Chapter 4

The elusive crawling nature of public land's privatization

*"Bureaucracy defends the status quo long past the time when the quo has lost its status".*[[1]](#footnote-1)

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The guiding principle for the administration of Israel Lands was, and remains, that ownership of Israel Lands not be transferred. As described in the previous chapters, the practical meaning of this principle is that most (93%) of the territory of the State of Israel is administered by the government. This type of administration no longer fits the character of the state, which has become more and more westernized, and champions a free-market economy. While the winds of public land privatization have started to blow in the Israeli parliament, it has engaged thus far in only one type of privatization: the process of transferring **formal** ownership of government-owned lands and resources to private hands. A number of amendments to legislation have been enacted over the last several years, marginally and gradually expanding the government’s mandate for this type of privatization. As of today, these processes are limited to built-up, urban lands. The vast majority of Israel Lands have remained untouched by this formal privatization process. The general principle, banning ownership transfer, remains in force both in legislation, and as a foundational principle which informs the government’s policy.

The formal picture is, however, not the complete picture. For years, Israel Lands have been going through the process of a different type of privatization: **informal**processes. These steps retain the government’s formal land ownership while dispensing with any practical content to said ownership. Individuals receive income or sources of income from the government, which they would otherwise receive were they the formal owners. These processes anticipate formal privatization. The articulation of the constitutional principle against ownership transfer in clause 1 of Basic Law: Israel Lands seems to apply to these situations as well, as it bans the transfer of Israel Lands ownership, “…either by sale *or in any other manner*”.[[2]](#footnote-2) Yet the similarities between what the law prevents and what is done here, in practice, are often blurred; economic aspects of ownership are transferred to individuals, but formal ownership remains in the hands of the public. These sort of progressions towards privatization tend to attract less public and legal attention. The result is the unraveling of practical government ownership, and the public, and maybe even the legislature as well, does not always realize the true meaning of what is happening. This is why these informal channels of privatization have come to be known in Israel as “Camouflaged Privatization” and “Sprawling Privatization”.[[3]](#footnote-3)

A clear characteristic of Israel’s informal privatization processes is the significant involvement of interest groups in their formation. According to Public Choice Theory, bias towards interest groups is a known characteristic in any bureaucratic decision-making process. Informal privatization processes are particularly suited to such interference because their true nature is hidden at times, or at least not immediately evident to the public.[[4]](#footnote-4) The government’s ability to insist on its ownership after it has dispensed with any signs of it is akin to closing the stable doors after the horses have already escaped. Not much reason is left in retaining formal ownership once the essential aspects of ownership are gone, so informal privatization processes can be well expected to culminate in formal privatization. In Israel, formal privatization tends to come about only after the government has waived any long-term economic advantages to its ownership. It functions as the closing act in the process of privatization, not the opening one. As such, the informal processes that precede it are of far greater importance.

This chapter will analyze two central, valuable components of Israel’s inventory of government land, as they relate to both the informal and the formal privatization processes: urban lands and agricultural lands. Informal privatization processes, wherein the government gradually relinquishes the economic advantages of ownership, have already been initiated in both types of lands. While a significant portion of urban lands have surpassed the informal stages of privatization and are now being formally privatized, the State of Israel’s agricultural lands remain very much within the confines of the informal privatization process. We will first review the general outline and description of the bureaucratic mechanism that administers land resources, and its susceptibility to the influences of interest groups. We will then analyze the steps towards informal privatization which have been undertaken in both categories of lands, emphasizing the influence that parties of interest wield over the public opinion of these processes.

**The Mechanism for Administering Public Lands and its Susceptibility to Interest Groups**

As described in previous chapters, in 1960 the management of Israel Lands was entrusted to the Israel Lands Administration, an independent government agency. In 2009, the Administration was replaced by a new body, the Israel Lands Authority, with the goal of administering the land inventory with greater efficiency. However, both the Administration and the Authority were designed to be strictly administrative-executive bodies, and do not deal in policy-making. Administration policies are made by a different governmental body, also established in 1960: the Israel Lands Council. The Council’s main authority is to “lay down the land policy in accordance with which the Administration shall act”.[[5]](#footnote-5) It is also authorized to “supervise the activities of the Administration and shall approve the draft of its budget”.[[6]](#footnote-6) The Council has made more than 1,500 decisions since its inception which have shaped the State of Israel’s land policies. These decisions have the status of secondary legislation. Practically, then, Israel’s land policies are primarily created by a government body, and not through primary, parliamentary legislation. This state of affairs has been sharply criticized by the Supreme Court, which claims that the central principles for Israel Lands policy ought to be established in primary legislation by the Knesset.[[7]](#footnote-7) The Court further claimed that the extensive authority in shaping Israel Lands policy given by the Knesset to the Council, a government body, amounts to “lazy legislation”.[[8]](#footnote-8)

Yet it is clear from its history that the attempt to entrust the Israel Lands policy-making authority to a government body was not a result of “laziness”, but was an intentional, calculated move by the legislature. The parliamentary majority in every Israeli Parliament has purposefully preserved the power to shape land policy for itself. Because legislative change is a public undertaking, requiring parliamentary deliberations and the support of a majority of the parliament, enacting principles of policy in legislation would restrict the government’s freedom to act. The Israel Lands Council makes policy decisions in an internal, governmental, bureaucratic framework, without having to overcome challenges from the Opposition, as all Council-members are appointed by the government; the head of the Council is always a minister.[[9]](#footnote-9) No Israeli politician, from any end of the political spectrum, has ever welcomed the idea of relinquishing the power given it by the Israel Lands Council as the body responsible for outlining the State’s land policies. Holding this power has traditionally been one of the most highly sought-after perks in the negotiations for building governments; this has certainly been the case in the past few decades. As such, the Ministry under whose auspices the Council operates constantly changes, in tandem with whichever Minister is granted control of it (Agriculture, Housing, Infrastructure, Treasury, Prime Minister).[[10]](#footnote-10) It is the lot of the politically powerful to be granted control of the Council, and that control creates such political power as well. In the last several decades, two Prime Ministers (Ariel Sharon and Ehud Olmert) served as Council chairman before becoming Head of State; both capitalized on their position to enact reforms and changes in land policy.[[11]](#footnote-11) During the post-election negotiations in 2015 for creating the 34th government, headed by Benjamin Netanyahu, Treasury Minister Moshe Kahlon, head of the moderate “Kulanu” party, demanded that any coalition agreement must commit to appointing him Chairman of the Israel Lands Council. He did indeed get his wish.[[12]](#footnote-12)

As far back as the sixties, politicians’ conscious and intentional preference for keeping a government-appointed body in charge of creating land policy has been reflected not just in technical, marginal issues that one would not expect the parliament to deal with, but in more principled cases of national land policy. For example, in a clause of the bill that preceded Basic Law: Israel Lands, it was proposed that the system for privatizing Israel Lands be limited such that “control of Israel Lands not be transferred in any way other than leasing or license-granting”.[[13]](#footnote-13) In deliberations in the Knesset’s Constitution, Law and Justice Committee, disagreement arose regarding the proper length for leasing periods, and it was eventually decided that the clause be stricken from the law altogether and that the Israel Lands Council eventually be tasked with creating legislation regarding leasing.[[14]](#footnote-14) Fifty years have passed since then, and no such legislation has ever made its way to the Knesset. The Israel Lands Council articulated the policy for transferring land control in its central compendium of statutes, and the ministers who chaired the Council over the years had critical say in its formation.

The heavy weight that politicians have had in shaping the land policy made membership in the Council, as well as influence over Council members, highly desirable power stances for interest groups. One main interest group that managed to seize such power is the Jewish National Fund (JNF). The JNF guaranteed this stance for itself when it signed a treaty with the government; the Israel Lands Authority Law that ensued stipulates that six of the thirteen council seats are to be filled by the Fund.[[15]](#footnote-15) Another such interest group that has accumulated heavy influence over the years is made up of representatives of agricultural settlements. The majority of Israel’s agricultural land is administered by the Council, so influence over the Council is of great interest to those who control that land. The say wielded by members of this group was, at one point, greater than their influence in the general population.[[16]](#footnote-16)

