 1948, and use them for the benefit of the country's development. When the Israeli government annexed East Jerusalem in 1967, applying Israeli law over the area, the Absentees' Property Law also applied to the territory of Jerusalem, despite there being no connection between the circumstances of 1948 and post-1967 Jerusalem.

Toward the late 1980s, the Custodian of Absentees' Property declared the Sumarin family home "absentee property" and it was sold to the JNF behind the Sumarin family's back, who had lived in the home prior to 1967. In 1991, the JNF filed an eviction lawsuit against the family, and a long and exhausting legal battle has ensued, to date. Thirty years later, Ahmad currently finds himself raising his children in his childhood home, as they now watch him busy with paperwork and documents, meetings with lawyers, court hearings, visits from journalists and activists, and a cloud of uncertainty still looming, which only seems to have grown heavier and more cumbersome with time.

On June 30, 2020, the district court of Jerusalem [rejected the Sumarin family's appeal](#) against their eviction from their home, in what appears to be the last legal battle. As the Israeli government currently declares its intent to annex the West Bank, it is worth learning from annexation

attempts previously carried out in 1967, when the government annexed approximately 70 square kilometers in the area of Jerusalem, applied Israeli law and declared it the “eternal united capital of Israel.”

**The story of absentees’ property in Jerusalem is just one example of what might be implemented on a massive scale in the occupied territories, should Israel annex them.**

This report analyzes various Israeli governments’ use of the Absentees’ Property Law and the way in which dozens of assets were taken over throughout East Jerusalem, and Silwan in particular.



The Sumarin family at their home in Silwan, May 2020. Photo: David Shulman

## A. What is the Absentees' Property Law?

Upon the founding of the State of Israel in 1948, a war erupted that concluded with the establishment of the country's borders, upon which hundreds of thousands of Palestinians found themselves outside its borders, having fled or been expelled from their homes during the war. The Israeli government decided not to allow them to return to their land and homes within Israel, such that they became refugees. These special circumstances, including a wave of mass immigration and vast property left behind, created a major legal challenge for the young country that needed to prevent wild invasive takeover of the assets on the one hand, while allowing for their use and the development of the country, on the other. Against this backdrop, the [Absentees' Property Law](#) was enacted in 1950.

**The Absentees' Property Law deems that if the owner of an asset is located in an enemy country, they are considered an absentee, and the Custodian of Absentees' Property may take over the asset.** The Custodian may sell the property to the Development Authority, which may sell it to a third party. That is, **the law enables the state to take over the absentees' property and make use of it at will.**

It is important to note that the lawmakers defined the term "absentee" such that it does not apply to anyone living abroad, but rather solely to Palestinians. Thus, absentees were solely deemed those who left the country for "an enemy state", and anyone residing in countries not considered enemy states, may retain possession of their assets in Israel. As such, a discriminatory law was created wherein if two people from Jerusalem left the country, a Palestinian who traveled to an Arab country and a Jew to Europe or the US, the Palestinian's assets would be considered absentee property, whereas the Jewish individual would retain ownership over his property in Israel from overseas.<sup>2</sup>

**These unique prevailing circumstances may have justified the enactment of the law upon the establishment of the state, yet in East Jerusalem, which was annexed to Israel in June 1967, the circumstances were entirely different.**

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<sup>2</sup> This way, for example, a rich supporter of the settlers from the US who never lived in Israel, could buy from the Israeli government properties in East Jerusalem that belonged to Palestinians who were declared absentees and settle them with settlers, such as the case of the Shepherd Hotel in Sheikh Jarrah.

## B. 1967 Annexation of East Jerusalem and application of the Absentees' Property Law

In 1967, the Israeli government annexed some 70 square kilometers of East Jerusalem, over which it applied Israeli law, including the Absentees' Property Law. Although the Absentees' Property Law was enacted under unique circumstances and challenges particular to the establishment of the state, it was applied to East Jerusalem, where none of the same circumstances existed; neither a wave of emigration due to warfare, nor extensive abandoned Palestinian assets or national Israeli development needs. Supreme Court President, Justice Asher Grunis, even declared: "It is quite likely that at least some of the provisions of the law, were they enacted today, would not pass constitutional tests"<sup>3</sup> (see more on the ruling in Appendix III).

**Yet even if the law applies, it need not be used.** Whether or not to apply it, and how to do so, remains up to the government's best judgment.

Indeed, various governments made different usage of the Absentees' Property Law in East Jerusalem. As the following explanation indicates, the Labor party chose to reduce the use of the law in East Jerusalem, whereas the Likud party attempted to expand its use, up to the point at which it became a tool to dispossess Palestinians of their assets. President of the Supreme Court, Asher Grunis, strongly criticized such use, stating "*...experience indicates that established restrictions have not always been maintained in the presence of the aforementioned recurrent attempts to undermine them. As such, it is worth noting that any decision to apply the law to a particular case, is inherently subject to judicial review.*"<sup>4</sup>

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<sup>3</sup> [Ruling on Civil Appeal 5931/06 Daoud Hattab Hussein et al, v. the Custodian of Absentees' Property et al](#), clause 20 of Grunis' remarks. See [unofficial translation to English, here](#)

<sup>4</sup> Ibid, class 32 of Grunis' remarks.

## C. Absentees' Property Law as a tool to dispossess Palestinians of their property in East Jerusalem

### 1. The secret government mechanism for transferring Palestinian assets to settlers

In the 1980s under Likud governance, various government entities established a mechanism for transferring Palestinian property in East Jerusalem to settlers. The mechanism was orchestrated by the Minister of Construction and Housing at the time, Ariel Sharon, who ensured that all relevant government bodies would serve settlers: the Israel Land Administration (which violated regulations<sup>5</sup> by issuing orders to the Custodian of Absentees' Property), the Amidar company, owned by the Ministry of Housing ([that leased the properties to settlers without tenders](#)), the General Custodian, and the Ministry of Construction and Housing itself (which funded the nonprofits' operations).

In the report generated by the inquiry committee formed by the Labor party government under Prime Minister Rabin ([the Klugman Report](#)) the method was revealed, and dozens of buildings – along with millions of shekels – were found to have been transferred to settler organizations (Ateret Cohanim, Elad, and Atara Leyoshna) without tenders and in violation of proper administrative regulations; the organizations' legal expenses for the eviction of Palestinian

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<sup>5</sup> The [1991 State Comptroller's Report](#) on the Custodian of Absentees' Property, severely criticized the Israel Land Administration's effective takeover of the Custodian, through violating its independence, and establishing unauthorized regulations:

*"The audit revealed that the freedom of operations necessary for the Custodian (and supervisor) to exercise lawful authority, was considerably restricted due to the Custodian's close knit reliance on various positions among the [Israel Land] Administration ... In September of 1986, the Administration issued a work regulation called: 'Procedure for Handling Absentees' Property' ... The audit deemed that the Administration has no legal authority to give the Custodian instructions, or issue regulations regarding how to exercise discretion, and the Administration retains no authority to determine its operative policies" (p. 328 of Annual Report 41 [1991]).*

On January 7, 1992, the Custodian of Absentees' Property, Aharon Shakarji, testified before the Knesset State Audit Committee:

*MK Dedi Zucker: Are you familiar with the attorney general's guidelines that restrict application of the law to East Jerusalem?*

*Shakarji: Yes.*

*MK Zucker: Do you abide by these guidelines in all cases?*

*Shakarji: I abide by the guidelines. But when I was in the Israel Land Administration, the Israel Land Administration considered itself the Custodian's landlord, and I followed the Administration's guidelines.*

