



המכון לאסטרטגיה ציונית
THE INSTITUTE FOR ZIONIST STRATEGIES

Executive Summary

As part of its efforts to save the economy from the world economic crisis, the 32nd Israeli Government chose to institute a reform in the Israel Land Administration (ILA). It is understandable that this reform may in fact be essential for a future increase in economic growth, but without properly dealing with the substantive aspect of the reform, it can be stated that this reform contains a number of components that harm the State of Israel's national interests as the National Home of the Jewish People.

Presented here are clauses that we find harmful to the Zionist Goal, followed by means to amend them while preserving the interests of the Jewish People, and without harming the objectives of the reform:

- A. The reform asserts that **State lands will be transferred to private ownership**, in clear defiance of Basic Law: Lands of Israel, which declares that these lands are only to be leased. This change opposes the Jewish principle of "This land will never be sold permanently", raises the chances of hostile purchase of these lands, and releases these lands from the hands of the Jewish People and its future generations.

Our recommendation is that **State lands remain in the possession of the State, without harming the rights of the lessees and by means of virtually eliminating the bureaucracy required between the lessees and the Administration.**

B. The reform delegates planning and building authority to the local boards, which are vulnerable to political pressures from local pressure groups. If they are unable to stand these pressures, this will bring about **harsh planning and building problems in the local councils**, especially in those already suffering from improper administration.

Our recommendation is that **local planning committees are only granted authority of departments that have already proven proper management over time, and will be subordinate to regional planning committees which will properly respond to appeals.**

C. The reform harms the rights and status of the JNF and does not ensure essential future arrangements to preserve the interests of the JNF in light of the proposed reform.

Because of the moral obligation of the State of Israel to the JNF and the Jewish People, our recommendations on the issue are:

1. Future **land exchanges** between the IDA and the JNF are to **include lands capable of being developed.**
2. **The value of the lands under IDF ownership is to remain the same.**
3. **The position of the JNF on the IDA board is to be maintained.**
4. **The JNF is to manage its lands independently** and in accordance with its founding documents.

The position paper proposes to implement the reform only following a number of adjustments, as described in the recommendations chapter, and strives to prevent harm to the position of the State of Israel as the National Home for the Jewish People.

Introduction

Since its establishment four years ago, the Institute for Zionist Strategies has dedicated itself to numerous activities, including but not limited to public action with the goal of conscious and constitutional strengthening of the Jewish sovereignty of the State of Israel. We believe this action is required in order to counter the faltering of the certainty of many Jews, both in Israel and the Diaspora, of the legitimacy of Zionism, which holds the existence of the Jewish State, the National Home for the Jewish People in its entirety in the Land of Israel, at its core.

Jewish national sovereignty in the State of Israel will continue to exist for the long term, even in times of peace, if the Jewish People continues to maintain a demographic majority and is able to sustain its current geographic majority. It follows that so long as the vast majority of the State's citizens are Jews, and they continue to reside in a large majority of the land, Jewish sovereignty of the State of Israel will be ensured.

According to the nature of the definition of a National Home – and unfortunately yet not stated by law – lands of Israel belong to the entire Jewish People, and are trustfully managed by the State of the Jewish People, the State of Israel. The State holds and maintains yet unsettled lands, so that Israeli-born Jews or Jewish Olim may settle them in the future.

Land is a national resource that is unusual in its characteristics. It is single-use and finite in its quantity. From this aspect, and because of the special purpose given to State land in the special existential conditions of the Jewish State, the law affirms that the lands of Israel will always remain under the ownership of the State, which will allocate them according to the needs of its citizens and in accordance with the national goals.

A reform in the Israel Land Administration will soon be presented for Knesset approval. This reform strives to correct failures and remove obstacles that lay in the way of economic development in the State of Israel.

The purpose of this position paper is to highlight several points in the proposed reform for the Israel Land Administration, which if carried out, would harm the Zionist goals as described above. It is quite understandable that the reform in the ILA may be essential to economic growth and to streamlining the services available to citizens. Even so, it appears that the proposed reform was composed without the attention befitting the ideological-Zionist obligation of the new government to ensure that the State of Israel's position as the Jewish State remains a paramount goal.

