

Breaking the Law in the West Bank

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One Violation Leads to Another:

Israeli Settlement Building on Private Palestinian Property

A Report of Peace Now's Settlement Watch Team

"Jehoshua ben Hananiah said: 'I was never disconcerted in my life except by a woman, a boy, and a little girl....Once I was traveling on a road and seeing a beaten path leading across a meadow I took that path. Said a little girl to me: 'Rabbi! Is this not a meadow that thou art crossing?' And I answered: 'Is this not a beaten path?' And she answered: 'Yea; such robbers as thou art have made it a beaten path.'"

Bab. Talmud, Erubin pp. 53 b

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We wish to thank to Nir Shalev and Michael Sfard for their comments
on this report

October 2006

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Executive Summary

Peace Now's Settlement Watch team has compiled precise information regarding the legal status of the land on which Israeli settlements have been constructed in the West Bank over the last four decades. The data, which is compiled and made public here for the first time, has enormous significance. It indicates the direct violation of Israeli law carried out by the State itself, driven by the architects and leaders of the settlement movement.

Israel never annexed the territories in the West Bank conquered in the war of June 1967, leaving the status of this land as "spoils of war". During the past forty years of occupation, Israel has ruled the territories through military orders and the laws of the State. In so doing, Israel has ignored international laws and agreements, such as the 4th Geneva Accords and the Hague Agreement, which define and limit changes the occupier may make in occupied territory during the period of occupation.

This report demonstrates that, in addition to ignoring international laws and agreements, Israel has violated even its own norms and laws in the West Bank, through the confiscation of private Palestinian property and the building of settlements upon them.

Data which its source is the Civil Administration, applied to each and every settlement by the Peace Now Settlement Watch team, indicate that a large proportion of the settlements built on the West Bank are built on privately owned Palestinian land. This, despite the fact that Israeli law guarantees the protection of the private property of the civil population resident on the West Bank.

The data presented in this report demonstrate that the property rights of many Palestinians have been systematically violated in the course of settlement building. The government's own information confirms this contravention of Israeli law - law, defined precisely in the landmark

Elon More decision of the Israeli High Court of Justice in 1979 (discussed in detail, below).

Peace Now condemns the violation of Israeli law carried out over the past forty years by the State of Israel. We condemn the efforts of politicians and bureaucrats to launder the land grab, which deprived thousands of Palestinians of the basic human right of possession, on the individual and collective levels.

We demand that the present Israeli Government rectify the situation, which means returning the private land to its owners.

Key findings include:

- > Palestinians privately own nearly **40% of the land** on which the settlements have been built;
- > Palestinians privately own over **40% of the land** in settlements located in "settlement blocs," west of the fence being constructed by Israel, including **86.4% of Ma'ale Adumim**, **44.3% of Giv'at Ze'ev**, **47.7% of Kedumim**, and **35.1% of Ariel**;
- > More than **3,400 buildings** in settlements are constructed on land that is privately owned by Palestinians;
- > "Survey lands" are areas whose ownership has yet to be determined and on which development is not legal, yet **5.7% of settlement territory** is "survey land" and **2.5% of the "settlement blocs"** are on "survey lands;"
- > Only a small percentage of settlement land was purchased by Jews; and
- > Over 50% of the land on which settlements have been constructed has been declared "State land," often through controversial means and mostly for the benefit of settlements.

Background

Many people may not know, or may have forgotten, that with the exception of some limited areas around Jerusalem, Israel never formally annexed the West Bank, leaving the status of this land as “spoils of war.” In this context, international law requires that the occupying power, in this case the State of Israel, respect and protect the property of the civilian population residing in these areas.

Unfortunately, the facts presented in this report demonstrate that Israel has failed to respect and protect the property rights of thousands of Palestinians, confiscating and seizing much of their property and erecting settlements on it. The government’s own information shows that, since 1967, successive governments of Israel have initiated new settlements and permitted the expansion of existing settlements on land privately owned by Palestinians, in violation of Israeli law and in violation of the spirit of a landmark decision from the Israeli High Court of Justice in 1979.