*Mk Zucker: Which were sometimes contradictory or inconsistent with the attorney general's guidelines?*

*Shakarji: Sometimes (p. 6 of the Knesset State Audit Committee's transcript, January 7, 1992).*

residents from their homes were subsidized by public funds; staff members from the respective organizations regularly participated in the committees that granted the organizations financial aid and transferred them assets; the organizations established companies under their ownership that collected “handling fees” from the state, and project management fees for the “services” they granted to the organizations; **and the Custodian of Absentees’ Property’s authority became a tool used by the organizations involved in the declarations of absentees’ property, which were ultimately granted ownership of the same properties.**

## 2. How the method worked:

1. **Settlers and the JNF hired Palestinians to declare assets absentees’ property** (attorney Eitan Geva, who was the attorney for Elad and the JNF at the time, prepared and approved the affidavits).
2. **The Custodian issued absentee certificates** on the basis of these affidavits without conducting further examinations, in violation of the attorney general’s guidelines.
3. The Custodian of Absentees’ Property transferred the assets to Amidar or the JNF ([through a barter exchange](#)) via the Development Authority, from which **they were transferred to Elad.**
4. Additionally, it turned out that the Elad foundation’s payment for the assets (which typically covered the cost of renovations), was subsidized through the Ministry of Construction and Housing’s budget for the foundation’s renovations.

Approximately 20 properties in Silwan were declared through this means, impacting dozens of Palestinian families.

Regarding the Custodian of Absentees’ Property, [the Klugman Committee](#) declared:

*“...the conduct of the Custodian of Absentees’ Property was, by all standards, extremely poor ... The grave findings on the matter indicate that the inquiry committee must immediately address and comprehensively examine the Custodian for Absentees’ Property’s conduct” ([Klugman Report](#), pp. 24-25).*

**3. “What do I have to check?”: The unbearable ease with which assets are deemed “absentees’ property”**

[In a hearing before the Knesset State Audit Committee, on January 7, 1992](#), the Custodian of Absentees’ Property, Aharon Shakarji, described how the mechanism worked:

*MK Dedi Zucker: What is the process by which you declare an asset, say in Silwan or the eastern city [East Jerusalem], absentees’ property?*

*Shakarji: ...if we receive a certificate from the mukhtar [head of an Arab town or village] or an affidavit that affirms the absentee property, I issue an absentee certificate and declare the asset absentee property.*

*MK Zucker: And that was also the process in Silwan, more or less?*

*Shakarji: Yes.*

*MK Zucker: Can you identify a person, or people, who would routinely or systematically declare certain assets absentee property?*

*Shakarji: Perhaps, yes.*

*MK Haim Oron: How many of such affidavits did Nabulsi provide? [...]*

*Shakarji: Maybe ten. Fifteen. I do not remember. [...] (pp. 14-15)*

*MK Zucker: Who would bring these affidavits?*

*Shakarji: Attorney Geva.*

*MK Oron: Who is?*

*Shakarji: The organization’s legal representative.*

*MK Oron: Which organization? Ateret Cohanim? Atara Lyoshna? Elad?*

*Shakarji: Atara Lyoshna – no.*

*MK Oron: Ateret Cohanim and Elad?*

*Shakarji: Yes.*

*MK Oron: He brought you the affidavits, including those of the protected tenants, and you accepted them and sealed the deal?*

*Shakarji: Yes. (p. 17)*

*MK Tichon: But MK Oron is telling you that there are professional informants, village mukhtars, who will approve whatever you want in exchange for money, wherein another person*

*effectively loses their property due to a fraudulent affidavit about which he doesn't even know. That means that a letter sent to you from a mukhtar is sufficient to declare absentee property?*

*Shakarji: Yes.*

*MK Tichon: You don't publish this anywhere?*

*Shakarji: No.*

*MK Tichon: You don't even check?*

*Shakarji: I don't have the capacity to check.*

*MK Tichon: Even regarding a person who is known to have falsely testified a few years ago, you're willing to receive a testimony from him now? If an attorney confirmed that he affidavit was signed in his presence, you'll accept it?*

*Shakarji: Yes, I don't know that he's provided a false affidavit.*

*MK Tichon: A mere letter from someone is sufficient for you to seize the property?*

*Shakarji: Yes.*

*MK Tichon: If I write to you that there's absentees' property in Sheikh Jarrah, you'll immediately seize it?*

*Shakarji: Yes. I can act in good faith. (pp. 24-25)*

In the lawsuit regarding plot no. 40 in Silwan (**Civil Claim 1870/96 Heirs of the Late Barbanela Nuniz Fatiha v. Himanuta**), [the Custodian of Absentees' Property testified](#) how he declared the house absentee property:

*Q. Aside from the court, what findings, evidence, or documents did you have at your disposal to issue this certificate?*

*A. As far as I recall there were affidavits, an affidavit. I don't quite remember, Nabulsi's I think [...]*

*Q. Aside from that statement, did you have any further evidence regarding plot 40?*

*A. Upon issuing the certificate there was no further evidence.*

*Q. Did you demand an inquiry into the claims made in this affidavit?*

*A. What do I have to check? [...]*

*Q. Are you familiar with the existence of a police investigation of the same Nabulsi, regarding affidavits he offered? Were you summoned to the police station for an investigation on the matter?*

*A. I was summoned a few times. I can't remember what I was summoned for.*

(The hearing [transcript from December 27, 1998](#), pp. 62-60).

#### **4. Initiators of the declaration of assets as “absentees’ property”: The JNF and settlers who ultimately receive the assets**

As the head of the JNF’s land division, [Avraham Halleli testified](#) regarding the same eviction lawsuit for plot no. 40 in Silwan, indicating that the JNF initiated the sale of the absentees’ property in Silwan to the Development Authority, the [barter](#) with the Israel Land Administration, and ultimately the transfer of assets to the Elad foundation.

[In a letter sent by Avraham Halleli to the Custodian of Absentees’ Property on January, 16, 1989](#), Halleli informs the Custodian of the existence of absentee assets in Silwan, requesting that the Custodian transfer them to the Development Authority, so that they may be transferred to the JNF thereafter:

- 1. The land detailed in the attached list herein, constitutes absentee assets [...]*
- 2. [...] I would appreciate your instruction to initially register this land under the name of the Custodian of Absentees’ Property, and transfer them in the name of the Development Authority [...]*
- 3. Following the execution of this registration, we would appreciate it should you update us so that we may follow through with the necessary actions to obtain and manage this land, including its legal eviction.*

**קרן קימת לישראל**  
 הלשכה הראשית  
 ירושלים, ת.ד. 283 סניף 15261

המחלקה לקרקעות - רכישה השו"ב ובעלות

חיפה ת.ד. 1547 סניף 521271-2

ירושלים, רח' בלפור 11  
 טלפון: 33681

זיפה,  
 ירושלים, 16/1/89  
 מספד כללי/43

לכבוד  
 מר א. שקרג'י  
 האפוטרופוס לנכסי נפקדים  
 ירושלים

א.נ.

הנדון: רשום האפוטרופוס לנכסי נפקדים כבעלים לגבי המקרקעין המפורטים ברשימה המצורפת.

1. המקרקעין המפורטים ברשימה המצר"ב הנס נכסי נפקדים פרט לחלקה מס' 75 בגוש 30125 הרשומה בפנקס המקרקעין. כל יתר החלקות רשומות אך ורק בספר משלמי המסים.