What’s more, the chairman of the Council always being a politician has made Israel’s land policy especially vulnerable to public opinion. It is much more difficult for politicians to conduct unpopular policy moves such as high fee collection from hundreds of thousands of people who control Israel Lands, or the evacuation of thousands of those who do not manage to uphold their contracts with the State. The political profit produced by granting discounts and other benefits to that population is, in stark contrast, immediate and clear. The influence wielded by holders of capital over politicians in need of support is similarly predictable. Yet this type of influence is not as visible as that of public opinion, since various forms of corruption are usually involved with it. Plenty of journalistic investigations of the influence that holders of capital wield over politicians’ heads have been published over the years. According to these investigations, not only can politicians and senior officials directly benefit from this support, whether through finances or media attention, but it often can also ease their exit from the political system into the world of private industry through the “revolving doors” system. The investigations have further pointed to attempts made by holders of capital to influence the policy over the State’s most important natural resources, such as the Dead Sea mineral quarries[[17]](#footnote-17) and the natural gas reservoirs in the Mediterranean Sea.[[18]](#footnote-18) Even if some of these reports have been denied, or did not result in official legal activity such as criminal prosecution, they clearly indicate the likelihood of the phenomenon. There is other circumstantial evidence of its existence: in 1986, for example, the concession for mineral quarrying at the Dead Sea was extended through the year 2030.[[19]](#footnote-19) Although Dan Tichon, a Knesset Member from the ruling majority, claimed in the first round of deliberations on the topic that so long an extension seemed “a bit exaggerated and dangerous too”,[[20]](#footnote-20) the extension was approved in the final deliberations with no qualifications or debates.[[21]](#footnote-21) In a recent arbitration ruling, it was found that the concession holders managed to avoid paying royalties required by the concession contract for many years.[[22]](#footnote-22) The ease with which such situations arise may well support the claim that, at least at that time, something prevented the politicians from dealing too strictly with the concession holders. It is worth noting that in January 2016, with the claims made against the concession’s extension, and with its coming 2030 expiration, Finance Minister Moshe Kahlon and the Ministry of Finance published the “Invitation to Submit Positions toward the end of the Dead Sea Concession”.[[23]](#footnote-23) The committee that was appointed to come up with suggestions of action on the topic has yet to publish a report. According to reports published at the beginning of 2017, then Accountant General of the Ministry of Finance, Michal Abadi-Boiangiu, wrote to Kahlon that based on research she conducted, there is no justification for automatically extending the concession and that “a tender is the right way to maximize the public’s share in Dead Sea natural resources”.[[24]](#footnote-24) Yet her findings were never published because, it seemed, she wished to leave the final decision to her successor, as her term was coming to a close at the time.[[25]](#footnote-25) The Ministry of Finance’s final stance has yet to be publicized. The claim has been made in Israeli media that the delay in decision-making points to successful pressure leveraged by the current concession holders, although the time that has passed could equally indicate a serious, balanced process of making tough decisions that will inevitably have serious economic consequences.[[26]](#footnote-26) Either way, the little that has been publicized thus far clearly points to an undeniable weakness in the government’s administration mechanisms: the frequent change of individuals, both senior officials and ministers.

Entrusting the formulation of Israel Lands administration policy to the government and its officials has made the principle of governmental land ownership retention particularly vulnerable, because the many policy decisions that have permitted deviation from it have gradually eroded it. The most prominent undertakings of privatization in Israel were not the result of an informed Knesset decision that expressed a change in ideology. They were not the result of organized, top-down policy guidelines. These undertakings always began at the bottom, in semi-administrative decisions made by the Israel Lands Council. The mark of interest group influences can be seen in the process of making each of those decisions. Such decisions, which often appeared to be nothing more than technical, gradually created the reality of privatization. The facts on the ground of Israel Lands have always preceded, and still do precede, the formal decisions to privatize. The changes took place without the public, the legislators, or even the government noticing their intensity, so they are irreversible. We will now demonstrate such developments in the two types of Israel Lands currently undergoing privatization: urban land and agricultural land.

**Privatizing Urban Land**

The possibility of privatizing urban Israel Lands is mentioned in clause 2 of Basic Law: Israel Lands, entitled “Permission by Law” and which stipulates that “Section 1 [which prohibits the transfer of ownership] shall not apply to classes of lands and classes of transactions determined for that purpose by Law”. In accordance with this allowance, the Israel Lands Law 5720-1960 was enacted parallel to the Basic Law in 1960.[[27]](#footnote-27) The law, of lower legal status than that of Basic Laws, established in clause 2, entitled “Permission to transfer ownership”, the types of Israel Lands whose ownership could be transferred. The clause allows mostly for internal land transfers between different owners of Israel Lands, or for the exchange of public land with private land. The most prominent, true allowance for privatization, however, is a limited-scale allowance, not to exceed 100 kilometers, to privatize Israel Lands “for the purpose of non-agricultural development” and “the transfer of the ownership of lands…which are urban lands”.[[28]](#footnote-28) A similar allowance was actually already provided for in the fifties, in legislation regarding Development Authority assets,[[29]](#footnote-29) which was implemented equally across all components of the governmental inventory in the sixties. The concern that foreign investors would hesitate to invest in building and project creation if they were not to be granted full private ownership of the lands was the main reason for enacting this exception to the rule.[[30]](#footnote-30)

Until the beginning of the new millennium, little use was made of the legal authority to privatize urban land. Only about 60 kilometers of land were formally transferred to private ownership.[[31]](#footnote-31) That amounted to less than a quarter of the then 251 kilometers of all built-up lands.[[32]](#footnote-32) Most of the lands that underwent privatization were urban assets that proved burdensome for the responsible bodies. The properties led to significant expenditures; many of them were populated by tenants who could not be evicted, and some were targeted for demolition and urban renewal.[[33]](#footnote-33) The government retained both formal ownership and active control of most of its developed urban lands until the start of the new millennium.

With this, the government did not need all of this rather large inventory of lands for its own direct use. Most of it was rented to private hands through leasing contracts, in a system that came to be known as “the leasing system”. The Israel Lands Council’s Decision 1 formulated the policy for transferring both urban and agricultural land via leasing, and is still in effect today. The decision established that urban lands “be transferred through lease only” and that the lease period “shall not exceed 49 years”. At the end of said period, “the leasing rights may be extended for another period of 49 years, at the request of the lessee, in which case the land will be re-evaluated”.[[34]](#footnote-34) The leasing system reflected the policy of Israel Lands ownership retention and its aims as expressed in the Basic Law. Leasing properties for defined periods of time gives private bodies the right of usage and control, but not permanently. It allows the lessor to enjoy the leasing and other payments, and to update them in accordance with changes in the property’s value. Essential aspects of ownership remain in the lessor’s hands: the right to end the contract at the end of the leasing period, the right to stipulate contract renewal on certain conditions and payment, the right to oppose the transfer of the leasing rights and rights to change the property and the types of usages it may serve. This is the basic socialist worldview that informed Herzl’s vision and the legislation of Basic Law: Israel Lands: profit and utility production from ownership of Israel Lands, for the good of the entire public.

Over the years, the government leased hundreds of thousands of housing units, business spaces and other urban structures built on Israel Lands to citizens. As the number of leased housing units increased, it became clear that the government must create a bureaucratic mechanism in order to actualize all the economic benefits it wished to gain from the leasing: by signing and renewing contracts, conducting and updating land assessments, collecting payments, granting permits and listing transfers and other transactions in a registry. While the mechanism was created, with time it turned into a significant bureaucratic burden for the government and the lessees. As a result, steps were taken to lighten the burden and to reduce the continuous friction with the lessees. The goal of these steps appeared to be technical and administrative, with no intention of transferring formal land ownership to the lessees. Yet it was precisely these steps which led to informal privatization and created an irreversible reality. First of all, they led to the gradual unraveling of the government’s – the owner’s - benefit from crucial economic advantages latent in the retention of ownership. Second, they created a feeling of ownership among the lessees, which in turn created the expectation and belief that the State would not return to insist on its rights of ownership of the properties.[[35]](#footnote-35) These processes essentially amounted to camouflaged, informal privatization of urban Israel Lands. The Israel Lands remained formally and legally under the ownership of the government, but the content and character of ownership irreversibly trickled over to the lessees. We will now proceed to describe the important milestones in the informal privatization process of urban Israel Lands.

The **first** milestone of the process occurred in the seventies, as expressed in the implementation of policy that allowed urban Israel Lands lessees to make their requisite payments to the Israel Lands Administration as a one-time, lump-sum payment at the time of the contract signing. This policy replaced the policy of annual payments, and payments in the event that the lessee wished to transfer his lease rights to someone else.[[36]](#footnote-36) The new system was meant exclusively for lessees of housing units in “saturated” buildings that were defined as “houses containing at least four apartments on two floors”.[[37]](#footnote-37) This seemed to be a technical decision, meant to obviate the need for constant and periodic evaluation and collection. Concentrating payments at the beginning of the contract period was designed so that the lessor and the lessee would have no need for one another during the extended lease period.[[38]](#footnote-38) With this, however, this progression was a sort of waiving of potential payments for the government in the event of significant increases in the value of lands, which weren’t accounted for in the lump-sums payed in advance. Loss of other income was caused by the significant discounts given to those who opted for the advance, lump-sum lease payments, meant to encourage the lessees to take that option.[[39]](#footnote-39) Strengthening bureaucratic efficiency seemed to offset these income losses. Yet this course of action had certain side effects that made it irreversible. The fact that lessees were making one large payment for the properties, rather than smaller, annual ones, blurred their experience as renters and developed the feeling that they were the owners. The lessees repressed the thought that at the end of the lease period, they would have to pay a large, updated sum in order to hold on to the property for a new lease period. “From a psychological point of view” wrote Professor Joshua Weisman, this requirement could “seem like exploitation”.[[40]](#footnote-40) The psychology of the lessees was also expressed in the leases’ retail prices, which ignored the fact that the rights acquired would not last forever.[[41]](#footnote-41)

The feelings of ownership that developed among Israel Lands lessees were not overlooked by the politicians responsible for their administration. That is what led to the **second** milestone in the informal privatization process: the formulation of rules guiding the lease Jubilee, i.e. establishing the conditions for extending the initial lease period of 49 years for an additional 49 years. Work on formulating these rules began in the seventies and stabilized in the mid-eighties. The main innovation that they heralded was the decision not to collect initial leasing payments for the second lease period (80% of the land value). A limit was also instituted on the yearly lease payments for residential urban lands, capping them at one percent of the land’s value. If the lessee were to opt for paying the advance lump-sum when signing the renewed lease contract, he would then receive a significantly discounted price. Similar conditions, without discounts on capitalization, were also instituted for annual lease payments of urban lands meant not for living but for business, factories, and other industry uses.[[42]](#footnote-42) Although these decisions appeared to be technical and to not interfere with its formal ownership of Israel Lands, they involved the government’s waiving of some income that it would otherwise have earned as owners for the public good. This policy led to the serial renewal of lease contracts for additional periods at discounted prices, effectively deferring the time when the government would actually see significant income from the lands into the distant future. It amplified the lessees’ feeling that they would never have to return the lands to their formal owner.

