PODCAST

US Embassy Plans on Stolen Palestinian Lands with Rashid Khalidi

By: Al-Shabaka: The Palestinian Policy Network, Rashid Khalidi · February, 2023

The transcript below has been lightly edited for brevity and clarity.

Rashid Khalidi 0:00

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Yara Hawari 0:32

From Al-Shabaka, the Palestinian Policy Network, I am Yara Hawari, and this is Rethinking Palestine.

In 2017, former US President Donald Trump declared recognition of Jerusalem as Israel's capital, not only breaking with international consensus, but also disregarding the historical Palestinian claim to the city. The following year, the US moved its embassy from Tel Aviv to Jerusalem, cementing their new policy.

And since then, the US Embassy has been housed in the western neighborhood of

Arnona, in what was formerly the US Consulate. However, recent reports reveal that there are plans to build a new embassy on a plot of land known as the Allenby Barracks. This plot of land was rented to the British during the Mandate by multiple Palestinian families, including the family of today's guest — Professor Rashid Khalidi, Al-Shabaka member, renowned historian, and the Edward Said Professor of Arab Studies at Columbia University.

Now, unlike many Palestinian families, the Khalidis have been able to show proof of ownership through written documentation. Indeed, the Palestinian human rights organization Adalah found rental agreements between the Khalidis and other Palestinian families and the British Mandate authorities in Israeli regime archives.

Of course, this particular case of land theft and US complicity is not unique and needs to be seen as part and parcel of a pattern of colonization across Palestine. Joining me for this episode to discuss all of this and more is the aforementioned Professor Rashid Khalidi. Professor Khalidi, thank you so much for joining me on Rethinking Palestine.

Rashid Khalidi 2:08

Thanks so much for having me.

Yara Hawari 2:10

Perhaps you can start us off by outlining the particularities of this case and telling us a bit more about the piece of land in Jerusalem.

Rashid Khalidi 2:20

This was the main garrison for the British military occupation of Palestine in the Jerusalem area, named for General Allenby, who actually was the conqueror of Jerusalem in 1917. It was rented from a number of families, in many cases awqaf — pious foundations — the most important of which was the al-Khalili waqf, which

many, many, many Jerusalem families are beneficiaries of. My family is one of the beneficiaries of that waqf, and then many other pieces of private land. So it's a very large property, almost all of which was taken up for the Allenby Barracks by the British.

These are properties that the British paid rent on throughout the period that their forces were in Jerusalem to the owners of the property. And what Adalah has done, building on the research of Walid Khalidi and others back in the 1990s when this plan originally surfaced, was to search both British and Israeli records for evidence of these agreements and for evidence of ownership by the various families involved.

Yara Hawari 3:22

So the Israeli regime appropriated this particular piece of land through the 1950 Absentee Property Law, which was the legal mechanism they used to justify or facilitate this appropriation. Can you tell me a bit more about this particular law and how it's been mobilized, not just in Jerusalem, but across Palestine?

Rashid Khalidi 3:40

I think to understand the Absentee Property Law, you have to understand how settler colonial regimes operate. They operate on two registers: one being land and property, and one being population. So they try to change the population of the territory being settled with new colonists from Europe, and they try to take over property.

You can see how this operated in Ireland, you can see how this operated in Algeria and in other settler colonies, in the United States. So there are a variety of legal regimes whereby property that is either the collective property of the indigenous population or the private property — or, in this case, waqf property — belonging to the original inhabitants of the country being colonized is seized.

It is an American historian, Caroline Elkins, who has a term for the use of violence in colonial situations. She calls it "legalized lawlessness." So what the Israelis needed to do after they occupied 78% of Palestine in 1948 was to take over the overwhelming majority of Palestinian land that they did not own. There was a small fraction — six or seven percent of the land of Palestine — which had been purchased by Zionist land purchase agencies. But the overwhelming majority of the land was either public or private Palestinian property, and in many cases was waqf.

And so this was a legal mechanism to take control of land under the false pretext that the owners, who had been driven out by Zionist militias and later by the Israeli army, were "absentees" living in "foreign countries," enemy countries, and that therefore their property could be seized.

In some cases, this was done to people who actually were still in Palestine — i.e., Palestinians living under Israeli control in areas like the Negev/Naqab, the Galilee, and so forth. But in most cases, this was done with property of people who had been made refugees by Israel and who, therefore, according to this law, were "absentees." And under the Geneva Convention, an occupying power cannot take property either.

So there are multiple international laws — laws for return and laws for compensation; in the case of Palestine, specific General Assembly resolutions. But there's a general provision of the Geneva Conventions, whereby an occupying power has no right to seize property.

Yara Hawari 6:16

So it's worth noting that this particular law, like many other Israeli laws, is not only obviously unjust but also completely contradicts international law, which stipulates that refugees all over the world have a right to repatriation and/or compensation for their lands or properties lost.

So this land was appropriated by the Israeli regime, and it includes land that was owned by your family. What happened to that land since? Can you sort of take us through, from when it was appropriated to present day?

Rashid Khalidi 6:52

It lay fallow for a while. Israeli border guards used it for a period. And most recently, the plot has been vacant. It's vacant today. You can drive by it — it's on the road to al-Khalil, on the road to Bethlehem and al-Khalil, in West Jerusalem, on the left side of the road as you drive south. It's a very large plot.