2. מאחר וכבר הודענו לך שלקרן קימת לישראל יש מקרקעין באוחו אזור וברצונה לקבל לבעלותה את הנכסים שירשמו על-שם רשות הפתוח, אודה לך אם תורו על רשום המקרקעין האלה החילה ע"ש האפוטרופוס לנכסי נפקדים ולהעבירם ע"ש רשות הפתוח. הרשום צריך להתבצע לגבי החלקות הרשומות בספר משלמי המסים (מס רכוש) בספרים אלה, ואילו זו הרשומה בפנקס המקרקעין - תרשם בפנקס זה.

3. לאחר בצוע רשום זה, נודה לך אם תעדכן אותנו כדי להמשיך בפעולות הדרושות לקבלה המקרקעין האלה ונהולן, כולל פנויין על-פי החוק.

בכבוד רב  
 א. הללי, עו"ד  
 מנהל המח" לקרקעות

יח/  
 צ. רשימה.

## Jewish National Fund

Head Office

Jerusalem P.O. Box 283 Tel. 35261

### The Land Division – Purchase Registration and Ownership

Jerusalem, Balfour street, 11

Haifa P.O. Box: 1547 Tel: 521271-2

Telephone: 33881

Jerusalem: January 16, 1989

Number: General/43

To: Mr. A. Shakarji

The Custodian of Absentees' Property

Jerusalem

Dear Sir                      Re: Custodian of Absentees' Property Registration as Owner of  
the land detailed in the attached list

1. The land detailed in the attached list herein is absentees' property, aside from plot no. 75 of bloc 30125, listed in the land registry. All of the remaining plots are solely listed in taxpayer books.
2. As we have already notified you that the Jewish National Fund has property in the same area, and seeks to receive ownership of the properties to be listed under the Development Authority, I would appreciate your instruction to initially register this land under the name of the Custodian of Absentees' Property, and transfer them in the name of the Development Authority. The registration must be carried out in accordance with the blocs registered in taxpayer books (property tax) in these books, as well as the one listed in the land registry – registered in this book.
3. Following the execution of this registration, we would appreciate it should you update us so that we may follow through with the necessary actions to obtain and manage this land, including its legal eviction.

Sincerely,

Atty. A. Halleli

Head of the Land Division

Thereafter, in an additional letter written by Halleli to the [Property and Registration Division of the Israel Land Administration, on February 4, 1991](#), Halleli seeks to transfer plots from Silwan to the Development Authority, in order to implement the barter agreement between the Israel Land Administration and the JNF, within the framework of which plots in Silwan were transferred to the JNF (this agreement was indeed carried out in [\[barter\] deed no. 9964/91 from May 23, 1991 between Himanuta and the Development Authority](#)).

In his court testimony ([transcript from May 25, 1998](#)), Halleli testified that **transferring the assets to the JNF was ultimately intended to transfer them in turn to settler organizations:**

*All of the JNF's lands [in Silwan], as far as I know, the [Israel Land] Administration leased to the Elad organization [...]*

*The policy for land in the JNF's possession, which is Jewish land to be held by the JNF, and remain vacant and untouched, is for it to be leased or held for the purpose toward which the JNF operates. That is to say, leased and handed over to Jews. [...]*

*We have an interest that those properties [in Silwan] will be Jewish owned.*

*([Civil Claim hearing transcript 1870/96, May 25, 1998, pp. 47-48](#)).*

Halleli further explained that as far as he was concerned, the interests of Himanuta and the JNF were identical to those of the Elad organization on this matter, such that in some cases Elad's legal representative would also represent the JNF in various proceedings (p. 47).

**Halleli further testified that the JNF and Elad were deeply involved in declaring absentees' property**, as they brought the declarant to testify that the asset was indeed absentees' property, and took care to compensate accordingly:

*Q. Were you personally involved, whether via Himanuta, JNF, in asset declaration proceedings [...] as absentee property?*

*A. I was not personally involved, yet I was aware [...].*

*Q. Did the Elad organization and Attorney Geva also serve as a source of information?*

A. Attorney Geva was not a source of information. From time to time the Elad organization would send updates on absentees' property here or there. But most was via local residents (pp.48-50).

In Halleli's testimony, he proceeds to describe his relationship with Nabulsi [one of the declarants], sharing that he worked with him and that he served as a middleman, providing information on land acquisition (p. 52).

Additionally, Halleli confirmed that Nabulsi received compensation for his affidavits<sup>6</sup>: *"He knows how to receive compensation. He won't get a cent from us."*

As the director of the Elad organization, [David Beeri testified](#) before the district court regarding the plot 51 lawsuit, too, affirming that he knew Nabulsi and describing the circumstances of their engagement with Himanuta ([p. 53 of the transcript of Civil Claim 1053/95, Juma'a Ruweidi v. JNF et al from December, 30, 2001](#)).

**The settler organization Elad even offered to subsidize the purchase of the assets for the JNF – [in a letter sent by Deuel Basok and Michael Wasserteil of Elad on March 27, 1990](#), to the prime minister's assistant on settlement affairs, they sought to advance the transfer of absentees' property in Silwan to their ownership:**

*[...] The administration already (finally) consented in goodwill to exchange land with the JNF, yet the delay lies in a disagreement regarding compensation offered by the JNF to the Israel Land Administration. [...] We presented Dori (from your office) with an offer that may be more convenient for the JNF. Namely, that the JNF will purchase assets from the Israel Land Administration, rather than exchanging land (the administration requires that land be exchanged for land). Should a financing issue arise along with a quick decision on payment to the Israel Land Administration, then we (Elad) will commit to donating the required amount to the JNF (likely several thousand dollars, according to*

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<sup>6</sup> [From a hearing on July 5, 2011](#), on the case regarding plot 51 (Civil Claim 1053/95 Juma'a Ruweidi v. JNF et al), Atty. Geva testified that Nabulsi received compensation for his affidavit *"By also having received compensation for his work, there's no fault in that. A person is entitled to compensation for efforts made toward investigating facts and transferring them to the Custodian"* ([p. 7 of the transcript from July 5, 2011, line 22](#)).

the Israel Land Administration). Either way, time is of the essence and a solution must be found for this important issue – Jerusalem.”



**אלעי"ד - אל עיר דוד**

יום ג' אי ניסן תשי"ן  
27.3.90

בי"ח  
לכבוד  
מר מיכאל דקל  
עוזר ראש הממשלה לענייני התיישבות  
שלום וברכה,

א. הרשה לנו לאחל לך סיום מוצלח ומהיר, בלא שיבוזבו ומנך היקר לישראל, ויבואו דברים על מקומם.

ב. אנו מבקשים לחזקו לך את נושאנו החשוב ממילא, שבימים אלו גדלה חשיבותו ובשל כך גם הצורך לרזו.

ג. עם זאת, באנו להוסיף כי במנהל יש כבר (סוף סוף) רצון טוב והסכמה להחלפת קרקע עם הקק"ל אלא שהעיכוב הוא באי הסכמה לתמורה שאותה מציעת הקק"ל לממ"י. נמצא אם כן שכדאי לפנות למר שלמה אריאב שירצה את ממ"י.

ד. הבאנו לפני דורי (במשרדך) הצעה שאולי תחא נוחה יותר לקק"ל. דהיינו שחקק"ל תרכוש בכסף את הנכסים של ממ"י במקום החלפת קרקעות. (המנהל דורש קרקע תמורת קרקע). ובאם תתעורר בעית מימון והחלטה מהירה לגבי תשלום לממ"י, אזי נתחייב אנחנו (אלעי"ד) לתרום לקק"ל את הסכום הנדרש (כפי הנראה כמה עשרות אלפי דולרים, לטענת ממ"י).

ה. כך או אחרת הזמן חשוב ויש למצא פתרון לסוגיא חשובה זו - ירושלים.