Another factor that contributed to this feeling was the fact that it was usually the lessees who paid for the building of structures on the plots of public land, shouldered the expenses of development and paid taxes. When the majority of the land’s value is a result of the lessees’ building investments, it would be unfair to charge them rent for those buildings. Due to this, the Israel Lands Council decided that rental rates for urban property would be calculated according to the value of the land only, without regard to the value of what might be attached to it.[[43]](#footnote-43) The lessees’ significant contribution to the lands’ value ended up greatly impacting the likelihood that the plots would be returned to the State at the end of the lease period. The State would probably not be able to afford it if it had to compensate the lessees of urban lands for their investments in building and development. The alternative, demanding that the lessees destroy whatever they had built on the plots of land before returning them to the State, seemed unfair in many cases, as well as economically unreasonable. The State would probably not have been able to implement such policy without significant opposition from the public. It should be noted that in England, legislation supported by the European Court for Human Rights instructed that in certain circumstances, lessees’ long-term investments in the leased property would justify the transfer to them of its ownership.[[44]](#footnote-44)

The changes described above created a clear contradiction between the government’s stated policy of remaining the owner of the property, and the practical disintegration of most of the advantages of ownership. Retaining ownership turned into a formal burden with no practical utility. In an attempt to solve this problem, the government appointed a public committee once every decade, who made increasingly determined suggestions to extend the lease period of urban lands to 196 years or permanently.[[45]](#footnote-45) The central reasons given seemed technical: restricting the “friction” with the lessees and freeing the Israel Lands Administration from the burden of administering lands whose utility had been exhausted.[[46]](#footnote-46) Yet behind these suggestions was the desire to transfer ownership to the lessees, leading their critics to brand them as nothing more than “a sleight of hand”.[[47]](#footnote-47)

After all was said and done, the State of Israel came to the conclusion that there is no reason to continue with that “sleight of hand” and, at the turn of the millennium, began implementing a policy of immediate transfer of formal ownership to all lessees of urban lands who paid the discounted, lump-sum, advance rent payments for 98 years. Such was the start of full, formal privatization of public urban lands- to their lessees. This process was also decided upon over the course of several stages. First, the management of the Israel Lands Administration decided to renew the policy of ownership transfer in the context of the maximum amount allotted for it in 1960, which had yet to be fully exploited.[[48]](#footnote-48) In 2006, the law was amended, and the maximum amount of public urban lands approved for ownership transfer was increased to 200 kilometers. At that stage, privatization was limited to tall buildings containing at least four living units (“saturated construction”).[[49]](#footnote-49) In 2009, the legislation was further amended, adopting a general privatization policy for **all** urban lands, including that of small construction which could be expanded in the future. The possibility to transfer ownership was also extended to lessees of “business” structures, including “industry, handicrafts, offices, commerce, tourism or hospitality”.[[50]](#footnote-50) However, lessees of land with small, non-saturated construction were required to make additional payments for the acquisition of ownership, which were meant to reflect the value of the possibility that the land be more fully exploited in the future.[[51]](#footnote-51) The Council’s decisions enable future privatization beyond urban settlements, of structures in communal or agricultural rural settlements.[[52]](#footnote-52) As of today, the Israel Lands Authority is working towards privatizing all developed public land, leased for living and for business. In 2009, urban Israel Lands were leased to about 800,000 lessees: about 63% were in apartments in saturated buildings, about 32% in apartments in low construction buildings with fewer than four apartments, and the rest (about 5%) was land meant for business use.[[53]](#footnote-53) From 2011-2016, the ownership of 439,141 properties were transferred. Lessees of tens of thousands of additional properties whose ownership could not be registered to them for technical reasons, received letters of eligibility for ownership.[[54]](#footnote-54)

While the present policy does not exhaust the full income that may be turned from the inventory of privatized lands in the future, especially in the less developed areas, the bureaucratic benefit that it creates can certainly justify it. Privatizing lands meant for private residences and businesses is further justified because the development of urban lands for these purposes is not a public good, and the private market currently supplies them in most of Israel’s urban settings. Ownership can only be transferred over planned, divided plots of land so that the process will not create problems of cooperation or pressure the owners to change the land from a public to a private designation. The current process for privatizing urban lands addresses only a small component of all Israel Lands, and does not detract from the government’s retention of ownership over all the rest. Despite this, an examination of the long-term demonstrates that the government is waiving its claim to future income which seems to contradict the constitutional principle of retaining ownership of Israel Lands. Moreover, the quota of Israel Lands whose ownership may be transferred, as of 2009 (about 800 kilometers), is three times as large as the complete territory of urban Israel Lands which have already been leased.[[55]](#footnote-55) On principle, this quota gives the government the option of transferring ownership of lands meant for urban development but have yet to undergo it. Worries that the government would lose hold of ownership over these lands as well before their optimal economic utility has been exhausted, led a unique coalition of politicians and NGOs from across the political spectrum to file a petition with the Supreme Court against this process. While the Supreme Court did validate the privatization process’ constitutionality, it warned that “transferring the lands must be done in proper measure, in accordance with the needs of natural population growth”.[[56]](#footnote-56) The warning implies that if a “squandering” policy of superfluous privatization of the government’s lands be implemented, the Court would view it as a deviation from the constitutional framework allowed by the Basic Law.

Unlike the government’s willingness to give up its ownership of urban land, owners of other large properties in Israel, such as Christian churches and the Tel-Aviv municipality, are zealous in their retention of lands which they have leased out for extended periods. That is the policy of the Greek Orthodox Patriarchate and the Order of the Nuns of Zion, for example, regarding lands that they purchased in the 19th century and which are located in the heart of central, expensive neighborhoods of Jerusalem, such as Rehavia and Talbiyeh. During the British Mandate, the churches leased their lands in contracts for periods of 100 years. The lessees, the JNF being one of the most prominent, built residential structures on the lands and leased the apartments to private sub-lessees. The value of those lands and apartments are some of the most expensive in Jerusalem.[[57]](#footnote-57) However, as the end of the lease period approached, the lessees grew more and more concerned that the properties would revert to the control of their owners, or that new lease contracts would have different terms. The expectation of such an eventuality is causing a perpetual decline in the value of these properties’ leasing rights, which will continue until the value is recalibrated at the end of the lease.[[58]](#footnote-58) It has recently come to light that the churches have already entered into contracts with real-estate developers, to lease these properties to them when the current contracts end in about thirty years. These developments indicate that the owners have no intention of renewing the leases with the current lessees, who will be forced to return the properties.[[59]](#footnote-59) As a result, the sub-lessees have initiated a public battle against the owners, with the help of Members of Knesset, the Mayor of Jerusalem, and even the President of Israel, Reuven Rivlin. They are demanding that the Israel Lands Administration and the JNF ensure that the buildings be transferred to them for an additional period under the same conditions that buildings are transferred to Israel Lands lessees.[[60]](#footnote-60) At the time of writing, it is not yet clear how the matter will be settled.

The Tel-Aviv municipality, which owns more than 13,000 of the State’s most expensive real-estate properties,[[61]](#footnote-61) has implemented policy even stricter than that of the State of Israel. Although the municipality was prepared to renew the lease contracts at the end of the current lease period, it conditioned this on the full lease payment for the entire new period, up front, with no discounts. It even began eviction claims, certified by the Supreme Court, against lessees who would not accept those terms.[[62]](#footnote-62) Several years ago, the municipality leased some of its land for the purpose of building some of Israel’s most expensive deluxe residential towers. The lease period for those apartments is scheduled to finish at the end of the current century, yet the lessees have no guarantee that they will be granted ownership of the apartments at that point.[[63]](#footnote-63) Despite this, the municipality has, in fact, begun the process of selling apartments in the neighborhoods of Yad Eliyahu and Nahalat Yitshak.[[64]](#footnote-64)

Both the Christian churches and the Tel-Aviv municipality are much commercially stricter in their management of the urban lands that they own than is the State with the management of urban Israel Lands. Whether these policies will last, when the State was not successful in making that happen, is the question that constantly hangs over the heads of the lessees of the two bodies’ properties. It cannot be predicted if these private bodies will be able to withstand the pressure leveled by the lessees, though it does seem that they have faired up to this point much better than the State has. Comparing the two cases indicates that the seeds of formal privatization of urban land ownership to their lessees are planted years in advance of the actual transfer, yet the sprouting of the privatization is not necessarily a result of higher power. The difference between these two genres of lessor behavior, as they hold up over time, appears to stem from the size of the government inventory, from high administrative costs, and principally from the administrators’ heightened sensitivity to public opinion and interest group pressures.