The position paper proposes to implement the reform only following a number of adjustments, as described in the recommendations chapter, and strives to prevent harm to the position of the State of Israel as the National Home for the Jewish People.

Background:

Upon his election, Prime Minister Binyamin Netanyahu appointed Member of Knesset Yuval Steinitz to chair the "One Hundred Days Team". One of the Team's assignments was to propose a quick reform in the Israel Land Administration (ILA).¹ Following the revealing of the team's conclusions, the ministerial committee appointed to deal with the reform approved the draft of the plan proposed by the One Hundred Days Team.² The details of the reform were presented within the framework of the recommendations of the One Hundred Days Team³, in the coalitional agreement between the Likud and Shas⁴, and later in the governmental proposition to amend laws.⁵

The Objectives of the Reform:

The primary motive for this reform, as described in the accompanied literature for the relevant chapter in the amended laws is the fact that ILA activity is characterized by several flaws that turn the ILA into a "major obstruction of the economic development of the State of Israel".⁶ According to the clarification documents, the key failures are: "inefficient allocation of resources by means of creating a shortage or surplus in supply, encumbrance, bureaucracy, delayed reaction to the needs of the market, a lack of incentives for innovation, and at times even corruption".⁷ These failures are caused, in part, because of a complex system of rules; the task of the ILA being kept taboo; an inefficient organizational structure including a duplication of certain

¹ ר' "צוות מאה הימים של נתניהו מגבש רפורמה מהירה במינהל", 10.3.2009:

<http://www.nrg.co.il/online/16/ART1/864/112.html>

² ר' "כבר לא אדמות מדינה: הרפורמה במינהל מקרקעי ישראל יוצאת לדרך", 3.5.3009:

<http://www.nrg.co.il/online/16/ART1/885/373.html>

³ כמובא בנספח 1: "המלצות צוות מאה הימים לעניין ממ"י – רפורמה במקרקעין" מ-15.3.09, תק. 2009-5944.

⁴ כמפורט בסעיף 41 ובנספח 2: <http://www.knesset.gov.il/docs/heb/coal2009Shas.pdf>

⁵ ההצעה הוגשה ב-4.05.09 ע"י צוות השרים אשר מונה לטפל בנושא זה (הצוות כולל את ראש הממשלה, שר האוצר, שר המשפטים ושר השיכון. השר לאיכות הסביבה והשר לענייני מיעוטים משמשים כמשקיפים) וזהה להמלצות צוות מאה הימים כמובא בנספח 1: "המלצות צוות מאה הימים לעניין ממ"י – רפורמה במקרקעין".

⁶ עמוד חמישי בנספח 1.

⁷ שם.

positions and an oversized staff; an unclear distribution of authority and engaging in activities that are not part of the actual task of the ILA. These failures leave an even stronger influence given the fact that the ILA holds a monopoly on the lands market.⁸

Problems Arising from the Current Proposal:

As stated before, it is probable that the ILA reform is essential, and perhaps even crucially essential, for economic growth and for streamlining the services available to citizens. But without getting into the professional side of the reform, it can be affirmed that it contains several components that are harmful to the national interests of the State of Israel. It appears that the proposed reform was composed without the attention befitting the ideological-Zionist obligation of the new government to ensure the continuation of the State of Israel's position as the Jewish State. The problematic clauses of the reform are stated below:

1. The reform states that new lands will be marketed by means of sale instead of by leasing⁹, as opposed to the current situation affixed in Basic Law: Lands of Israel 5720-1960.¹⁰ The significance of this change is in the privatization of State Lands and the transfer of these lands to private property instead of keeping them in the possession of the Jewish State. This decision constitutes a threat to the character of the Jewish State both on national and cultural levels for the following reasons:

a. Land sales in the free market will bring about a situation that will allow hostile takeover of lands, if not in the immediate future, then in second or third hand sales, including a the chance of acceptance of aid from hostile causes and the use of foreign funds. Restrictions against transferring lands to foreigners¹¹ may succeed in minimizing the problem, but will certainly be unable to solve it completely, both legally and in terms of enforceability.