(ג) הנני בלתי אנוש פגא ישראל, איעזר אהרן ונני אהרן  
באישו אה אהרן ב יום 27.4.  
עלי אהרן ב יום 27.4 אה אהרן אה אהרן  
אהרן אהרן ב יום 27.4.

בכבוד רב ובברכה רבה  
דעואל בסוק מיכאל וסרטייל  
אלעי"ד

רח' אור החיים 11 ירושלים שבין החומות 97500  
P.O.B. 32429 YERUSHALAYIM 91323 ירושלים 32429 ת.ד.  
טל: 02-273343 TEL:

**ElAD – to Ir David**

March 27, 1990

To: Mr. Michael Dekel  
Prime Minister's Assistant on Settlement Affairs

Greetings,

- A. Allow us to wish you swift successful closure, without wasting your time that is precious to Israel, so that things may fall into place.
- B. We seek to remind you of our work, which is important as is, yet has recently grown in importance along with the need to expedite matters.
- C. With that, we wish to add that the administration already (finally) consented in goodwill to exchange land with the JNF, yet the delay lies in a disagreement regarding compensation offered by the JNF to the Israel Land Administration. It is thus worth appealing to Mr. Sholmo Ariav to appease the Land Administration.
- D. We presented Dori (from your office) with an offer that may be more convenient for the JNF. Namely, that the JNF will purchase assets from the Israel Land Administration, rather than exchanging land (the administration requires that land be exchanged for land). **Should a financing issue arise along with a quick decision on payment to the Israel Land Administration, then we (Elad) will commit to donating the required amount to the JNF** (likely several thousand dollars, according to the Israel Land Administration).
- E. Either way, time is of the essence and a solution must be found for this important issue – Jerusalem.

Sincerely and respectfully yours,  
Deuel Basok and Michael Wasserteil  
Elad

Thus, the entire process of declaring absentees' property and selling it to the JNF was conducted with extreme lack of good faith, and as a scheme in which the beneficiaries initiated the declaration of the absentee property. In some cases the declared "absentee" was not absentee whatsoever.

Clause 17A of the Absentees' Property Law states: *"Any transaction made in good faith between the Custodian and another person regarding any asset that the Custodian considered vested property at the time of the transaction, will not be annulled and will remain in effect even if the*

*property is proven not to have been vested at the time.”* That is, the law allows for the Custodian to act in good faith, such that even if they are mistaken, their actions remain in effect.

## **5. Judicial decision: The procedure was unacceptable, yet the assets are nonetheless “absentees’ property”**

In the early 1990s, immediately after the assets declared absentees’ property were transferred to the JNF, Amidar, and the settlers, the latter began suing Palestinian families and demanding their eviction. Families informed for the first time that their homes were “absentees’ property,” were compelled to contend with a lawsuit filed by powerful, wealthy, knowledgeable entities, and to prove their rights to the property.

When the picture grew clear in courthouses regarding the mechanism of declaring absentees’ property, the judges began ruling in favor of Palestinian families, in some cases, criticizing the Custodian of Absentees’ Property, who acted in extremely bad faith.<sup>7</sup> Take, for example the Supreme Court ruling on the appeal regarding the Abbasi family’s home ([Civil Appeal 5685/94](#)):

*“The court further examined the good faith of the person who filled the role of the Custodian himself – Mr. Shakarji – who made the transaction and deemed that in deciding to sell the rights, the latter acted in bad faith. The Custodian was under direct pressure from the Administration to sell the property to the Development Authority. He did not exercise basic and independent judgement regarding whether or not to do so. Moreover, his decision to sell the property was made through deliberately turning a blind eye to the blatant contradiction between the sole evidence regarding some of the heirs’*

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<sup>7</sup> **The Abbasi House (nicknamed “Beit HaTira”)** - [Civil Claim 895/91 Estate of Hussein al-Abbasi et al. v. the Development Authority et al.](#), and [Civil Claim 19168/91 Mussa Abbasi et al v. the Elad Foundation et al.](#), approved in [Civil Appeal 5685/94](#) – which ruled that the declaration of absentees’ property was unlawful, and the decision was approved yet again by the [High Court of Justice – 6496/99 Elad Foundation v. the Supreme Court et al.](#)

**The Ruweidi House** (plot 51) – [Civil Claim 1053/95 Juma’a Ruweidi v. JNF](#) – repealed a declaration of absentee property in [a ruling from 2012](#), following a ruling in 2005 that approved of it, and an appeal conducted in the Supreme Court, which reopened the case with new evidence on the method used in Silwan, after which the declaration was repealed.

**The Ftieha Sumarin House** (plot 40) – [Civil Claim 1870/96 Heirs of the Late Barbanela Nuniz Fatiha v. Himanuta](#). In a declaratory ruling the Sumarin family was deemed the owner.

**The Sumarin House** (plot 75) – [Civil Claim 5980/91 – Himanuta v. Sumarin \(plot 75\) – Judge Tzur’s verdict.](#)

**The Sumarin House** (plot 27) – [Civil Claim 5981/91 –Himanuta v. Jabari et al \(plot 27\) – Judge Procaccia’s verdict.](#) The judge ordered that the verdict be transferred to the attorney general for investigation, as she found grave flaws in the Development Authority and Custodian of Absentees’ Property’s conduct.

*absentee status, and the declaration according to which the property was entirely absentee.*

***The lack of good faith in declaring the property absentee in its entirety was sufficient in undermining the declaration and its outcome, yet the lack of good faith regarding the issue at hand remained, even upon selling the property to the Development Authority. The outcome is that protection of the absentees' property market regulation, put forth in clause 17(a) of the law, does not include transactions with the Development Authority, thus eroding the basis for transferring property rights to the Elad organization. In this case, clause 18 of the law applies, which provides for the return of property not considered a vested asset, to its owners."*** (Emphasis added)

Yet the families did not have the final word with their initial court victories. Settlers and the JNF did not let go of the assets, filed appeals, and even commenced new proceedings. The underprivileged Palestinian families were compelled to raise vast sums of money to sustain a prolonged exhausting legal battle over the years, against powerful established entities.

Ultimately, the ruling that the **declaration process** was unacceptable, was insufficient in preventing the eviction. In most cases, when government bodies such as the Custodian of Absentees' Property were party to the lawsuit, the state's stance was that even if the declaration was invalid, the property was still considered absentee and its sale to settlers via the JNF valid, and in any case, the burden of proving ownership was imposed upon Palestinian families.<sup>8</sup>

Take, for example, [the Sumarin family's case](#), wherein the magistrates' court ruled against the declaration of the asset as absentees' property, and deemed Mussa Sumarin the owner, who lived in Silwan until his death and was never an absentee landlord. Yet the Custodian's stance was that even if the declaration was invalid, and Mussa Sumarin was not an absentee landlord, his children still reside in Arab countries, thus deeming the property absentee. So long as the

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<sup>8</sup> In one of the noteworthy cases, namely the [verdict regarding plot 40 \(Civil Claim 1870/96\)](#) of Mr. Fteiha Sumarin, represented by Adv. Danny Seidemann, the court ruled that in light of the Custodians' conduct, he does not retain integrity, and the burden of proof is not imposed on Palestinian families: *"Against the foregoing, there is no alternative regarding the matter at hand, but to rule that clause 30 of the law, as well as clause 22d of the law, do not apply, and the burden of proof does not lie on the plaintiffs' shoulders. On the contrary. In any case, high degrees of proof do not apply to the prosecution at hand – 'beyond reasonable doubt' provided in section 20b of the law regarding 'absentees and related legislation.' This implies that regarding this case's circumstances ... I would rule in favor of the plaintiffs, even if I believed the scales [of justice] were balanced from an evidential aspect."*

property is absentee then its sale to the JNF remains valid. The Sumarin family members currently living in the home are Mussa's nephew's family, who lived with him in the home like a son, yet the state's position is that the sole legal heirs are Mussa's children, and since they are absentees – the Sumarin family lacks rights to the property, and that in any case the burden of proving ownership lies solely on the shoulders of the Sumarin family.