**Privatization of Agricultural Land used for Agriculture**

Unlike urban Israel Lands, there is no Israeli legislation allowing for formal ownership transfer of agricultural Israel Lands, and, as such, no formal privatization processes are at work over these lands. The scope of agricultural Israel Lands is several times greater than that of urban lands. About 4,400 kilometers, or around 20% of all the State’s land, are meant for agricultural work.[[65]](#footnote-65) Another 4,000 kilometers are used for pasture.[[66]](#footnote-66) Most of the agricultural territory and all the pasture are Israel Lands, administered by the government.[[67]](#footnote-67) Decision 1 of the Israel Lands Council established that these lands, similar to urban lands, be transferred via leases for periods not to exceed 49 years.[[68]](#footnote-68) Contracts for pasture lands never exceed one year.[[69]](#footnote-69) As mentioned in previous chapters, the agricultural land, historically, was the natural target for retaining government ownership due to the great importance that Zionism and the State of Israel ascribed to agricultural work in the process of renewing their hold on the Land of Israel. Retaining ownership of agricultural lands also fits with the narrower rationale of guaranteeing the production of public goods, as agriculture can produce goods such as public food safety, environmental protection, development of rural areas and the strengthening of general and political safety in border areas. Retaining ownership of lands intended for agriculture is meant to ensure the provision of this public good in the case of a political crisis, and to subsidize agricultural work and protect it from the unique characteristics which effect its stability, such as seasonal production, difficulties in matching supply to demand, high fluctuations in supply and prices, and dependence on the ever-changing provision of water. The State of Israel still views the protection and development of agricultural as supremely important.[[70]](#footnote-70) Privatizing agricultural lands may endanger this goal and lead private owners to abandon agriculture and the production of public goods in favor of non-agricultural endeavors. To avoid this, no formal privatization policies have been implemented or allowed for agricultural Israel Lands.

Despite this, informal privatization is in process for agricultural Israel Lands. The main reason for this is the perpetual increase in the demand for using agricultural lands for more profitable purposes, such as living, business, tourism and industry. Israel is a small state, the land inventory in desirable areas is limited, and the needs continue to increase. The demand increase has led, in practice if not in law, to the dimming of the splendor of agriculture. Retaining the agricultural purpose of lands has become a secondary goal to the goals of producing maximum, immediate and future utility from non-agricultural components of the land or from changing the land’s designation in the future to more profitable urban lands. This is the case both for the lessees who control the lands and for the Israel Lands Authority. The continuation of the land’s agricultural designation is a bargaining chip for those who control it in the battle over dividing the fruits of the designation change, against the owners, the Israel Lands Authority. This battle is precisely what is delaying the designation change in areas where it is crucial to do so, and that is one of the factors influencing the price hike of lands in Israel’s more desirable areas.

A symbolic expression of the decline in agricultural lands’ splendor is evident in an examination of the differences between the Israel Lands Administration’s logo and that of the Israel Lands Authority, which took over the lands’ administration in 2009. The Administration’s logo sketches wide swaths of land with dark green lines, reminiscent of agricultural or pasture land; there is no representation of urban lands. The Authority’s new logo, on the other hand, representation of agricultural lands has been restricted, and more prominent expression is given to urban lands: the logo has only one green line, on a downward-facing bias, with a brown line beneath it representing the soil, and a blue line launching upwards, representing the environmental trend. Seven black squares of differing sizes are spread out above them, clearly representing urban lands. Both logos can be found below, in Figure 4.

**Figure 4: The Logos of the Israel Lands Administration and the Israel Lands Authority**



**Until 2009 Since 2009**

**Israel Lands Administration logo Israel Lands Authority Logo**

Beginning at the end of the nineties, a public battle between the government and the representatives of the agricultural community ensued, regarding the size of the share that the latter would receive from the fruits of the land’s designation change. While the farmers claimed that they deserve relatively large shares, the government wished to restrict those shares as much as possible. This battle led to a sharp disagreement within public opinion in Israel, which seems to have become less sympathetic towards the farmers in the past years than the treatment they had been accustomed to since the founding of the State. The start of the battle was marked by an appeal filed at the end of the nineties with the Supreme Court by a social movement known in short as “The Eastern Democratic Arc” and officially as “New Discourse – For the Sake of the Democratic and Multi-Cultural Discourse in Israel” (hereon: The **New Discourse** case).[[71]](#footnote-71) In the years leading up to the appeal, the movements which represented Israel’s agricultural settlements had undertaken certain action both in the Israel Lands Council and at the political level. The government ministers in charge of the Israel Lands Administration often came from agricultural backgrounds and displayed much appreciation for that population’s interests. This allowed the representative of the agricultural settlements in the nineties to convince the Israel Lands Council and its chairman, Minister Ariel Sharon (later the Prime Minister and owner of the *Shqamim* ranch in the Negev), to make decisions that became known as “The Boeing Decisions” because of the happenstance similarity between their serial number in the Council’s list of decisions and the model numbers of Boeing planes.[[72]](#footnote-72) These decisions granted agricultural settlements two economically valuable benefits in the event of designation changes of agricultural lands for urban purposes: Preemptive right to receive the properties without applying for tender in its new designation, and the right to receive it at a discount. The discount was to be calculated based on the new value of the property, which is greater, the more desirable the area in which the property is located. The Democratic Arc movement appealed to void these decisions. The movement’s founders, who were academics, claimed that benefits should not be given to the farming community because that infringes upon equality. They claimed that the farming community is a well-off minority that represents the generation of the “founders” of the State who moved from Eastern Europe, and that there is no justification for giving them preferential treatment above weaker populations whom the movement saw itself as representing, such as “immigrants”- Jews who immigrated from Arab countries, and “natives”- Arab citizens.[[73]](#footnote-73) The Attorney General joined the appellants in claiming that the decisions should be voided, but for different reasons. He based his stance on the claim that the discounts “are not suitable to the reality of lands today…therefore, they are unreasonable”.[[74]](#footnote-74) The Court accepted the appeal and voided the decisions which granted benefits to the farmers.[[75]](#footnote-75) The ruling does not mention the sociological differences between the various appellants, and noted the agricultural community’s great, historical contribution “to the Land of Israel and the State of Israel”.[[76]](#footnote-76) The court based its ruling to void the Israel Lands Administration’s decisions on the claim that they grant farmers exaggerated, unreasonable benefits, arbitrarily defined by the value of the lands, and so infringe upon the principles of equality and distributive justice.[[77]](#footnote-77)

Ever since the **New Discourse** case, the battle over the fruits of the designation changes have taken many different forms. The government formulated a “thinner” benefits policy for the farmers who wished to change the designation of agricultural land: they would have to return the land to the Israel Lands Authority, in exchange for compensation of its agricultural value only. The government is prepared to grant additional compensation for the return of lands, though nothing particularly high, based on the amount of time that the given farmer controlled the land. It is even prepared to grant additional benefits at times, such as partnership in low percentages of urban projects to be built on the lands after their return.[[78]](#footnote-78) The farmers, for their part, do not see these incentives as enough of a compensation for the return of the lands, and are in no way hurrying to relinquish it. A senior official at the Israel Lands Authority testified in the Knesset in 2014 that until new policy was implemented following the **New Discourse** case, “the agreements were relatively simple and the desire of the rights-holders of the lands to return them was much simpler. Today, it is much more complex”.[[79]](#footnote-79)

A year later, he testified before the Israel Lands Council that “since [**New Discourse**] we are trying to create a new order regarding the return of lands following designation changes”.[[80]](#footnote-80) Without strong enough incentives to leave, both sides are simply sitting and polishing their swords so as to improve their stance in preparation for the expected eviction. The farmers are sticking to agricultural usage according to their current contracts. The State is gradually increasing the incentives it is offering for voluntary eviction but, at the same time, is threatening to end the contracts and is expanding the eviction authority it already has.[[81]](#footnote-81) However, despite legal authority to evict the farmers when the designation of the land changes, the State of Israel has thus far avoided filing eviction claims against the farmers who wish to continue with their agricultural work. The government does not particularly like the idea of using its eviction authority, because of possible public consequences. The State is not particularly skilled when it comes to large-scale evictions, as can be seen both from the difficulties with enforcing such policies among the Bedouin population[[82]](#footnote-82) and from the problems that have arisen following the eviction of entire populations from Gaza and from Judea and Samaria.[[83]](#footnote-83) It is no surprise that the government does not want to have to make use of such authority with the farming community in particular, as so many people have great admiration for their historic contribution to the State.[[84]](#footnote-84) The government would prefer to wait and hopefully reach an eviction agreement. This is, then, the main informal privatization process among agricultural lands: the farmer holds steadfast to his land by flashing his Zionism on the one hand and through the growing cost of the land, caused by the fact that the agricultural land is not being turned into urban land, on the other hand. These are the farmers’ bargaining chips. At the end of the day, they do manage to yield a part of the fruits of the designation change.

A perfect example of this process is the ***Mehadrin*** case.[[85]](#footnote-85) In the fifties, the State leased lands for planting orchards and groves to the *Mehadrin* company.[[86]](#footnote-86) The original contract did not include an express clause allowing the owner to terminate the contract in the event that it need the land for a different purpose. When the time came to renew the lease, the Israel Lands Administration conditioned the renewal on the inclusion of such a clause, assuming that one day it would need the land for non-agricultural purposes. The company opposed the addition of the clause and insisted upon its right to continue the agricultural designation of the lease according to the original terms.[[87]](#footnote-87) The company claimed that it was interested in continuing its agricultural work, and not in “economic speculation of the land”.[[88]](#footnote-88) The company’s main activity was growing and marketing agricultural products, but the company’s shares were traded on Tel-Aviv’s stock market as securities under the “Real-Estate and Construction” category, and it even has a growing department of profitable real-estate assets. Its shareholders are major investment and real-estate companies in the Israeli market.[[89]](#footnote-89) In 2012, the Tel-Aviv Regional Court accepted the company’s stance that the new clause insisted upon by the State should not be included in the new contract.[[90]](#footnote-90) As a result, the company’s 2013 report to its investors stated that:[[91]](#footnote-91)

“The company estimates that over the course of the next two decades, the designation of many hundreds of dunams of land leased to the company will be changed from agricultural to a different designation. The group’s rights in those lands, including the level of compensation it is to receive (if at all) and its ability to continue holding the land with its new designation, whether through exemption from tender or otherwise, depend, among other things, on the lease contract that will be in force at that time.”