⁹ סעיפים (1-ב'), (8) ו-(14-א') בנספח 1: "המלצות צוות מאה הימים לעניין ממ"י – רפורמה במקרקעין".

¹⁰ חוק יסוד: מקרקעי ישראל, תש"ך-1960, קובע כי: "מקרקעי ישראל, הם המקרקעין בישראל של המדינה, של רשות הפיתוח או של הקרן הקיימת לישראל, הבעלות בהם לא תועבר, אם במכר ואם בדרך אחרת".

¹¹ כמוצע בסעיף (8-ט') בנספח 1: "המלצות צוות מאה הימים לעניין ממ"י – רפורמה במקרקעין".

- b. National sovereignty exists on two primary conditions: demographic and geographic. Both a large majority of Jewish citizens and Jewish sovereignty on most of the areas of the State are required. Sovereignty over lands is achieved by Jews residing on these lands on a permanent basis, generation after generation, with the lands providing a home and sustenance to those who develop them. If the reform is implemented without the required changes, it will become difficult for the State to ensure that a majority of the lands in the State of Israel remain under Jewish sovereignty.
- c. The Jewish concept of "the land will not be sold permanently" is based on moral, religious and cultural Jewish values that promote social-national justice¹² and are designated to prevent the creation of a class of landowners versus simple folk, and additionally to keep the lands for the Jewish People in its entirety and not for individuals or wealthy people.

In fact, the sale of State lands to the highest bidder steals the land from the grasp of the Jewish People for generations to come.

- 2. Clause 18 of the reform calls upon the Minister of Interior "to establish at least ten local planning and building committees, which were not established in the past, to approve detailed plans...".¹³ The purpose of this clause is to lessen the burden placed on the regional councils and to delegate authority to the local councils, to allow more efficient service for the citizens. Nonetheless, the transfer of planning authority from the regional councils to the local councils exposes local councils to local

¹² הנחלת עקרון בעלות הלאום על רוב רובן של קרקעות מדינת ישראל, ר' בהרחבה ספרו של פרופ' יוסי כץ, "[והארץ לא תימכר לצמיתות](#)", המכון לחקר תולדות קק"ל בשיתוף עם הקתדרה ללימודי תולדות קק"ל ומפעליה באוניברסיטת בר-אילן, תשס"ב-2002

¹³ הנוסח המלא מובא בסעיף 18 בנספח 1: "המלצות צוות מאה הימים לעניין ממ"י – רפורמה במקרקעין".

political pressures. This creates a risk especially during the election period, that local pressure groups (families, neighborhood residents, landowners, etc) will approach the council chairmen with requests for building and planning permits (in open areas and in general). As a result of this, planning and building problems may arise from the improper administration in place. This problem is expected to be even more prominent in Arab towns, where the family clans hold great influence, and the local councils are less capable of enforcing the law. Moreover, these towns generally have other motives (e.g. cultural motives – low building, national motives, etc.) that encourage building in open areas.

3. Clause 21 of the reform appoints the finance minister the duty of implementing the land exchanges between the State and the KKL.¹⁴ The coalitional agreement between the Likud and Shas contains additional details that are not mentioned in the reform, e.g. "As part of the deal, all KKL lands allotted to a third party that are designated as residential and commercial areas are to be exchanged for available land in the Negev and Galilee. Additionally, a land exchange system is to be instituted at the time of future allotments of KKL lands".¹⁵ The land exchange system on its own is not invalid, but without a guarantee that the KKL will be given lands of equal value that are suitable for development, there is a considerable risk that the transfer of developable land to the KKL will be impossible due to legal, political, economic or other reasons.
4. Clause 41 of the coalitional agreement states that the government is to propose a bill to change the membership of the Lands of Israel Council to reduce the number KKL members in the

¹⁴ הנוסח המלא מובא בנספח 1: "המלצות צוות מאה הימים לעניין ממ"י – רפורמה במקרקעין".