In the JNF appeal, following the state's position, the district court ruled in 1996 that while the property was considered absentee, the Palestinian family was still permitted to reside in the property (permission received from the property owner prior to his death). The fact that the sale of the property to the JNF was not ruled invalid, nor was the Sumarin family declared the property owner – allowed for the JNF to take advantage of the situation, filing [a new eviction claim](#) a few years later. In [the verdict](#) for this lawsuit, the family was ordered to vacate their home, and on June 30, 2020 the Jerusalem district court [rejected their appeal](#).

A similar outcome unfolded with the Abbasi family. It became clear in court that the father of the family, who was the property owner, had never been an absentee landlord. Yet the Custodian maintained that since some of his children were absentees, the sale of the property to the Elad foundation via Amidar, still applied to part of the property. As far as the state was concerned, the sons who continued to live in their father's home did not own the entire property, claiming that since their siblings live abroad – parts of the house belong to the state. Indeed, the court eventually accepted this claim, and the Elad organization moved into parts of the home while the Abbasi family relocated to a small section of the house where they live in the same complex, to date.

Ultimately, of 20 absentee properties in Silwan only about 7 of them were saved from settler takeover, and some of them only temporarily.

#### D. Absentees' Property Law in Jerusalem – depends on the government's "good will"

As noted, in June of 1967 the Israeli government annexed approximately 70 kilometers of East Jerusalem over which it applied Israeli law. Israeli law included the Absentees' Property Law, yet the question of its application over Palestinian property in East Jerusalem was a matter of policy and various governments' political decisions.

- **From 1968 to 1977, under the labor party, [the government's position](#)** was to refrain from applying the law toward occupied property (in which people live), and in cases wherein the absentees' property is vacant, solely permitting public use without selling them or granting protected tenants' rights.
- **From 1977 to 1992, the Likud party [exploited the Absentees' Property Law](#)** to take over properties in East Jerusalem, through grave corruption on behalf of various entities that assisted in transferring assets to settlers, as exposed in the [Klugman Report](#).
- **From 1992 to 1997 the Labor-Rabin party government** put an end to use of the mechanism, establishing an [inquiry committee](#) that exposed the method for taking over Palestinian property in East Jerusalem. It **prevented ongoing abuse of the Absentees' Property Law, yet did not prevent future exploitation, nor did it assist in restoring the original situation**. Thus Palestinian property owners found themselves continuing to contend with eviction claims on behalf of settlers and the JNF, when the state's stance regarding lawsuits on the matter placed the burden of proof on Palestinians, whom would otherwise be evicted.
- **From 1997 to 2005 the Likud government** expanded use of the Absentees' Property Law, and [Attorney General Meni Mazoz ordered that it cease to do so](#).
- **2005 to date** – The Custodian of Absentees' Property **continued to periodically declare properties in East Jerusalem, or parts thereof, absentee assets**. In some of the cases this was carried out through a legal proceeding regarding ownership of the property, in which the Custodian intervenes to take part of the asset.<sup>9</sup> Currently, as the government has commenced an orderly registration process of ownership throughout East Jerusalem, there

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<sup>9</sup> This was the case in the [lawsuit filed by the Elad foundation against the Siyam family in Silwan](#) for a property owned by eight siblings. The settlers claimed that they purchased the property from four of the siblings, whereas the Custodian of Absentees' Property declared two of the additional siblings absentees, such that the family was left with a mere 2/8 of the asset. Ultimately, the Custodian sold his portion to settlers.

is concern that the Custodian of Absentees' Property will take over many assets within the framework of the process.

It is important to note that (in the [Hussein ruling](#)) in 2015, the Supreme Court effectively prohibited the declaration of **cases wherein property owners are residents of the West Bank** (who are legally considered "absentee," yet live in territories under Israeli control), as absentees' assets (read more on the ruling in Appendix III).

**For a detailed examination of various government policies on the Absentees' Property Law in East Jerusalem, see Appendix II.**

## **Appendix I: Teddy Kollek's Efforts**

The Mayor of Jerusalem Mr. Teddy Kollek, strongly opposed settlers' entry into Silwan and the Muslim Quarter, going so far as [to singularly protest the settlements in Silwan as mayor](#), in December of 1991. Regarding absentees' assets, he felt that the matter was morally unjust, and did his utmost to try and return the assets to their rightful owners. From the minimal information available to us, it is evident that he appealed to several entities, seeking each of their assistance in **reverting the situation to its original state, such that Palestinian property holders could continue to live in their homes undisturbed.**

[In a letter to the Minister of Justice on February 4, 1993](#), Kollek complained that "the state has thus admitted that these assets were illegally declared absentees' property. With that, the state has neglected to take a stance on the question of the outcome of annulling declarations on the property law. **In accordance with the defense's documents, the state requests that the same Arab families that lived in the properties prior to their declaration as absentees' property, will present some sort of evidence to prove their ownership of the asset.** ...It seems to me that after having carried out an inspection and finding that the declaration regarding the assets deemed absentees' property was illegally conducted, the situation must be immediately restored, to enable the same Arab families that lived in the properties over the course of several decades, to return to reside in the same homes. **The question of ownership should not be decreed by the state** and returning possession to Arab families need not grant them rights beyond those they retained prior to the illegal expropriation. ...Resolving this issue is of the utmost importance to our capacity to continue to ensure coexistence in the city."

[On March 9, 1993, Kollek appealed to the state comptroller](#), following their meeting, he requested that an investigation be conducted on the findings of the Klugman Report. In his letter, he added: "I would like to emphasize, even if it is clear to me that this matter is not the responsibility of the state comptroller, following an investigation that found that the declaration of absentee property was unlawfully conducted – it must be restored to its former state. **It is of great importance to correct the injustice done to some of the Arab residents of the city**, and as far as they are concerned, justice must be seen and not merely done – even if through a long, tedious, legally complex process."

[On March 14, 1993, Kollek appealed to the Minister of Foreign Affairs](#), Shimon Peres, requesting that he take action to return the assets to Palestinians. In his letter he briefly describes the findings of the Klugman Report, emphasizing: **“All this has yet to return a single property to the Arab tenants who previously resided in these properties. We must prove that justice will be served and not merely spoken of in the courts.** This matter will clearly greatly ease relations in the city, yet may peripherally impact more significant negotiations. I will call you tomorrow to hear what steps you might be able to take regarding the matter.”

[On April 30, 1993](#), two days following a visit to Jerusalem on behalf of the Minister of Energy and Infrastructure, Professor Amnon Rubenstein, Mayor Kollek wrote to him: **“I request your intervention in the government to rectify the injustice, through returning assets to their legal owners** so as to restore justice. I believe that even if the Arab property owners cannot prove their ownership of these assets, at least the situation will be restored.”