This report represents a harsh indictment against the whole settlement enterprise and the State’s role in it. **While it is difficult to assess all of the political and legal implications of the information that this report is revealing here for the first time, it is clear that the settlement enterprise has, since its inception, ignored Israeli law and undermined not only the collective property rights of the Palestinians as a people, but also the private property rights of individual Palestinian landowners.**

1) The Source of Information and its Reliability

This report is not based on data that “Peace Now” – or any other civil organization, Israeli or Palestinian – plucked out of thin air. This data comes from the Civil Administration, the body appointed by the State of Israel to administer all of the civil aspects related to the construction of settlements in the West Bank.

Therefore, this is a State-made database, updated to the best of our knowledge through 2004. This database, supplemented by other sources, served as a reference for attorney Talia Sasson when she prepared her government-mandated report on the outposts – a report which has been widely publicized and discussed.

Sasson refers in that report to outposts built on privately owned Palestinian land saying:

"It is absolutely prohibited to establish outposts on private Palestinian property. Such an action may in certain circumstances become a felony. But first and foremost this is a serious prejudice of the right of possession. This right is a basic right in Israel – included in Basic Law: Human Dignity and Freedom, and was defined by the Israeli Supreme Court as a constitutional right. The Israeli High Court of Justice ruled that the Commander of the area must protect the fundamental rights of the Palestinians in Judea, Samaria and Gaza. This means that he must also protect their right of possession. It is the Commander's duty to prevent the intolerable prejudice of the Palestinians' right of possession, which the establishment of outposts on their property causes.

There is no way to validate the establishment of an outpost on private Palestinian property, not even post factum. Such outposts must be evacuated, the sooner the better.¹ (Emphasis in original)

¹ The Sasson Report Concerning Unauthorized Outposts, www.pmo.gov.il, p. 16

The information included in this report came into Peace Now's possession, despite the State's refusal to transfer the data to us in a systematic fashion. A year ago the Settlement Watch team asked the Civil Administration, both in writing and orally, for this data, citing Israel's Freedom of Information Law. To our great disappointment, these requests received no response at all, or, after a long wait, were refused.

The continued refusal of the State to transfer the requested information led Peace Now, together with the Movement for Freedom of Information², to submit a joint petition to the Jerusalem District Court in this matter.³ The Petition requested that the State immediately send the Petitioners the requested information. At the request of the State, a hearing on the petition, scheduled for May 2006, was postponed. In justifying the request for the delay, the State revealed a few of its reasons for not transmitting the requested information. Attorney Liora Haviliou, representing the Jerusalem District Attorney's office, wrote:

*“The issue of the petition is a complex **and most sensitive** issue, where, among others, security considerations **and foreign relations** aspects of the State of Israel are concerned. In order to formulate a position in this case, the Respondents require additional discussions ...” (Emphasis Added)*

While it is difficult to understand what security considerations could be involved in this matter, it is easy to guess how Israel's foreign relations might indeed be affected by the information contained in this document. It can also be inferred from this statement that the State is very much aware of the damning nature of the facts they have sought to conceal.

² The Movement for Freedom of Information in Israel - www.foim.org.il

³ Administrative petition number 135/06

2) Defining “Privately Owned Land”⁴

To understand the mechanism of land seizure in the West Bank, one must go back to the political history of the region. During the 19th and 20th centuries, the West Bank came under the successive rule of four different powers: the Ottomans, the British, the Jordanians, and the Israelis. Each left a legal and administrative trail behind them, the implications of which play a significant role in today’s legal reality.

Since 1967, Israel has made use of Ottoman legislation dating back to the middle of the 19th century in order to declare land to be “State land.” According to that law, all lands are considered "State Land" unless proven otherwise. To formally register land as private property, one must cultivate it for at least ten years. If the land is not registered, one would be considered the owner as long as he cultivates it and pays taxes on it. If the land is not cultivated for three successive years, it may become the property of the Ottoman State, i.e. "State Land".

