

## The Bluff behind Land Takeovers as a Military Necessity Revealed

Military requisition - The take-over of private Palestinian land for Israeli settlements

A document obtained by Peace Now reveals the big bluff behind the pretext of "military necessity" used since 1967 to seize Palestinian land, on which about one-third of the settlements were established. This method was used throughout the 1970s until it was banned by the [Elon Moreh ruling in 1979](#). The uncovered summary from the Ministry of Defense discussion about the establishment of Kiryat Arba settlement reveals that when the system was invented, it was clear to the government and all concerned that this was a lie and deception, and that military necessity was only an excuse to take over land.

After the Elon Moreh verdict the "security needs" bluff was replaced by that of "[declaration of state lands](#)" used by subsequent Israeli governments to seize nearly a million dunam in the West Bank. But the aftermath of seizure for the so-called purpose of military necessity continues today in some settlements.

### The Method: "Requisition for Military Purposes"

Since 1967, Israel has established over 120 official settlements and some 100 outposts in the Occupied Territories. Because international law prohibits the occupying power from expropriating private property for the benefit of its own residents, Israel has had to "invent" legal avenues that would permit it to engage in actions forbidden by the international law.

The first settlements established right after 1967, especially in the Jordan Valley, were set up inter alia using the Absentee Properties Law, a practice defined by the Civil Administration's Legal Advisor as "apparently illegal."<sup>1</sup> Later, another method was used that enabled the construction of dozens of settlements until the early 1980s, whereby the IDF seized private Palestinian land for "security purposes" (which was permissible under international law). [About 44 settlements](#), a third of the total, were established

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<sup>1</sup> State Comptroller's Report 56A, 2003, p. 194.

**in one way or another on the basis of military requisition ([for the full list of settlements click here](#)).**

During the first decade of the occupation, when Palestinian landowners petitioned the Israeli High Court against the seizure of their lands for settlements, the state argued that the settlement is in effect a military security need of a temporary nature. Only in 1979, in the [Dweikat High Court ruling \(known as the "Elon Moreh" ruling\)](#) did the High Court rule that the establishment of settlements cannot be considered a "security necessity" and forbade the use private land for the purpose of its establishment. This came after the settlers' claim, as respondents to the petition, that the settlement is not a temporary security need but a permanent political necessity. Shortly thereafter, on 11/11/79, the government decided that the building and expansion of settlements will be made only on "state lands" (after which the new method of ["state land declarations"](#) was invented). The High Court ruling concerned future rather than post-facto actions, hence all established settlements were left and deemed lawful. But an analysis of data from the Civil Administration shows that even after the Elon Moreh ruling, the use of military seizures for the purposes of settlement continued, as detailed below.

### **“Construction will be presented as part of the IDF's building needs”**

A document obtained by Peace Now classified as "confidential" reveals that from the outset, the government and all concerned parties knew that "military necessity" was only a pretext for settlement building, and that attempts were made to conceal its use for this purpose. The summary of the discussion entitled "The method of establishing Kiryat Arba," held on 14/7/1970 at the Defense Ministry, set out how all relevant parties would create a misrepresentation of establishing a military camp as a smokescreen for the construction of the Kiryat Arba settlement in Hebron:

- A. "The construction of 250 housing units in Kiryat Arba will be implemented within the perimeter of the enclosure set for the military unit.
- B. The entire construction will be carried out via the Ministry of Defense ... (from the Housing Ministry's budget) and will be presented as part of the construction for needs of the IDF.
- C. [...]

- D. The Chief of Staff will instruct Training Base 14 to expand the fenced area of the camp [...]
- E. Likewise, several tents will be set up in the additional area in Training Base 14.
- F. [...] Several days later the Commander of Hebron district will summon the Mayor of Hebron by raising other issues [and] shall inform him that we started to build houses inside military camp for the coming winter. "

Apparently this was the first time that seizure orders for security purposes were used to establish a settlement.<sup>2</sup>

### **Settlements built on lands seized for "security needs"**

An analysis of data provided by the Civil Administration to Peace Now (GIS layer) shows that:

- Nearly 39,000 dunam (c. 9,700 acres) were seized on grounds of military necessity during the years 1969-1983 and are used wholly or partially for building settlements. In 1991, 171 dunams were seized and the outpost Rehalim was set up there.
- 44 settlements and outposts were established, in part or in full, on lands seized for military purposes.
- 17 settlements were established after the High Court ruling on Elon Moreh (22.10.79), which prohibits the use of private land for the purposes of settlements (The settlements of Efrat, Homesh, Ma'on, Matityahu, Psagot, Bracha, Maaleh Levona, Tene, Migdalim, Otniel, Asfar, Dolev, and the outposts: Rehalim, Mevo'ot Yericho, Shechunat Gal, Pnei Kedem, Omer Farm, as well as a cluster of trailers within the military base in the Hebron central bus station).
- In 22 cases, the land seized for military purposes was retroactively declared as state land, after the settlement was established. In these cases, the seizure order was superfluous and in some the order was canceled.