The company’s report makes it clear that it took into account the economic utility that may result from the designation change.

The State appealed the ruling and the Supreme Court accepted the appeal, rejecting the company’s opposition to the inclusion of a stipulation in the contract that the land may be repossessed by its owners in the event of a designation change.[[92]](#footnote-92) While Justice Rubinstein did claim that he has no doubt of the authenticity of “the appellees’ claim that they are themselves interested in agriculture and not in the real-estate side of the land”, he noted that their claim “does not adequately take into account the limited national need for agricultural land compared to the past” and that “developing the land – yes. Speculations – no, so it is for the Administration and so it is for the lessees”.[[93]](#footnote-93) Yet the instructions given by the Court regarding the implementation of the authority to retract lands have only encouraged the farmers to cleave to their control of the land in its agricultural form, even if neither side is interested in that anymore. Justice Rubinstein ordered the Israel Lands Authority to examine the degree of necessity in changing designation for the good of the public: “A thorough examination […] taken seriously […] to weigh carefully […] these things should not be undertaken lightly”. He further instructed that “the appellees’ will to continue their agricultural work on the land, for which they received the lease initially, be considered”.[[94]](#footnote-94) These guidelines may well strengthen the farmers’ dedication to agricultural work, though it is doubtful if they uprooted the hopes to receive fair compensation in exchange for giving in.

Indeed, only a short time after the ruling was handed down, the controlling shareholders of *Mehadrin* approached the wider public of company shareholders with an offer to purchase stock at a price higher than the already high price in the stock market.[[95]](#footnote-95) The investors rejected the offer.[[96]](#footnote-96) The explanation both for the offer and for its rejection is hidden in the fact that despite the Supreme Court’s ruling, all sides continued to cling to positive speculations about the future of the land and the fruits that would stem from continued control of it. All sides continued to “sit on the fence” following the rejection of the proposal, and the company’s stock appeared on the Tel-Aviv stock exchange’s list of minimally traded securities between June 2015 and February 2017.[[97]](#footnote-97) The scope of the stock’s trade increased in anticipation of the May 2017 signing of an agreement that gave the company the right to high compensation for relinquishing control of the agricultural lands it leased back to the Israel Lands Authority. The contract also granted the company percentages of a large residential project to be built on that land, without applying to a public tender. The company of course reported this to its investors immediately.[[98]](#footnote-98) The wait paid off. The company won a portion of the fruits of the change in designation.

**Privatization of Agricultural Land used for Residential Purposes**

Another informal privatization process that took hold over agricultural Israel Lands is a process in which the Israel Lands Authority transfers property rights very similar to ownership, at highly discounted prices, over agricultural lands used by the farmers who lease them as residences. This process appears to be a direct and natural continuation of the privatization processes in play over urban lands. Its character as an informal process stems from the allocation process of most of the agricultural lands, known as the “*Nahalot* (Estates) System”.[[99]](#footnote-99) This system allocates around 3,000 kilometers of agricultural Israel Lands to settlements of a collective nature, meaning *moshavim* (32,508 estates) and *kibbutzim* (35,402 estates).[[100]](#footnote-100) The estate, which is the system’s most basic unit of allotment, includes as a single unit, land used for agriculture and other components used for other purposes, such as buildings used as the farmers’ homes and other structures used for any and all production needs.[[101]](#footnote-101)When the government enters into a lease contract of an agricultural estate, it is essentially leasing land used for many purposes more urbane than simply agricultural. The formulaters of the land policy in the fifties believed that the main use of the land was agricultural, and the other uses were secondary or incidental to that, and actually served it. This outlook had three operative consequences: First, splitting up the different components of the estate was prohibited, as it was believed that all the uses together as a unit served the land’s agricultural purpose. Second, the rights over all the estates were given to the farmer in exchange for symbolic rental payments which were common for agricultural land. Finally, the continuation of the contract with the farmer was contingent upon the continued agricultural use of the land and that the farmer himself live on the property. A farmer who ceased working his estate or who left it was supposed to return it, with all of its components, to the government, so it could be allotted to someone else.[[102]](#footnote-102) This policy suited the socialist-Zionist worldview of those who designed the system, with its emphasis on encouraging agriculture and subsidizing it. One of the main achievements of this system was that most of the estates are still being tilled today.[[103]](#footnote-103)

Despite this, the reality has made this system dangerous and inefficient both to the holders of the land and to the government. The main reason for this is, as noted, the perpetual increase in demand for use of agricultural lands for more profitable uses. The value of estates in many areas is significantly affected by the value of the non-agricultural components included in the land, especially the value of the residential component. Capital holders who wish for large homes on pleasant estates are willing to pay high sums which can fluctuate from a million and a half to eight or nine million US dollars.[[104]](#footnote-104) Were they to be forced to upkeep the estates’ agricultural usage, that would be a small burden to bear. Yet the high price of estates, because of the residential component, actually prevents their purchase by those who are interested in them specifically for agricultural work, because the chances that the agricultural activity will return their investment are extremely low.[[105]](#footnote-105) The mutual conditioning of agricultural work and continued residence on the properties is very dangerous for seasoned residents of agricultural settlements. Many of them no longer work the land but continue to hold on to the estates because of the non-agricultural advantages that they provide, or which may come about in the future.[[106]](#footnote-106) The fear of losing these advantages is the only thing which has prevented the abandonment of the agricultural lands thus far, but it also includes the risk of eviction for older farmers. The linkage of the built territory with the agricultural territory has become a burden for some estate holders. The government also sees disadvantages in this set-up. The connection between the different components of the estate negatively effects the commerciality of the built territories in agricultural areas, restricts their development, and amplifies the increase in the price of apartments. Selling estates at the high market prices which reflect their urban value yields a high premium for the farmers, due to the significant gap between the symbolic rental fees they pay and the urban market value of the estates. While the government does receive a fair share of this premium through taxes, the share could grow if the urban components of the estate were to be separated and subjected to the accepted payment guidelines for urban lands.

It was for these reasons that for years, the representatives of the farmers compared the status of their property rights over the estate residences to the status of lessees’ rights over urban lands. Every few years, various public committees suggested long-term anchoring of the farmers’ residential rights.[[107]](#footnote-107) Yet the implementation of these suggestions has been delayed for many years, due to the waning public admiration for the agricultural community and the judicial rhetoric of the **New Discourse** case, which sent the message that there is no reason to give extensive benefits to farmers. Negotiations again developed between the farmers and public officials regarding the conditions for instituting their rights in residential areas. While the farmers claimed that they should be granted rights under the same conditions as urban lessees, the State claimed that the symbolic lease prices that the farmers paid meant that they should have to pay more than their urban counterparts. Worry was also expressed that if the residential rights in rural settings be individually protected, that would render the incentive to continue tilling the agricultural parts of the estate powerless, and would lead to exaggerated suburban development.[[108]](#footnote-108) The Israel Lands Council finally formulated a policy, in a series of decisions, which granted the farmers identical leasing rights to those of their urban counterparts in the residential component of their estates, in exchange for a lump-sum payment of only 33% of the value of the land and the rights to it. The farmers were further granted the right to split part of the residential structures from the agricultural estate and to trade them, subject to the condition that at least one residential unit remain on the estate and contingent upon its continued agricultural use.[[109]](#footnote-109) Petitions were filed in the Supreme Court against this policy, both by farmers who claimed that the price is too high and does not take their investment in the properties into account, and by “The Union for Distributive Justice” which claimed that the price of the benefits granted the farmers is too low and gives them an advantage over the urban population.[[110]](#footnote-110) The **Forum of the Heads of Israel’s Large Cities** joined the opposition, claiming that urbanizing rural areas will create competition with established cities and threaten their proper urban development.[[111]](#footnote-111) The Supreme Court adjudicated all the petitions and rejected them all. Justice Arbel summarized her ruling with the finding that the Israel Lands Council: [[112]](#footnote-112)

“Gives proper weight to the complex reality, to the past as well as the present, to agricultural settlement as well as urban settlement, to the great efforts invested and the proper exchange that ought to be given for them, to change as well as renewal”.