Israel has also exploited the fact that during the Ottoman period only small parts of the land of the West Bank were formally registered to a specific owner. During the 1920’s, the British began a process of registering the land to the farmers who cultivated it or residents who owned houses that were built on it. This process continued throughout the Jordanian period. In 1968, the State of Israel stopped the land registration process by virtue of an injunction⁵ issued by the military governor in the occupied territories. It was claimed that the injunction was intended to protect the owners of land that had been abandoned (from other Palestinians who might try to register ownership of it in their absence), and to prevent the rights of these owners from being discriminated against. However, in reality, this injunction left thousands of square kilometers of agricultural land unregistered, where it

⁴ The May 2002 report by B’Tselem, Land Grab: Israel's Settlement Policy in the West Bank, was a point of reference for writing this section, see Chapter 3 of that study, www.btselem.org

⁵ Injunction No. 291, 1968.

eventually was declared "State Land" and used for the sole benefit of Israel.

The occupation in 1967 brought about a change in the Palestinian economy. Many Palestinians, who in the past had worked as farmers became workers in Israel. This situation paved the way for the "Custodian of Government Property in the Area of Judea and Samaria," to declare large parts of the uncultivated land as "state land", utilizing the Ottoman law.

The "privately owned land" to which this report refers is:

- A. Land that was registered and recognized as private property before 1968, at a time when the process of land registration was still open and available to Palestinians, or**
- B. Cultivated land which is recognized by Israel as private land according to the Ottoman law.**

3) Seizure for "Military Purposes"

In addition to the wholesale declaration that designated much of the West Bank as "State land" – land that was then allocated solely to the settlements and the settlers – there are a number of additional administrative means by which the State was able to take control of land in the West Bank.

The State's main means of acquiring private land was "seizure for military purposes." In contrast to an "expropriation," in which ownership of the land is transferred to the State, "seizure" leaves the official ownership of the land in the name of its original owners, but transfers total control of the land, for a designated period of time, to the military. At the end of that period, the military must either relinquish control of the land to the owners – something which has rarely happened in the West Bank – or renew the seizure order.

Many of the settlements established during the first decade of the Israeli occupation of the West Bank were built on land that had been “seized for military purposes.” However, a landmark court decision in 1979, the result of the affair known as the Elon More case, brought this abusive practice to an official end.

4) The Elon More case

On June 5th, 1979, the then-commander of the Israel Defense Forces (IDF) in the West Bank, Binyamin Ben Eliezer, ordered the seizure for military purposes (i.e., temporary seizure) of some 700 dunams of land belonging to the Palestinian village of Rujib, situated southeast of the Palestinian city of Nablus (located in the northern West Bank). Two days after that order, construction of the Elon More settlement started on the seized land. In response, the owners of the land petitioned the High Court of Justice, arguing that the seizure was illegal, since the IDF based it on security needs, while the seized land was actually being used for a new settlement. In its response, the State Attorney’s office stated, as in many similar cases before, that the establishment of the settlement was indeed required for military purposes.

In response, settlers from the Elon More group submitted a memorandum rejecting the interpretation that the seizure was temporary and for military purposes. The settlers made clear that their intention was to establish a permanent civilian settlement, founded for ideological and political purposes. This, of course, contradicted the State’s claim.

In view of the settlers’ argument, the High Court ruled that the establishment of the settlement on this land was not consistent with the uses of land “seized for military purposes,” and instructed that the seizure be cancelled. Based on the Elon More legal precedent, after 1979 the State was forced to cease using “seizure for military purposes” as a means of taking over privately-owned Palestinian land for the construction of settlements.

However, during the decade following the signing of the Oslo Accords, Israel began once again to make regular use of seizure injunctions for military purposes, particularly in order to establish the bypass road system on the West Bank, intended to make it possible for settlers to travel without having to cross Palestinian population centers. Over the years, many additional seizure orders have been issued in order to create “secure zones” around the settlements, as well as to build the separation fence.

5) Building on Private Land: The Law vs. the Reality

In spite of the clear ruling of the court, the State continued to initiate and allow the construction of settlements, as well as “new neighborhoods” of established settlements, on property that the State knew to be privately owned by Palestinians. Since such lands could not be declared “state land” and, based on the Elon More ruling, could not be seized under the pretext of “military purposes,” these activities were carried out without any legal basis.