## Appendix II: Various Government Policies Regarding Absentees' Property Law in East Jerusalem

### A. The Labor Government Policy – through 1977

**First stage – No Touching Held Assets** - [In a meeting conducted on November 22, 1968](#) by the Minister of Justice with the participation of the Attorney General, Minister of Agriculture, representatives from the Ministry of Defense, the Advisor on Arab Affairs, the Israel Land Administration, and the Custodian, the policy regarding absentees' property in East Jerusalem and the occupied territories was agreed upon. Among other things, the following was determined:

- “Properties that belong, in part or in full, to permanent residents of Judea and Samaria – will be released to them”.
- “Properties that belong to the inhabitants of enemy countries, as of June 5, 1967, will be managed, in whole or in part, by legal representatives who are currently permanent residents of Judea and Samaria or East Jerusalem – and will be released to these legal representatives.”
- **“The home, or business, occupied by tenants, will be released from application of the Absentees' Property Law, and the Custodian for Absentees' Property will not look after them.”**
- “The home or business that is vacant of any person related to a resident of an enemy country, and for which there is no legal representative for any part thereof, in Judea and Samaria or East Jerusalem, will be managed by the Custodian for Absentees' Property, **on the condition that it will solely be handed over to government offices or their employees, and on an additional condition – that it not be handed over with a protected lease.”**

[A summary of the meeting on November 22, 1968, may be read here](#)<sup>10</sup>

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<sup>10</sup> [In an additional meeting, approximately three months later on February 3, 1969](#), the issue of assets effectively seized by the Israel Land Administration was discussed and matters changed slightly, though a similar principle remained in place, and the principle according to which held assets were not to be touched was upheld.

## B. The Likud government policy: 1977-1992

### A Temporary Order Followed by the Mechanism to Dispossess Palestinians of their Property -

[In a letter from Attorney General Meni Mazoz to the Minister of Finance on January 31, 2005,](#)

regarding use of absentees' property in East Jerusalem whose owners live in the occupied territories, he assesses the government's policy on the matter, writing:

*In December of 1977 a forum chaired by the Minister of Justice and the Minister of Agriculture, decided to ease the restrictions on use of the law against properties in East Jerusalem. In accordance with the new decision, residents of Judea and Samaria who have properties in East Jerusalem, were required to apply for continued possession and use of their assets, from the Custodian for Absentees' Property. This was deemed a temporary arrangement, 'to be reexamined in light of its attempted application'<sup>11</sup>.*

According to the wording of the decision, the property owners were not only required to ask for permission to continue to hold them, but also to prove that they had been using them continuously since 1967. We do not know if and how the decision was made public, in any case, none of the property owners contacted the Custodian for Absentees' Property to obtain permission to continue to use their assets.

While the 1968 decision resulted in almost no absentee property being seized in East Jerusalem, the 1977 decision allowed for seizure of assets that had not been in continuous use since 1967. In his letter from January 31, 2005, Attorney General Mazoz determines that **following this decision** "[the law was abused](#), as revealed by the Klugman Committee's Report from 1992," and a mechanism was effectively activated in the 1980s and 1990s, for the transfer of Palestinian property in East Jerusalem, to settler organizations.

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<sup>11</sup> According to the explanation detailed in the [government memorandum from April 1993](#), the excuse for this decision was enactment of the Absentees' Property Law (compensation) 1973, "Considering that the law devised on June 5, 1967, applied to powers of attorney, provided that they were solely valid for a period of five years, whereas the decision [in 1968] was intended to temporarily authorize the release of assets to those who managed and held their properties consecutively."

### C. The Rabin-Labor Government: 1992-1996

#### Blocking the Mechanism of Dispossession Without Its Annulment

The Rabin government, established in 1992, blocked the mechanism in ceasing to declare absentees' property in East Jerusalem, yet stopped short of restoring assets previously declared to their owners, neglecting to "dismantle the mechanism." Thus, after the elections, it was easy for the following governments to recommence use of the Absentees' Property Law to dispossess Palestinians of their assets.

#### 1. Putting an end to the mechanism: the government's actions toward ceasing declarations of absentees' property

In 1991, still under the Likud government, [the State Comptroller's Report was published](#) on the activity of the Custodian of Absentees' Property in East Jerusalem, whereafter a discussion was held on the matter by the [Knesset State Audit Committee](#). Attorney General Yosef Harish, appealed to the [Minister of Finance on April 2, 1992](#), and instructed him to appoint a professional team to establish regulations for the Custodian of Absentees' Property. The team, evidently led by Attorney Plia Albeck, [convened a few times](#). The exploitation of the Absentees' Property Law began to be exposed, yet was not stopped.

Following the elections in May of 1992, the Rabin government established a [governmental inquiry committee](#), led by the Director of the Justice Department, Haim Klugman, which investigated the transfer of Palestinian property to settlers in East Jerusalem. The committee published a comprehensive report (the "[Klugman Report](#)"), which revealed the entire mechanism established among government entities, to transfer Palestinian assets to settlers through inappropriate, borderline criminal, means. According to the [Mazoz letter](#), ***Following this report, a decision was made to freeze application of the law, and return to the prevailing policy up until December of 1977.***

In October of 1992, the Accountant General requested that the Director of Amidar (a state-owned housing company) assess Amidar's mode of communication with asset organizations in East Jerusalem. [In May of 1993 an audit report was completed by Amidar's auditor](#), which detailed how each property was transferred to settlers, who was involved, and how public funds were transferred for that purpose.

On September 13, 1992, [the government decided](#) to take a series of steps following the [Klugman Report](#), primarily: to task the cabinet with recommending a government policy regarding assets within the Klugman Report; appoint a team to look into these assets' legal rights; submit the Klugman Report to the attorney general (to examine its criminal aspects); task the state comptroller with preparing an opinion on the matter; assess the Custodian of Absentees' Property's role; and establish a professional committee in the Ministry of Finance to inspect the means of supervision and oversight of the transfer of funds to settler organizations.

Shortly thereafter, [Finance Minister Baiga Shochat wrote a letter](#) to the Custodian of Absentees' Property, **ordering that he cease to declare absentee property.**

Subsequently, [as a result of an appeal on behalf of the legal advisor to the Ministry of Finance on November 15, 1992](#), and in order not to impair essential routine operations, the Minister ordered that certificates on absentee assets may only be issued following the examination and approval of the Ministry of Finance's legal advisor throughout the country, aside from Jerusalem. In Jerusalem, beyond consultation with the Ministry of Finance's legal advisor, approval from the Minister of Finance is also required.

## 2. Avoiding future changes in policy – proposed resolution withheld from the government

In accordance with the government's decision following the Klugman Report, in April of 1993 the Minister of Justice prepared a [government resolution](#) regarding absentees' property, which was brought before the cabinet secretariat. **The proposed resolution effectively stated that the policy regarding absentee property in Jerusalem would return to the status decided upon in 1968 and 1969, namely:**

- o If all or most of the owners are residents of Jerusalem or the Occupied Territories, the assets will not be declared absentee property;
- o If a minority of ownership remains in the hands of residents of Jerusalem or the Occupied Territories – the Custodian may appoint a trustee among them.
- o If there are no owners in Jerusalem or the Occupied Territories, the Custodian will manage them, provided that they will **“solely be handed over to government offices or public bodies and that they will not be handed over with a protected lease.”**

It is important to note that the proposed resolution does not address the question of occupied assets. It is possible that it did not occur to anyone that the Custodian would intervene in cases of occupied assets, held by occupants for years.

**The resolution was not brought before the government due to the Oslo Accords** – according to the [state's response to H CJ 2179/95 Ir Shalem v. Prime Minister et al on March 28, 1996 \(clause 12\)](#), the motion for the resolution was prepared by the Justice Department and brought before the cabinet secretariat, yet “meanwhile, agreements were signed with the Palestinians in the backdrop of the absentee problem, which is notoriously challenging and complex unrelated to the issue at hand. Under these circumstances, a new proposal is currently being labored over on the issue of policy regarding assets in East Jerusalem, and will likely solely be submitted to the government established following the elections.”