In light of these development, the fate of the residential areas within agricultural settlements has already been determined. Although the Israel Lands Council has yet to decide on the question of formal ownership transfer to the farmers, for all intents and purposes, the farmers already hold ownership. Will these steps not infringe upon incentives that thus far have motivated the farmers to continue tilling the land? The Supreme Court is of the opinion that the obligation to retain the connection between at least one housing unit in the residential area and the agricultural element of the estate, which means that the rights-holders must continue to live their and work the land, will ensure the continuation of agricultural activity.[[113]](#footnote-113) Beyond the spirit of Zionism which still beats in the hearts of some of the farmers, it appears that the main guarantee of agricultural activity in Israel is bound up in the continued battle over the fruits of designation changes of agricultural lands currently used for agricultural purposes. The farmers will continue to control and zealously work the land out of the hope for the eventual right to the attractive, urban share of those fruits. It is difficult to predict if a politician or public official will rise to power and dare to take the farmers’ estates or their homes by force, with the intention of changing their designation. Such has yet to occur and it is not reasonable that it should happen in the future. The formal ownership of agricultural lands is still fully in the hands of the government, yet a significant portion of its contents have already irreparably moved to private hands. This is just another example of the famous saying that “Bureaucracy defends the status quo long past the time when the quo has lost its status”.[[114]](#footnote-114)

1. *Peter's Quotations: Ideas for Our Time* 83 (Quill, 1977). [↑](#footnote-ref-1)
2. §1 Basic Law: Israel Lands, 5720-1960, S.H.56, 14 L.S.I. 48 (Emphasis added). [↑](#footnote-ref-2)
3. Gilat Benchetrit, Daniel Czamanski, *The gradual abolition of the public leasehold system in Israel and Canberra: what lessons can be learned?* 21 Land Use Policy 45, 48 (2004); Rachelle Alterman, Planning in the face of crisis: Land use, housing and mass immigration in Israel ??? (Routledge 2002); Joshua Weisman, *Camouflaged Privatization of Land in Israel* 21 Tel-Aviv Law Review 525, 527-528 (1998)(Hebrew); Rachelle Alterman, *Who can retell the exploits of the Israel Lands Authority?-From the aspects of justifying the continuation of local ownership of land*, 21 Tel-Aviv University Law Review 535, 546 (1998)(Hebrew); Daphna Barak-Erez, *An Acre here, an Acre there: Israel Land Administration in the Vise of Interest Groups*, 21 Tel-Aviv University Law Review 613, 614-617 (1998)(Hebrew). [↑](#footnote-ref-3)
4. Daphna Barak-Erez, *The Administrative Process as a Domain of Conflicting Interests*, 6 Theoretical Inquiries in Law 193, 204-208 (2005); Barak-Erez, *An Acre here*, supra note 2, at 617-620. [↑](#footnote-ref-4)
5. § 3 Israel Lands Administration Law 5720-1960, S.H.57, 14 L.S.I. 50. [↑](#footnote-ref-5)
6. Ibid. [↑](#footnote-ref-6)
7. HCJ 244/00 The New Discourse Organization for a Democratic Discourse in Israel v. The Minister of National Infrastructures, PD 56(6) 25, 87-88 (2002)(Hebrew)(Hereafter *The New Discourse* case). [↑](#footnote-ref-7)
8. Ibid, at 65-66. [↑](#footnote-ref-8)
9. § 4a Israel Lands Administration Law 5720-1960 as amended by §3 Israel Lands Administration (Amendment) Law 5755-1995, S.H. 111 (Hebrew) and §6 Israel Lands Administration (Amendment No. 7) Law, 5769-2009, H.H. 318 (Hebrew). [↑](#footnote-ref-9)
10. These changes can be formally identified by tracing the changes in the definition of "Minister" in Israel Lands Administration Law. [↑](#footnote-ref-10)
11. The identity of the chairpersons of the Council can be monitored according to their signatures on the decisions of the Council. Ariel Sharon served as the head of the Council during the years 1990-1992, 1996-1999 and during part of his tenure as Prime Minister at the years 2002-2003. Ehud Olmert served as the council's chairperson in 2003-2006. [↑](#footnote-ref-11)
12. Moran Azulay, *Kahlon demands Israel Land Administration portfolio*, Ynet-News, 12 January 2015, [https://www.ynetnews.com/articles/0,7340,L-4614404,00.html](https://www.ynetnews.com/articles/0%2C7340%2CL-4614404%2C00.html); §14.1 A coalition agreement for the establishment of the 34th Government of the State of Israel between the Likud faction in the 20th Knesset and all of our faction headed by Moshe Kahlon in the 20th Knesset, 29 April 2015 (Hebrew), <http://main.knesset.gov.il/mk/government/documents/Coalition2015_1.pdf>; Moti Basok, *The government approved the transfer of the Israel Lands Authority and the Planning Administration to the Treasury*, TheMarker 19 May 2015 (Hebrew), <https://www.themarker.com/news/1.2640198>. [↑](#footnote-ref-12)
13. § 4 Proposed Bill Basic Law: Israel Lands5720-1960, H.H.34 (Hebrew). [↑](#footnote-ref-13)
14. Yossi Katz, The Land Shall Not Be Sold in Perpetuity: The Jewish National Fund and the history of state ownership of land in Israel 76 (De Gruyter, Berlin 2016). [↑](#footnote-ref-14)
15. § 4a Israel Lands Administration Law 5720-1960 as amended by §6 Israel Lands Administration (Amendment No. 7) Law, 5769-2009, H.H. 318 (Hebrew). [↑](#footnote-ref-15)
16. Ravit Hananel, [*Zionism and agricultural land: National narratives, environmental objectives, and land policy in Israel*](http://www.sciencedirect.com/science/article/pii/S0264837710000311), 27 Land Use Policy 1160, 1163 (2010); The Committee for Examining the Separation of the Management of JNF Assets from the Administration of the Israel Land Administration ("Ben-Eliyahu Committee") 33-34 (29.1.2009)(Hebrew). [↑](#footnote-ref-16)
17. Mickey Rosenthal, The Shakshuka System-Documentary Film (Hebrew, English subtitles), <https://www.youtube.com/watch?v=mwVUr8yQ-xg> [↑](#footnote-ref-17)
18. Shuki Sadeh, *Digging Into the Lobbying Efforts of Natural Gas Partner Noble Energy*, HAARETZ July 11, 2015, <https://www.haaretz.com/israel-news/business/.premium-1.665415>. [↑](#footnote-ref-18)
19. The Dead Sea Concession Law (Amendment No. 2), 5746-1986,S.H.208 (Hebrew). [↑](#footnote-ref-19)
20. Minutes of meeting no. 200 of the Eleventh Knesset, April 16, 1986 (Hebrew). [↑](#footnote-ref-20)
21. Minutes of Session 205 of the Eleventh Knesset, May 27, 1986 (Hebrew). [↑](#footnote-ref-21)
22. Partial Arbitration Ruling, State of Israel v. Dead Sea Works Ltd. (19.5.2014)(Hebrew)(A copy is in the author's possession). [↑](#footnote-ref-22)
23. Ministry of Finance, Invitation to Submit Positions toward the end of the Dead Sea Concession [↑](#footnote-ref-23)
24. Amiram Barkat, *Treasury wants tender for Dead Sea concession,* Globes 17 January 2017, <http://www.globes.co.il/en/article-accountant-general-dont-extend-israel-chemicals-concession-1001172487>. [↑](#footnote-ref-24)
25. Ibid. [↑](#footnote-ref-25)
26. Amiram Barkat, Stella Korin –Liber, *The creative solution that will allow Ofer to hold the Dead Sea*, Globes, 4 September 2017 (Hebrew), <http://www.globes.co.il/news/article.aspx?did=1001203701> . [↑](#footnote-ref-26)
27. S.H.56 (Hebrew); L.S.I 49. [↑](#footnote-ref-27)
28. Ibid, § 2(7). [↑](#footnote-ref-28)
29. Development Authority (Transfer of Property) Law 5710-1950, S.H.278 (Hebrew); 4 L.S.I. 151;