In a harsh report regarding the conduct of the Civil Administration, the State Comptroller describes a case in which an Israeli industrial area was built, both by public and private investment, on privately-owned Palestinian land in the West Bank. Quoting the legal adviser of the Civil Administration on this affair, he writes: "***This affair's severity does not indicate its exceptionality***".⁶

Thus, for example, the settlement Ofra, established in 1975 on an abandoned Jordanian military base, was constructed mainly after 1980, almost completely on private lands belonging to the residents of the neighboring village of Ein Yabrud. This is the case, as well, for dozens of additional settlements and outposts, which were knowingly built, in whole or in part, on privately owned Palestinian land. The most extreme

⁶ The Annual Report of the State Comptroller No. 56A p. 221.

example is Elon More itself, which was moved to a new site following the court's ruling. According to the data of the Civil Administration published below, over 65% of the land of this settlement is privately owned by Palestinians.

Peace Now does not possess all available information regarding land seizure injunctions issued by Israel in the West Bank from 1967 until today. As noted earlier, a request to the Civil Administration for this data, based upon the Freedom of Information Law, has yet to be answered. This information could, of course, shed light on the interesting question of which of the settlements (or parts of settlements) are located on land which was seized in the past through the use of military seizure orders. As discussed earlier, such seizure orders do not change the status of land ownership. **Any settlements which were built on land seized in this manner are actually located on land that is owned privately by Palestinians, even according to official registration in Israel.**

6) “Survey Land” & “Jewish Land”

Apart from "State Land" and "Private Palestinian Land", Israel established another category of land, “survey land.” This refers to property whose ownership is in dispute, generally in cases where a Palestinian’s title to the land is being challenged by the State. Under Israeli law, such land cannot be developed legally, either by the State or by the Palestinian claiming ownership. In reality, as the data below will show, settlement construction has been permitted on such land, too.

In addition, the category of “Jewish land” was created, referring to West Bank property owned by Jews.

The Methodology – How the Data is Calculated

>>> A. Defining the Boundaries of a Settlement

For the purposes of this report, we had to define the boundaries of each of the settlements and outposts that exist in the West Bank. The official boundaries of the settlements do not usually reflect the area which they cover in reality. They often include larger areas, in order to allow for future expansion.

We elected to define the boundaries of the settlements on the basis of the situation as we know it in the field, which is a function of a number of basic factors:

1. Built-up area;
2. Open areas that have been developed;
3. Areas fenced in by a partial or complete perimeter fence;
4. Perimeter lighting;
5. Ring roads that were built around the settlements.

These factors determine the area that each settlement covers and the ability of Palestinian residents to reach their land. In other words, when we delineated the area of a settlement, we also considered the issue of whether Palestinians have access to those areas or not.

For the sake of this report we have also checked the situation of the built-up area of the settlements only (i.e buildings, roads and developed land) and not the total area covered by the settlements. The harsh results of this survey can be seen in the chart at page number 21.

>>> B. Data from the Civil Administration

The data from the Civil Administration divides the land into four categories:

1. State Land – land that has been declared as land managed by the State;
2. Private Palestinian Land – registered land recognized by the State of Israel as the private property of Palestinian residents and cultivated agricultural land that was not declared "State Land" and was not purchased by Jews;
3. Survey Land – land whose ownership is still being examined and whose standing still has to be determined. By law, such land cannot be developed; and
4. Jewish Land – land purchased by Jews.

>>> C. Calculating the Data

The calculations regarding the total area occupied by each settlement are based on: the boundaries that have been defined for all of the settlements; the total area of settlements defined as private Palestinian lands; the total area of settlements defined as “survey land;” and the total area of settlements defined as “Jewish land.”

For the purposes of this report, most of the outposts were included in the areas of the settlements, since they are integral parts of the area upon which the settlements lie (in accordance with the elements enumerated above). Outposts that are not part of the *de facto* jurisdiction of a settlement appear as separate entities.