It is safe to assume that following agreements with Palestinians, had they prepared a new resolution, it should have been much more restrictive regarding use of the Absentees' Property Law. Yet ultimately, following the elections in 1996 and the formation of a government under Netanyahu, no further resolution was brought before the government, and the topic remained vague and open to future exploitation.

### 3. Abstaining from repairing the harmful method

#### A. The establishment – and dissolution – of a team

- o **Establishing a team to assess property rights** - [government decision no. 193 following the Klugman Report](#) on September 13, 1992, addressed the question of property rights previously transferred to organizations, and determined that a team would be established on the matter.<sup>12</sup>
- o [In June of 1993, a team established under the Accountant General commenced operations](#), allegedly primarily addressing communications with settler organizations.

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<sup>12</sup> We will note that even prior to the Klugman Report, following the State Comptroller's Report, the Attorney General ordered the establishment of a **team to determine work regulations** for the Custodian of Absentees' Property. Following the government decision in September of 1992, it appears that this team was intended to address the fate of the homes, yet since the team was made up of people directly involved in the inappropriate procedures of transferring assets to settlers (likely Plia Albeck), Attorney General Yosef Harish ordered the appointment of another team in [a letter on February 7, 1993](#).

- o A team was **only established in May of 1996**, in accordance with the government’s decision on the status of the assets themselves, following the submission of a petition to the High Court of Justice on the matter (HCJ 2179/95 Ir Shalem v. Prime Minister et al), [when the Minister of Finance appointed the team on May 9, 1996](#).

This team did not manage to make much progress either. According to the [state’s response to HCJ 2179/95 Ir Shalem v. Prime Minister et al from September 22, 1996](#), **the team**, led by the Director of the Minister of Construction and Housing, Amos Rudin, **convened once**, two days before the Knesset elections on May 27, 1996. Following the elections, Mr. Rudin no longer led the office, and the team ceased to operate. In its response, the state undertook to “immediately” appoint a new representative for the team via the Minister of Construction and Housing to proceed with this work ([see clauses 4-6 of the state’s response on September 22, 1996](#)).

We are unaware of the team’s fate under the elected Netanyahu government, yet as far as we know, nothing was done to return assets to their owners.

- B. State claims on the eviction of (solely) three properties from settler organizations** – As evidenced by the [state’s response on March 28, 1996 \(clause 5\)](#), the state filed two eviction lawsuits against organizations that received assets unlawfully, regarding three structures in the Old City alone (Civil Claim 10943/92, and Civil Claim 10942/92). No further actions were taken regarding other assets.
  
- C. The state’s stance regarding evacuation proceedings against Palestinians** – As noted, the government did not establish a team to propose policy on the status of buildings taken over via the improper method, yet in the meantime on the ground, the state was required to address the question when it was added to the Himanuta/JNF eviction lawsuits against Palestinians in Silwan. [Attorney Esther Rosenthal’s letter from the Jerusalem District Attorney’s Office to the Attorney General on December 25, 1995](#), reviewed the proceedings on absentee property in Silwan, noting that the state’s position in most cases is that **the declarations were indeed deficient, yet on the other hand, the state requires Palestinians to present evidence of ownership**. This situation leaves the door open for settler organizations to continue to file eviction claims when Palestinians live in homes for which

they do not necessary have the proper documentation of ownership, relying on various arrangements with the original owners, some of whom are deceased, while others are absentees (as was [the Sumarin family's case](#), for example).

Nevertheless, when the state was required to reply to the HCJ petition filed by Adv. Danny Seidemann on behalf of Ir Shalem on the matter, it attempted to downplay its role in taking over assets, as it wrote in [a reply on March 28, 1996](#): “The Attorney General ... **has come to an understanding with representatives of the Himanuta company, such that they will not undertake to dispossess the holders of a number of assets discussed in court, until having consulted with the Attorney General**” (clause 7 of the reply). In practice, Himanuta continued to pursue legal proceedings to evict Palestinianians, and is even currently in the midst of demanding the eviction of the [Sumarin family](#) in Silwan.

**D. Post-Rabin's government 1997-2005 – further deterioration: the law's application to residents of the West Bank**

Under Netanyahu, the Likud government expanded use of the policy in enabling renewed application of the law over absentee property in East Jerusalem, as described in [Attorney General Mazoz's letter to the Minister of Finance on January 31, 2005](#). In 1997, the Custodian was permitted to declare vacant property absentees' assets with the approval of the Ministry of Finance's legal advisor, and the declaration of occupied assets was even permitted with the additional approval of the Ministry of Justice. In March of 2000, the Barak government decided that each transfer of absentees' property to the Development Authority (that is, the sale of absentee property to third parties), requires the approval of a special ministerial forum.

In July of 2004, without the knowledge of the Attorney General and contrary to the positions of representatives from the Ministry of Justice, the Sharon government decided to remove restrictions on declaring absentee property in East Jerusalem. Following this decision, several assets belonging to Palestinians who live in the West Bank were declared absentee property. When the Attorney General was informed of the decision, he [wrote a letter to the Minister of Finance](#), informing him that his decision lacked authority, and essentially ordered him to cease applying the Absentees' Property Law on assets in East Jerusalem that belong to residents of the West Bank. Palestinians landowners, residents of the occupied

territories, whose land in Jerusalem was declared “absentee property,” filed a series of lawsuits to annul the declarations. They were heard during the [Hussein ruling](#) in 2015, wherein the declarations were ultimately revoked (see more on the ruling in Appendix III below).

### Summary of Government Policies – Absentee Property in East Jerusalem:

- **From 1968 to 1977, under the Labor government,** the government’s position was to refrain from applying the law on occupied assets, and in cases wherein the absentee property was vacant, to restrict the use for public purposes only, without granting protected tenant rights.
- **From 1977 to 1992, under the Likud government,** the **Absentees’ Property Law was exploited** to take over assets in East Jerusalem through severe corruption on behalf of various entities that aided in transferring the property to settlers.
- **From 1992 to 1996, the Rabin government** stopped the mechanism. It **prevented continued abuse of absentees’ assets, yet did not prevent the possibility of their future exploitation, nor did it aid in restoring the situation to its former state,** such that Palestinian property holders found themselves continuing to contend with eviction claims on behalf of settlers and the JNF.
- **From 1997 to 2005 the Likud government** expanded use of the Absentees’ Property Law once more, and Attorney General Mazoz ordered that it cease to do so.
- **From 2005 to date,** the Custodian of Absentees’ Property periodically **continues to declare assets, or parts thereof, in East Jerusalem.** In some cases this is conducted through a legal proceeding regarding ownership of the property, wherein the Custodian intervenes to take part of the property.<sup>13</sup> Currently, as the government has commenced an orderly registration process of ownership throughout East Jerusalem, there is concern

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<sup>13</sup> This was the case in the [lawsuit filed by the Elad foundation against the Siyam family in Silwan](#) for a property owned by eight siblings. The settlers claimed that they purchased the property from four of the siblings, whereas the Custodian of Absentees’ Property declared two of the additional siblings absentees, such that the family was left with a mere 2/8 of the asset. Ultimately, the Custodian sold his portion to settlers.

that the Custodian of Absentees' Property will take over many assets within the framework of the process.

It should be noted that in 2015, the Supreme Court ruled (in the [Hussein verdict](#)), that in **cases wherein the property owners are residents of the West Bank** (who are considered "absentees" by law, yet live in territory under Israeli control), their assets may not be declared absentee property (see more on the ruling in Appendix III below).