[For the list of settlements derived by seizure orders - click here.](#)

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<sup>2</sup> Although an area within the settlement of Kfar Etzion (established in 1967) was seized for security purposes already in 1969, the settlement itself is only a small part of a very wide area seized for security purposes. Thus it is possible that the order was not issued for the purpose of establishing the settlement.

**Continued use of land seized for military purposes towards settlements**

Since the land was formally seized for military purposes, all planning procedures were done under a special order (Order 997 - concerning the granting of work permits in territories under use for military purposes). According to the order, settlement construction plans were not brought to the public's attention, and as a result, the public and the landowners were not given an opportunity to file objections, in contravention of planning laws that apply to other settlements. Thus, in addition to hiding the true purpose of the seizure order, the planning process was also concealed.

A few years ago, Peace Now addressed the West Bank Legal Advisor via attorneys Shlomi Zecharia and Michael Sfard, demanding that the special order be canceled, that any plans for settlements on lands seized by military order be published, and that the public be given the opportunity to oppose them. The appeal was made following the two incidents in 2009 in which Peace Now learned in hindsight about civil construction plans that were approved on territories seized for military needs (a plan to build 80 new housing units in the settlement of Elazar and a plan to build an industrial zone in Mevo Horon). In response to claims by Peace Now, and after prolonged correspondence, the West Bank Legal Advisor announced on 28/8/11 that:

"After reviewing the issue and weighing it in light of the legal reality of the region, we found that at this time there is room to expand the advertising of these systems of rules [=plans] [...] Accordingly, we have instructed the Commissioner regarding the order that from now on, the publication guidelines for the [plans] will be similar to the publication guidelines of a new plan within settlements."

Indeed, since the end of 2011 following Peace Now's request, the constructions plans in these settlement are published and deposited for objections, similar to plans in other settlements.

**New use of old orders**

In addition to cases in which the seizure orders were given and settlements were established after the Elon Moreh ruling, currently land seized for military purposes is also used for construction in the settlements. These days the High Court is discussing an appeal made by landowners from the village of Dura al-Kara with [Yesh Din](#) (High

Court case 5165/15), which deals with land seizure on the grounds of military necessity during the 1970s for the construction of the settlement of Beit El. The parcel belonging to the petitioners was not used by the settlement, until in 2010 settlers invaded the area and began to build structures without a permit and without a valid plan ("[Dreinoff buildings](#)"). These houses were demolished by order of the High Court, but the government has approved a construction plan to allow new construction on the plot. The petitioners claim that after the 1979 High Court ruling on Elon Moreh banned seizure orders for the construction of settlements, new lands cannot be used for settlement construction, even if they were seized prior to this ruling. As of this writing, the case is pending before the High Court.

### **From "seizure for military needs" to wholesale declaration of state lands—the current system of takeover and settlement-building on Palestinian land**

After the method of seizure for security purposes was blocked, the state has developed a new and effective method for the construction of settlements. The state has adopted a [draconian and manipulative interpretation](#) of the Ottoman Land Law in the Occupied Territories, whereby land that is not cultivated for several years, becomes "state land" This interpretation, which was not acceptable under Ottoman, British or Jordanian rule, has allowed the state to declare nearly one million dunams in the Occupied Territories as "state land."

Data provided to Bimkom and to ACRI as part of an appeal under the Freedom of Information Act, of all the "state lands" that were allocated in the Area C, 98.7% was allocated to the settlements. Only 1.27% was set aside for Palestinian use. These unambiguous data show that following the Elon Moreh case, although the main method through which Israel seized private Palestinian land has changed, its overall objective was and remains a massive expansion of illegal settlements at the expense of the local population.



Kiryat Arba, 1973—Seizure order from 21/3/70 highlighted in red



Kiryat Arba, 2015—Seizure order from 21/3/70 highlighted in red