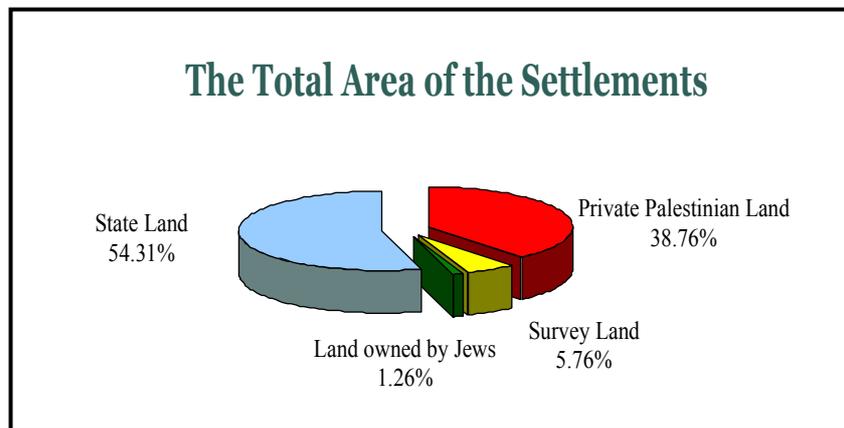
Jerusalem, October 2006
Dror Etkes and Hagit Ofran
Settlement Watch Team, Peace Now

The Main Findings

To the full list of settlements and the private lands (according to the official information received from the Civil Administration in March 2007) - http://www.peacenow.org.il/data/SIP_STORAGE/files/5/4315.xls

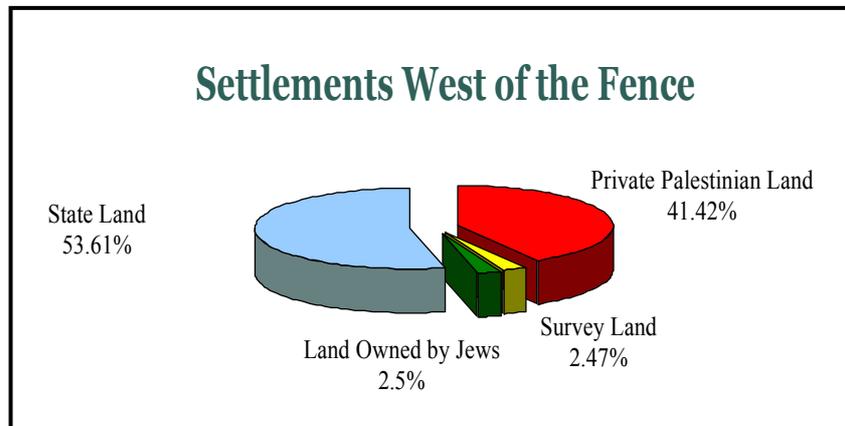
1. Nearly 40% of the total area of the settlements, outposts and industrial zones in the West Bank is comprised of private Palestinian land:

	Area	Percent
Total area	157.59 km ² (157,591 dunams)/ 60.84 mi ² (39,398 acres)	100%
Private Palestinian land	61 km ² (61,085 dunams)/ 23.58 mi ² (15,271 acres)	38.76%
Survey land	8.93 km ² (8,933 dunams)/ 3.44 mi ² (2,233 acres)	5.67%
Jewish land	1.98 km ² (1,986 dunams)/ 0.767 mi ² (496.7 acres)	1.26%

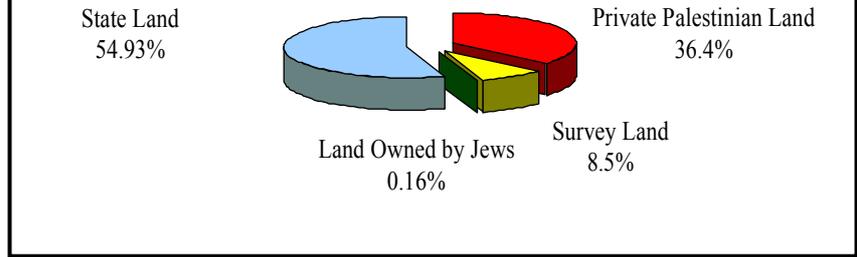


2. Settlement land located west of the fence which Israel is constructing around the “settlement blocs” is comprised of private Palestinian land:

	Area	Percent
Total area	74 km ² (74,098 dunams)/ 28.61 mi ² (18,525 acres)	100%
Private Palestinian land	30.68 km ² (30,684 dunams)/ 11.847 mi ² (7,671 acres)	38.76%
Survey land	1.83 km ² (1,832 dunams)/ 0.7 mi ² (458 acres)	5.67%
Jewish land	1.85 km ² (1,850 dunams)/ 0.71 mi ² (462.5 acres)	1.26%



Settlements East of the Fence



3. Nearly 30% of the built-up area of the settlements⁷ is located on private Palestinian land, with at least 3,435 buildings in settlements constructed on private Palestinian land⁸:

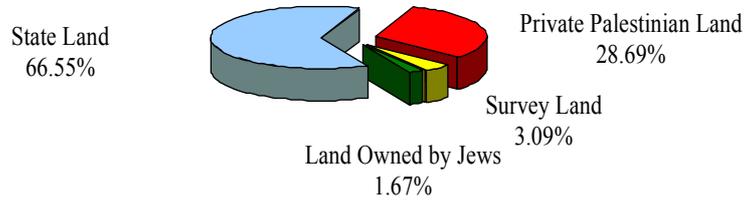
4.

	Area	Percent
Total area	52.94 km ² (52,941 dunams)/ 20.44 mi ² (13,235 acres)	100%
Private Palestinian land	15.19 km ² (15,190 dunams)/ 5.87 mi ² (3,797 acres)	28.69%
Survey land	1.63 km ² (1,636 dunams)/ 0.63 mi ² (409 acres)	3.09%
Jewish land	0.884 km ² (844.3 dunams)/ 0.34 mi ² (221.1 acres)	1.67%

⁷ The Built-up area of the settlements includes only the area of the buildings, roads and developed parts of the settlements and not all the area covered by the settlement.

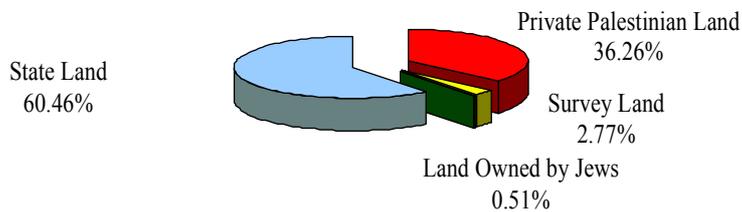
⁸ The number of buildings does not refer to the number of apartments or the number of stories in each building. Further, the building count was based on data updated a few years ago. Since then, thousands more buildings have been constructed in the Territories, some of them on privately owned land.

Built-Up Area of the Settlements



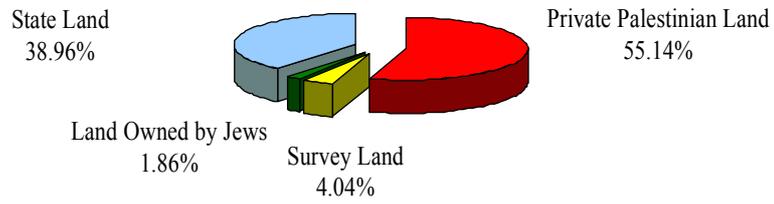
5. The amount of Palestinian private land involved in settlements differs according to the settlement region.⁹ The highest percentage is found in the Binyamin area (north-central West Bank), and the lowest percentage in the Jordan Valley:

Samaria

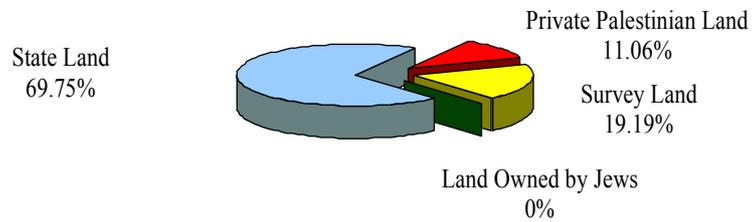


⁹ The regional distribution was not made along the official municipal borders. Regions include local authorities and cities that lie within the boundaries of the official municipal locality. The “Jordan Valley” region includes both “Megilot” and “Aravot Hayarden” local authorities. Hebron Area does not include the city of Hebron itself.