## Appendix III: The Hussein Ruling – the Applicability of the Absentees’ Property Law in Jerusalem

### I. The Hussein Ruling – ceasing to apply the Absentees’ Property Law in East Jerusalem

[On April 15, 2015, seven Supreme Court justices issued a ruling](#) on the application of the Absentees’ Property Law in East Jerusalem (“the Hussein verdict”)<sup>14</sup>. The ruling determines that despite the validity of the Absentees’ Property Law, it must cease to be applied in East Jerusalem, aside from “exceptionally exceptional” cases. Although the topic addressed in court was absentee property in Jerusalem whose owners reside in the occupied territories, some of the **principles determined in the ruling are also relevant to other cases**, and may inform how it also applies to assets in East Jerusalem whose owners live in enemy countries<sup>15</sup>.

1. The Supreme Court ruled that the Absentees’ Property Law is inherently problematic, and that had it been legislated today, it would have been invalidated on constitutional grounds (see clause 20 of Supreme Court President Grunis’ remarks).
2. The Supreme Court ruled that though the law remains in place, it may not be applied to property in East Jerusalem aside from in exceptionally exceptional cases alone (clause 37 of Grunis’ remarks). It is worth noting Justice Naor and Justice Hayut’s opinions that **there are no such exceptional cases** (Hayut also called for legislative change).
3. The principles underlying the invalidation of the law’s application by the Supreme Court, are relevant to absentees in enemy countries, though not necessarily in the occupied territories:
  - a. **The purpose of the Absentees’ Property Law (clauses 15-17 of Grunis’ remarks) –**  
To resolve a problem created by the special circumstances in 1948. It was ruled that the purpose, aside from protecting assets for the benefit of their owners (see Civil Appeal 58/54 Habab v. the Custodian of Absentees’ Property), it also has “the capacity to utilize them to promote development in the country, through preventing

<sup>14</sup> [Ruling on Civil Appeal 5931/06 Daoud Hattab Hussein et al, v. the Custodian of Absentees’ Property et al](#) See [unofficial translation to English, here](#)

<sup>15</sup> It is worth noting that HCJ verdict 5911/14 **Lydia Abu Kaba v. the Custodian of Absentees’ Property** from December 18, 2017, rules that the Hussein verdict solely applies to cases in which the owners are located in the occupied territories, yet its principles may still be deemed valid in all cases.

exploitation by anyone who is not legally considered an absentee, and the ability to hold them until political agreements are established between Israel and its neighbors” (HCJ 4713/93 Golan v. the Special Committee According to Clause 29 of the Absentees’ Property Law).

- b. **So long as it entails protecting the assets – as Palestinian families, typically relatives of the absentees, are the best protectors for the absentees** (and sale of the property will certainly not protect it).
- c. **As long as it entails the need to develop the country** – Jewish settlement in Silwan is not within the scope of developing the country.
- d. **In East Jerusalem** - In the words of Rabban Gamliel, “I did not approach her border, she approached my border” (Mishna Avoda Zara 3:4) – in 1967 there was no massive refugee problem, as people left, it became a part of their natural movement, similar to a normal state in any other place in the country and the world. There is no relation between legislative circumstances and the situation in East Jerusalem in 1967 to date.

Thus according to those principals, insofar as the Custodian has the authority to sell the property, it is solely for those who reside there, and/or to release it to its owners, and/or family members. The Custodian may hold, but not liquidate/sell, the property.

4. **The relevance of the Hussein ruling to assets previously declared absentee property**

The Hussein ruling states that in a case wherein an asset has already been declared absentee, **it must be released** (clause 39 of the verdict) – specifically **to the absentees and/or their descendants who are residents of Jerusalem and/or to family members residing in the property:**

*“In cases concerning absentees’ property regarding which the Custodian has already taken action, they should be resolved through the ‘release route’ established in clauses 28-29 of the law. The problematic character of applying the law to assets of the type in question, must also be considered by authorized entities upon their decision whether to release the assets (see Golan issue, p. 646). In other words, in instances wherein the release of an asset is sought from among said assets to which the ruling does not apply, the Special Committee and the Custodian may place considerable weight on the*

*challenges inherent in their perception of ‘absentee property’ as well as the restrictive policy to be abided by in applying the law to them. Thus it is fitting that priority be granted toward the assets’ release.”* (Grunis’ remarks in clause 39 of the Hussein ruling).

## **II. Restrictions on implementation of the Absentees’ Property Law in East Jerusalem – the importance of judicial review**

**Assets in Jerusalem that belong to residents of Arab countries** – The Hussein ruling extensively quotes a letter sent to the Finance Minister from Attorney General Mazoz in 2005 ([“The Mazoz Directive”](#)), in which he describes the series of policy-related affairs regarding the application of the Custodian’s authority in East Jerusalem for assets belonging to residents of the West Bank:

*“Over the years, attempts have been made to erode the aforementioned directive. In 1977, a forum chaired by the Minister of Justice and the Minister of Agriculture established a temporary arrangement to be reexamined in light of its attempted application. According to the arrangement, residents of Judea and Samaria were required to apply for continued use of their assets, from the Custodian of Absentees’ Property, on their own initiative. It later grew clear that in practice the arrangement was not reexamined, and that the law was abused under its guise (Mazoz Directive, paragraph 4(b)); for further details see the [Report of the Committee to Examine Buildings in East Jerusalem \(1992\) \(hereinafter - the Klugman Report\)](#). The report conducted in 1992, describes faulty proceedings in declaring assets in East Jerusalem ‘absentee property,’ and deems the conduct of the Custodian of Absentees’ Property by all standards, extremely poor (ibid. p. 24; see also pp. 13-26). In this light, an immediate comprehensive inspection of the Custodian’s conduct was recommended. Additionally, the attorney General appointed a team to establish regulations for the exercise of power on behalf of the Custodian (Klugman Report, p. 25). As such, application of the law was re-frozen, along with a reversion to the previous policy in accordance with the 1968 guidelines.”* (Hussein Ruling, clause 30 of Grunis’ remarks).

The Mazoz Directive, along with Justice Grunis' remarks, encapsulate the government's policy and determine that a decision was made at the time to return to "the directive from 1968." They do not cite the 1968 directive in full, but rather its main points. It is important to note that [the 1968 directive states](#):

Clause 4 – **"The home, or business, occupied by tenants, will be released from application of the Absentees' Property Law, and the Custodian of Absentees' Property will not look after them."**

Neglecting to reference this point seems to be due to the fact that Mazoz and Justice Grunis addressed cases of vacant properties. Yet regarding occupied properties, it is difficult to see how it may be claimed that the Custodian of Absentees' Property may act to remove people from their homes.

We will note that the background for the establishment of the Klugman Committee, was the Custodian's conduct in Silwan, whose authority became a tool in the hands of settlers to dispossess Palestinians from their homes and transfer them to settlers.

According to the Hussein ruling, even following the Klugman Committee, there were further attempts on behalf of the government to enable application of the law in East Jerusalem, which were blocked to some extent by the Attorney General, until the Hussein verdict intended to put an end to such efforts to enact the law in favor of settlers.

The Hussein verdict warns and explicitly emphasizes the importance of judicial review:

*"We will clarify that we have seen where the respondents may anchor the reigning policy in this ruling regarding the matter at hand, **as experience indicates that established restrictions have not always been maintained in the presence of the aforementioned recurrent attempts to undermine them. As such, it is worth noting that any decision to apply the law to a particular case, is inherently subject to judicial review.**"*

(Hussein verdict, clause 32 of Grunis' remarks, emphasis added).