The State Property Law, 5711-1951, S.H. 52 (Hebrew); 5 L.S.I. 45. [↑](#footnote-ref-29)
30. Minister of Finance Eliezer Kaplan MK Yohanan Bader to the Knesset, *Divrei Ha-Knesset* Vol.3, Col. 309 (1949) (Hebrew); MK Yohanan Bader to the Knesset, ibid at 301. [↑](#footnote-ref-30)
31. Report of the Committee for the Reform of the Israel Lands Policy (Ronen Committee) 18 (1997) (Hebrew). [↑](#footnote-ref-31)
32. HCJ 729/10 Tnua'at Dror Israel v. State of Israel, Par. 18 J. Beinisch (Nevo, 24.5.2012). [↑](#footnote-ref-32)
33. Israel Land Administration, Report on the activities of the Israel Land Administration for the year 1972/73 36 (1973) (Hebrew); Israel Land Administration, Report on the Activities of the Israel Lands Administration for 1989/90 110 (1990) (Hebrew). Israel Land Administration, Report on the activities of the Israel Lands Administration for 1992/93 80 (1994)(Hebrew). [↑](#footnote-ref-33)
34. § B1, B4 Decision 1 of Israel Lands Council, *Land Policy in Israel* (May 17, 1965). [↑](#footnote-ref-34)
35. Weisman, *Camouflaged Privatization* supra note 2, at 531; Joshua Weisman, *Long term lease as a substitute for ownership,* Memorial book for Gad Tedeschi - Essays in Civil Law 211, 224 (1996)(Hebrew). [↑](#footnote-ref-35)
36. Decision 130 of Israel Lands Council *Changes in the conditions of leasing land to saturated public housing* (10.9.1973)(Hebrew); Benchetrit & Czamanski, supra note 2, at 49; Ravit Hananel, *The Land Narrative: Rethinking Israel’s National Land Policy*, 45 Land Use Policy 128, 130-131 (2015). [↑](#footnote-ref-36)
37. §6 Decision 130. [↑](#footnote-ref-37)
38. §2 Decision 130. [↑](#footnote-ref-38)
39. Alterman, Planning in the face of crisis, supra note 2, at ???; Alterman, *Who can retell*, supra note 2, at ???; Amir Kaminetzki, Long-term Lease 475-476, 482, 535 (2011)(Hebrew). [↑](#footnote-ref-39)
40. Joshua Weisman, Property Law-General Part 255 (1993) (Hebrew). [↑](#footnote-ref-40)
41. Ibid, at 248; Kaminetzki, supra note 38, at 534-535. [↑](#footnote-ref-41)
42. §1-§2.1-2.2 Decision 146 of Israel Lands Council *Jubilee Lease - Rules for Extending the Lease Contract - Land for Urban Housing* (3.2.1975); Decision 269 of Israel Lands Council *Jubilee Lease - Rules for Extending the Lease Contract for Urban Land* (22.8.1983; Decisions 282, 537, 689, 714, 851, 968, 1061, 1090 of of Israel Lands Council-Amendments to the former decisions; Benchetrit & Czamanski, supra note 2, at 48-49; Alterman [↑](#footnote-ref-42)
43. §B.3 Decision 1, supra note 33; Ministry of Justice-Land Assessment Division, Guidelines - Special issues in the assessments carried out for the Israel Lands Administration (April 3, 2011)(Hebrew). [↑](#footnote-ref-43)
44. James v. United Kingdom , 96 Eur. Ct. H.R Ser. A 67 (1986), para.49. [↑](#footnote-ref-44)
45. Report of the Public Committee to Examine Land Policy Goals (The Goldenberg Committee)(1986)(Hebrew); Report of the Committee to Examine New Urban Land Reorganization (Tzaban Commission)(1995) (Hebrew);Report of the Committee for Reform of the Israel Lands Policy (Ronen Committee)(1997) (Hebrew); Report of the Public Committee for Reform in the Israel Land Administration (Gadish Committee) (2005) (Hebrew); Benchetrit & Czamanski, supra note 2, at 48-49. [↑](#footnote-ref-45)
46. Ronen Committee 1997, supra note 30, at 15. [↑](#footnote-ref-46)
47. Joshua Weisman, *A Lease That Is Renewed Permanently - A Miracle Drug or Deceit*, 29 *Karka* 2, 11 (1987)(Hebrew); Weisman, *Camouflaged Privatization* supra note 2, at 527-528 ;Weisman, Property, supra note 39, at 220. [↑](#footnote-ref-47)
48. Report on the Activities of the Israel Lands Administration for 1999/2000 50 (2000)(Hebrew). [↑](#footnote-ref-48)
49. § 11, 12 The Arrangements Law in the State Economy (Legislative Amendments for Achieving Budget and Economic Policy Goals for the 2006 Fiscal Year), 2006, S.H. 306 (Hebrew); §4(17) Israel Land Authority Law. [↑](#footnote-ref-49)
50. §1, 2(7) Israel Lands Law, 5720-1960 as amended in Section 13 of the Israel Lands Administration Law (Amendment 7), 5769-2009, S.H. 318 (Hebrew). [↑](#footnote-ref-50)
51. §4(17) Israel Lands Authority Law; Decision 1370 Israel Lands Council *Reform in the Administration of Israel Lands* (June 22, 2014). [↑](#footnote-ref-51)
52. Ibid. [↑](#footnote-ref-52)
53. Data provided by former Israel Lands Administration director-general Yaron Bibi to the Knesset. Minutes of the 19th meeting of the Economics Committee of the 18th Knesset (June 3, 2009). [↑](#footnote-ref-53)
54. Report on the activities of the Israel Lands Authority for the budget year 2016 56-57 (2017) (Hebrew). [↑](#footnote-ref-54)
55. § 2(7) Israel Lands Law, as amended on 2009; See also supra note 31. [↑](#footnote-ref-55)
56. Dror case, supra note 31, J. Beinisch at par. 39. [↑](#footnote-ref-56)
57. Examples of the phenomena are the *Gan Rehavia* buildings on 1 Narkis Street in Jerusalem leased by the Order of the Sisters of Zion or buildings on Sokolov Street in Jerusalem leased by the Greek Orthodox Patriarchate. The author holds Land Registration records of these sites. [↑](#footnote-ref-57)
58. Koby Bir, *Renewal and Extension of Lease Contracts on Church Land*, 119 Land and their Value, Journal of the Real Estate Appraisers Association in Israel 43 (1999)(Hebrew). [↑](#footnote-ref-58)
59. Nir Hasson, *End of Church Leases Sparks Real Estate Storm in Jerusalem*, HAARETZ June 6, 2016. [www.haaretz.com/israel-news/.premium-1.723415](http://www.haaretz.com/israel-news/.premium-1.723415); Nir Hasson, *Israeli Land Sale by Orthodox Church Puts Tenants’ Homes in Danger*, HAARETZ June 28, 2017. [www.haaretz.com/israel-news/.premium-1.798173](http://www.haaretz.com/israel-news/.premium-1.798173). [↑](#footnote-ref-59)
60. Udi Shaham, *We will not allow residents to be harmed because of real estate deals*, The Jerusalem Post, October 2, 2017. [www.jpost.com/Israel-News/We-will-not-allow-residents-to-be-harmed-because-of-real-estate-deals-506560](http://www.jpost.com/Israel-News/We-will-not-allow-residents-to-be-harmed-because-of-real-estate-deals-506560); Greer Fay Cashman, *Rivlin meets with Greek Patriarch about property sales*, The Jerusalem Post**,** October 3, 2017. <http://www.jpost.com/Israel-News/Rivlin-meets-with-Greek-patriarch-about-property-sales-506646>. [↑](#footnote-ref-60)
61. Municipality of Tel Aviv, Municipal Assets Division List of Municipal Assets, Tel-Aviv Municipality website, viewed 20 October 2017 (Hebrew), <https://www.tel-aviv.gov.il/Forms/%D7%A8%D7%A9%D7%99%D7%9E%D7%AA%20%D7%94%D7%A0%D7%9B%D7%A1%D7%99%D7%9D%20%D7%94%D7%A2%D7%99%D7%A8%D7%95%D7%A0%D7%99%D7%AA.pdf> . [↑](#footnote-ref-61)
62. Shlomit Tzur, *Supreme Court: Green light for Tel Aviv municipality to begin evacuating tenants in Bitzaron*, Globes January 5, 2014 (Hebrew), [www.globes.co.il/news/article.aspx?did=1000907034](http://www.globes.co.il/news/article.aspx?did=1000907034). [↑](#footnote-ref-62)
63. Shlomit Tzur, *Did you buy an apartment in Tel Aviv? It is possible that in a few decades you will have to part from it*, TheMarker, November 12, 2010, <https://www.themarker.com/realestate/1.580694>. [↑](#footnote-ref-63)
64. Municipality of Tel Aviv - Municipal Assets Division, Renewal of "*Ba-al Bayit*" (House Owner) operation for 2018-2017 in Yad Eliyahu and Nahalat Yitzhak, Tel-Aviv Municipality website, viewed 20 October 2017 (Hebrew), <https://www.tel-aviv.gov.il/Residents/Assets/Pages/Landlord.aspx>. [↑](#footnote-ref-64)
65. Israel Bureau of Statistics Israel Statistic Year Book 2016 7 (2017), <http://www.cbs.gov.il/shnaton67/np1.pdf> (Hebrew). [↑](#footnote-ref-65)
66. Ministry of Agriculture and Rural Development, Pasture Authority, Ministry Website (Hebrew) (viewed 23 October 2017), <http://www.moag.gov.il/yhidotmisrad/technun_calcali/rashut_miree/Pages/default.aspx>. [↑](#footnote-ref-66)
67. Data provided by the Israel Lands Administration to the Committee for Examination of the Land Policy for the Management of Agricultural Land, which is included in the Israeli Lands Law, which was appointed by the Government of Israel in October 2010. The author was a member of the Committee. Author's record dated January 20, 2011, 21.7.2011(Hebrew). [↑](#footnote-ref-67)
68. §A3 Decision 1, supra note 33. [↑](#footnote-ref-68)
69. Pasture Authority Website, supra note 66. [↑](#footnote-ref-69)
70. Ministry of Agriculture and **R**ural Development**,** Ministry Vision and Goals for 2017, Ministry Website (viewed 23 October 2017), <http://www.moag.gov.il/en/About%20the%20Ministry/Pages/Ministry_Vision.aspx> . [↑](#footnote-ref-70)
71. *The New Discourse* case, supra note 6. [↑](#footnote-ref-71)