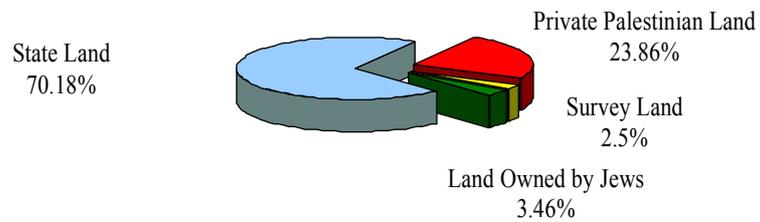
Binyamin

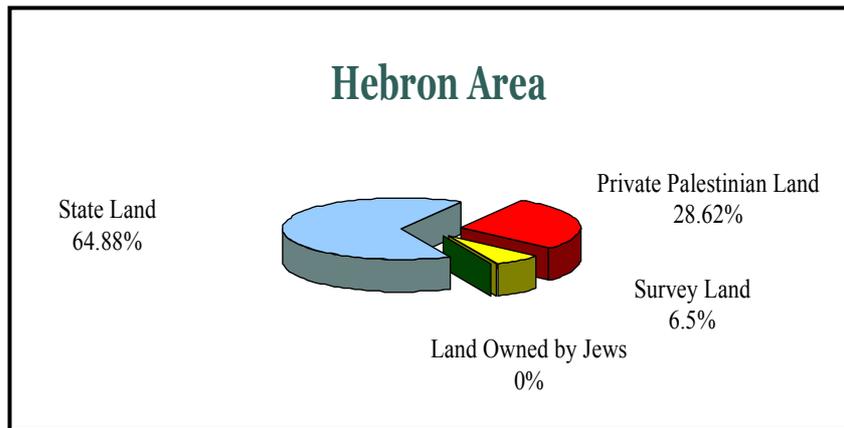


Jordan Valley

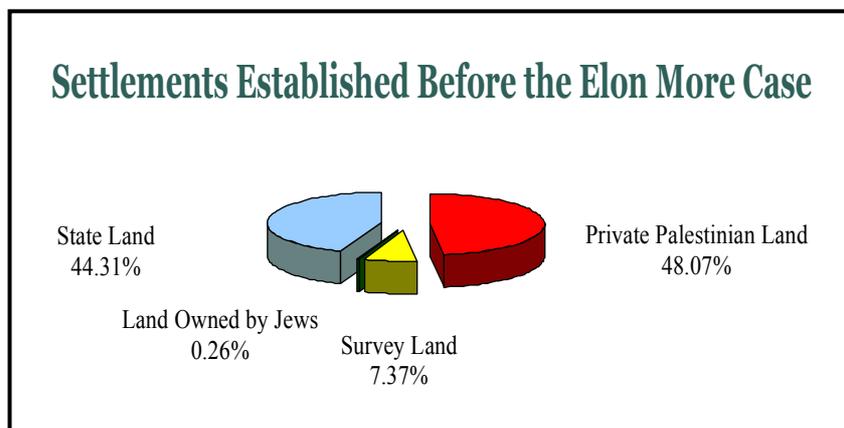


Gush Etzion





6. Before the 1979 Elon More case (discussed above), which established that Israel could no longer use "security needs" as a pretext for the seizure of Palestinian private land to benefit settlers, nearly 50% of the land on which settlements had been established was private Palestinian land. After the Elon More ruling Israel continued to build settlements on private Palestinian land, mainly without seizure orders, and nearly 32% of the land on which settlements were built after 1979 is private Palestinian land.



Settlements Established After the Elon More Case