¹⁵ ר' סעיף 41.6-ז' בנספח 2: "ההסכם הקואליציוני בין הליכוד לש"ס".

Council.¹⁶ Aside from the fact that this decision opposes the agreement between the State of Israel and the KKL¹⁷, this decision also weakens the connection between the State of Israel and its national institutions and weakens their special status as such. Furthermore, Clause 22 of the reform exposes the government's intent to make amendments to the agreement for the purpose of implementing the resolutions of the reform, and without so much as to clarify what these amendments even are.

5. A petition currently stands before the Supreme Court regarding the ILA and KKL¹⁸, requesting that the ILA leases KKL lands against the founding principles of the KKL. In the case that the KKL is not allowed to market its lands in accordance with its principles, it will have no other choice other than disaffiliating itself with the ILA and managing its lands independently. Moreover, though it has not yet been clearly stated in the reform's documents that are open to the public, there are those who view the separation of the KKL from the ILA as an inseparable part of the reform, thus creating competition between two organization that market their lands in the free market.¹⁹ Despite the legal situation described above and the apparent economic trend, there is no reference in the reform to a KKL split from the ILA, and it is yet unclear what the initiators of the reform's intentions were regarding the future of the KKL and the arrangements to be put in place concerning the issue.

¹⁶ הנוסח המלא מובא בנספח 2: "ההסכם הקואליציוני בין הליכוד לש"ס".

¹⁷ ר' סעיף 9 בנוסח כתב האמנה שנחתמה בין ממשלת ישראל לקק"ל, תשכ"ב-1961:

http://www.kkl.org.il/kkl/hebrew/nosim_ikaryim/al_kakal/sugiot_mishpatiot/ktav%20amana.x

¹⁸ ר' בג"צ 7242/04 אבו-ריא ואח' נגד ממ"י ואח'.

¹⁹ לדוגמא, ר' ראיון עם עו"ד שלמה בן-אליהו, אשר כיהן בעבר כמנהל ממ"י ומנכ"ל משרד השיכון, בתוכנית הטלוויזיה "לונדון את קירשנבאום" מתאריך 3.5.09.

Recommendations:

In light of the aforementioned statements, **we recommend adopting the reform in the Israel Land Administration, in accordance with the changes presented here, in order to prevent harm to the character of the State of Israel as the State of the Jewish People, and without harming the objectives of the reform.** Our recommendations for changes in the reform are listed below. (The numbering used corresponds to the numbering of the risks in the previous chapter):

1. **State lands should remain property of the State, yet without harming the rights of the lessees.** The transfer of ownership, as proposed in the reform, should constitute new lease stipulations. Additionally, there should be no need for the authorizations currently required from the ILA. That is to say that the interaction between lessees and the ILA can and should be minimized, but that the lands should be marketed only by leasing and not by sales.
2. **Local planning and building councils should be enacted on the condition that the local councils prove financial stability and proper management** (a balanced budget, a proven ability to levy taxes, etc) over a period of ten years (at least two full council terms). Furthermore, appeals concerning rulings of the local planning councils should be judged by the regional planning council, which is less affected by political pressures.
3. The reform must maintain that future land transfers between the KKL and the ILA maybe only happen under following circumstances:
 - a. Lands transferred to the KKL must be **developable** lands only (as opposed to lands on which it is impossible to settle).
 - b. **The monetary value of the lands owned by the KKL is to be preserved.**

4. The State of Israel should maintain the presence of the KKL in the Lands of Israel Council, even when the KKL is separate from the ILA and manages its lands independently. The special treatment given to the KKL stems from the moral obligations of the State of Israel to the Jewish People and to its national institutions.
5. In order to preserve its original purpose, it should be stated within the framework of the reform that the **KKL is to manage its lands independently** and separately from the ILA in accordance with the principles stated in its founding documents at the time of its establishment. The reform should include a detailed plan that strives to achieve this goal.