72. Decision 717 of the Israel Lands Council, *Long-leasing of land for factories of kibbutzim, collective moshavim, moshavim and cooperative villages*, June 20, 1995 (Hebrew); Decision 727 of the Israel Lands Council, *Agricultural land whose purpose was changed for another purpose under the Israel Lands Administration Law, 5720-1960*, July 3, 1995 (Hebrew); Decision 737 of the Israel Lands Council, *Expansion of residential units in agricultural settlements that are moshav workers, cooperative village, cooperative moshav, kibbutz or agricultural cooperative society*, 17 December 1995 (Hebrew); Hananel, *Zionism and agricultural land*, Supra note 15, at 1167. [↑](#footnote-ref-72)
73. Hananel, *Zionism and agricultural land*, Supra note 15, at 1164; Barak-Erez, *The Administrative Process*, supra note 3 at 205; Benchetrit & Czamanski, supra note 2, at 51; §59, 102,115The Petitioner's petition in the *The New Discourse* case (Hebrew). [↑](#footnote-ref-73)
74. *The New Discourse* case, supra note 6, at ??. [↑](#footnote-ref-74)
75. Ibid, at ??. [↑](#footnote-ref-75)
76. Ibid, at 64. [↑](#footnote-ref-76)
77. Ibid, at ??. [↑](#footnote-ref-77)
78. Resolution 1470 of the Israel Lands Council, *Termination of lease on agricultural land whose zoning was changed to a different purpose, for residence or employment*, 13 July 2016; Previous decisions on this subject: 1426 (9.6.2015), 1285 (3.6.2013), 1259 (29.10.2012), 1222 (6.12.2012). [↑](#footnote-ref-78)
79. Testimony of Mr. Ilan Dgani, Director of the Marketing Department of the Israel Lands Authority, Minutes of meeting no. 268 of the 19th Knesset Internal Affairs and Environment Committee (29.4.2014) (Hebrew). [↑](#footnote-ref-79)
80. Testimony of Mr. Ilan Dgani, Director of the Marketing Department of the Israel Land Authority, Transcript of the meeting of the Israel Land Council on 29 June 2015. [↑](#footnote-ref-80)
81. §4A of the Public Land (Land Evacuation) Law, 5741-1981, as amended in Section 4 of the Public Land Law (Removal of Invaders) (Amendment) 5765-2005,S.H.106 (Hebrew); §29A-29I of Promotion of Constructions in Preferred Housing Sites (Temporary Order) Law, 5764 - 2014, as amended in the Promotion of Constructions in Preferred Housing Sites (Temporary Order) (Amendment No. 3), 5766 – 2016 (S.H.682)(Hebrew) and Promotion of Constructions in Preferred Housing Sites (Temporary Order) (Amendment No. 4), 5767 – 2017 (S.H.1162)(Hebrew). [↑](#footnote-ref-81)
82. Israel Kershner, *Villager and Israeli police officer die in clash at Bedouin hamlet*, NY Times, January 18, 2017, <https://www.nytimes.com/2017/01/18/world/middleeast/israel-arab-home-demolition.html>; Havatzelet Yahel *Land Disputes between the Negev Bedouin and Israel* 11 Israel Studies 1, 8-10 (2006). [↑](#footnote-ref-82)
83. The New York Times, *Israel Ejects Settlers in Last Stand at West Bank Synagogue*, NY Times, February 1, 2017, <https://www.nytimes.com/2017/02/01/world/middleeast/amona-west-bank-settlers-eviction.html>; Yair Sheleg, *The Impact of the Disengagement on Religious Zionism*, 27 Jewish Political Studies Review 52, ??? (2015); Suzie Navot, *The Israeli Withdrawal from Gaza - A Constitutional Perspective*, 12 [European Public Law ??, ??? (2006](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1126509##)); HCJ 1661/05 Gaza Coast Regional Council v. Knesset Israel, Section 82 of the majority ruling and section 39 of Justice Levy's ruling (Nevo, 9 June 2005)(Hebrew). [↑](#footnote-ref-83)
84. *The New Discourse* case, supra note 76; HCJ 1027/04 Independent Cities Forum v. Israel Lands Council, IsrSc [Nevo, 9.6.2011], J. Arbel, par. 89 (Hebrew). [↑](#footnote-ref-84)
85. CA 8325/12 State of Israel Israel Lands Administration v. Mehadrin Ltd. (Nevo, 5.6.2014)(Hebrew). [↑](#footnote-ref-85)
86. Ibid, Justice Rubinstein at section 1-3. [↑](#footnote-ref-86)
87. Ibid, Justice Rubinstein at section 9. [↑](#footnote-ref-87)
88. Ibid, Justice Rubinstein at section 58. [↑](#footnote-ref-88)
89. The Tel Aviv Stock Exchange, *Mehadrin Ltd.*, Maya - Internet messaging system (Hebrew)(Last visited 24.10.2017), <http://maya.tase.co.il/company/686>. [↑](#footnote-ref-89)
90. (Tel Aviv District Court) 1523/07 Mehadrin Ltd. v. Israel Lands Administration (Nevo, 27.9.2012) (Hebrew). [↑](#footnote-ref-90)
91. Mehadrin Ltd., Periodic Report for 2013 52 (2.3.2014)(Hebrew), [mayafiles.tase.co.il/RPdf/881001-882000/P881766-00.pdf](http://mayafiles.tase.co.il/RPdf/881001-882000/P881766-00.pdf). [↑](#footnote-ref-91)
92. Mehadrin case, supra note 85, Justice Rubinstein at section 41, 49; Justice Barak Erez at section 1. [↑](#footnote-ref-92)
93. Ibid, Justice Rubinstein at section 52. [↑](#footnote-ref-93)
94. Ibid, Justice Rubinstein at section 51. [↑](#footnote-ref-94)
95. Mehadrin Ltd., Details of a full tender offer 9-6 (1.6.2014)(Hebrew), [mayafiles.tase.co.il/RPdf/900001-901000/P900744-00.pdf](http://mayafiles.tase.co.il/RPdf/900001-901000/P900744-00.pdf) . [↑](#footnote-ref-95)
96. Delek Group, Unaudited financial statements as of June 30, 2014 4 (28.8.2014)(Hebrew), [maya.tase.co.il/bursa/report.asp?report\_cd=917640](http://maya.tase.co.il/bursa/report.asp?report_cd=917640) [↑](#footnote-ref-96)
97. Mehadrin Ltd., Condensed Financial Statements as at March 31, 2015, 11 (12.5.2015)(Hebrew), [maya.tase.co.il/bursa/report.asp?report\_cd=965739-00&Type=Pdf](http://maya.tase.co.il/bursa/report.asp?report_cd=965739-00&Type=Pdf). [↑](#footnote-ref-97)
98. Mehadrin Ltd., An immediate report on an event or matter deviating from the corporation's ordinary business - the signing of a land restitution agreement with the Israel Land Authority (4.5.2017)(Hebrew), <http://maya.tase.co.il/reports/details/1095835> . [↑](#footnote-ref-98)
99. A.4.a Decision 1, supra note 33. [↑](#footnote-ref-99)
100. Data provided by the Israel Lands Administration to the Committee for Examination of the Land Policy for the Management of Agricultural Land, which is included in the Israeli Lands Law, which was appointed by the Government of Israel in October 2010. The author was a member of the Committee. Author's record dated January 20, 2011 (Hebrew). [↑](#footnote-ref-100)
101. §A.1, A.7 Decision 1, supra note 33. [↑](#footnote-ref-101)
102. Ibid at § A5-A9; Decision 427 of the Israel Lands Council, *Lease Fees for Agricultural Land under the Israel Lands Administration Law, 5719-1960* (3.8.1989)(Hebrew). [↑](#footnote-ref-102)
103. Data provided by the Ministry of Agriculture (Mr. Shay Dotan) to the Committee for Examination of the Land Policy for the Management of Agricultural Land, which is included in the Israeli Lands Law, which was appointed by the Government of Israel in October 2010. The author was a member of the Committee. Author's record dated February 3, 2011 (Hebrew). [↑](#footnote-ref-103)
104. Nimrod Bousso, *The Transformation of the Moshav: From Chicken Coops to Mansions*, HAARETZ June 26, 2015, [www.haaretz.com/israel-news/business/real-estate/.premium-1.663002](http://www.haaretz.com/israel-news/business/real-estate/.premium-1.663002); Ministry of Justice, Land Assessment Division, Guidelines - Preparation of Assessments for the Calculation of Consent Fees in *Nahala* (Estate)(December 2007)(Hebrew). [↑](#footnote-ref-104)
105. Gideon Vitkon, *Agricultural Land Management Policy in Israel*, 11 *Mekarkein* (Real Estate) 103, 104 (2012)(Hebrew). [↑](#footnote-ref-105)
106. Larisa Fleischmann, Eran Feitelson, Menachem Slutzky, Changes in the nature of agriculture and the farmland - attitudes of residents of the rural area in the central region 39 (2009)(Hebrew). [↑](#footnote-ref-106)
107. Ronen Committee 1997, supra note 30, at 20-31; Report of the interministerial team to examine all aspects of changing the designation of agricultural land (Milgrom Committee) 52-56 (2000) (Hebrew); Report of the Public Committee for Reform in the Israel Lands Administration (Gadish Committee) (16) (2005) (Hebrew); Report of the Committee to Examine the Rights in the Residential Area of the Agricultural Communities (Haber Committee) 35-36 (2005) (Hebrew). [↑](#footnote-ref-107)
108. Independent Cities Forum, supra note 84, J. Arbel at par. 9. [↑](#footnote-ref-108)
109. Decision 979 of the Israel Lands Council, *Determination of rights in the residential plot in agricultural settlements that are moshavim, cooperative village, cooperative moshav, kibbutz or agricultural cooperative association* (27.3.2007); Several changes have occurred in this decision since it was adopted. Its updated and integrated versions are now expressed in respect of moshav - in Decision 1464 (18.4.2016) and in respect of Kibbutz – in Decision 1456 (18.4.2016). [↑](#footnote-ref-109)
110. Independent Cities Forum, supra note 84, J. Arbel at par. 18, 21, 25. [↑](#footnote-ref-110)
111. Independent Cities Forum, supra note 84, J. Arbel at par. 19. [↑](#footnote-ref-111)
112. Independent Cities Forum, supra note 84, J. Arbel at par. 148. [↑](#footnote-ref-112)
113. Independent Cities Forum, supra note 84, J. Arbel at par. 72. [↑](#footnote-ref-113)
114. *Peter's Quotations: Ideas for Our Time* 83 (Quill, 1977). [↑](#footnote-ref-114)