In the 1990s, the US government began to plan for building an embassy in Jerusalem under the impulsion of a congressional resolution. And it was in the late 1990s that the US government signed an agreement with the Israeli government for this plot. At that point, this came to the attention of members of the various families involved, whether beneficiaries of the al-Khalili waqf or owners of private property involved in this plot of land. And they did the initial research, which led to several things.

First of all, the owners sent a letter to the US State Department — Madeleine Albright at the time was the Secretary of State — laying out the evidence and saying that the United States government had absolutely no right to lease this property from the Israeli government, which had absolutely no right to seize it as it had done under the Absentee Property Laws of 1950.

We feel that those objections may have had an effect, because the plan then lay dormant till the Trump administration actually moved the embassy to Jerusalem — did what previous administrations had not done in spite of this congressional resolution mandating that the US government move the embassy.

At that point, the plan was dusted off. And at that point, the same group of families, together with Adalah based in Haifa and the Center for Constitutional

Rights based in New York, did additional research in both the British and the Israeli archives to further prove ownership by the various awqaf and by the various private property owners of this piece of land, and sent that to both the US Ambassador in Israel and the US State Department, back in November of 2022.

Yara Hawari 8:58

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So the US government hasn't actually formally announced that it's going to be moving its location of the embassy to this piece of land. They've actually stated that they're still deliberating. But should they choose the Allenby Barracks, would you be able to pursue legal action in the US, or even here in Palestine?

Rashid Khalidi 9:30

Well, we are currently pursuing action in Palestine. Adalah has filed a formal 65-page objection based mainly on international law before the district planning committee, which was delivered earlier this month, earlier in February. And there will eventually be a hearing on that objection and on other objections that have been made to the building of an embassy on this plot.

So we are pursuing action in Israel via Adalah, who is mandated by a number of the property owners or the beneficiaries of the awqaf to act on their behalf. In addition, we've objected, as I mentioned, via a letter sent by Adalah and the Center for Constitutional Rights to the US government.

It's important to highlight what the US government is doing here. Back in '98, it leased the property. So it had already taken a step in the direction of building the embassy. That was then put on ice for 20-odd years, almost 25 years. After Trump's move of the embassy to Jerusalem — to the current quarters, where one

of the consulates used to be located, the Arnona property, so-called — we discovered the United States government was actively involved in this process.

It was the US Embassy which submitted a request to the Planning Commission — in the Jerusalem District Planning Commission — to build an embassy on this site. It was the US government which commissioned and hired architects to draw up the plans — a Chicago firm, actually; Krueck Sexton Partners, I think the name is. Those were the plans that were submitted by the US government, on documents stamped "US Embassy in Israel."

So the US government is actively pursuing the building of an embassy on this site. It hides behind — it says, "We haven't decided, there's a planning process" — but it is the US government, obviously together with the Israeli government, that is pushing this plan.

So we are acting by objecting. We are acting in Israel by objecting to this request before the Planning Commission. As to what we can do in the United States, I think that there are a variety of options. Back in 1998, a group of the families involved in this, who are the owners of this property — a number of the owners of this property — began to prepare a lawsuit against the federal government on grounds that these were takings of private property under Article Five of the Constitution.

Now, I'm not a lawyer, I'm not a constitutional expert. But I think there is certainly a possibility that, going forward, depending on legal advice obviously, the various families involved back in 1998 and additional families who've come forward could consider doing something along those lines in the US courts.

I mean, it's particularly outrageous. I should mention that the owners and beneficiaries of the awqaf which own this property include residents of East Jerusalem, include Palestinians living elsewhere, but include a large number of US citizens — Palestinians who are US citizens. And so what the US government is

proposing to do is not just to take stolen Palestinian land, which is a violation of international law, but to take the property of US citizens — Palestinians who happen to be US citizens. So it's, if you want, triply egregious.

Yara Hawari 12:52

It's outrageous but not at all surprising that the US is once again proving itself to be deeply complicit in the theft of Palestinian land and even the theft of land of its own citizens.

Now, as I mentioned, in this particular case, your family and others have been able to prove ownership of the land through documentation that was found in the Israeli archives, no less. Many other Palestinians don't have that kind of documentation — either it never existed or was lost after decades of war, exile, and occupation. What does this case mean for these families who rely on orally transmitted testimonies for claims of ownership to land? What does it tell us about those kinds of oral testimonies for land ownership?

Rashid Khalidi 13:40

This is the kind of problem that often arises in colonial settler situations. Before the 1858 Ottoman Land Law, land was not held as private — most agricultural land, at least. Many urban properties were held as private property. But most agricultural land was not held as private property. In many cases, there was collective tenure, mushaa. And under Islamic law and Ottoman law before 1858, any cultivator who cultivated land and paid taxes had right of usufruct, right of residence, and the right to their property. It was not private property. That was the law until 1858, when European capitalist notions of private property were introduced into Ottoman law.

The problem in Palestine is that the implementation of that law was never fully completed, either by the Ottoman authorities before 1918 or by the British

Mandatory authorities. And so you have large areas of Palestine where that process of registration as private property on behalf of the cultivators — and therefore the formalization in private property terms of their rights, which were absolute rights to tenancy and occupation and usufruct under pre-1858 laws — was never registered.

And so there's a multiple problem. Many people whose land was registered, as you've suggested, have lost their documentation. But in many other cases, there was no documentation. And this is something that, of course, the Israelis have taken advantage of to steal land — essentially saying, "Well, there's no documentation, therefore it's public land. And we are the public — i.e., we're the state — and we take it." And that has been the stratagem whereby the theft of huge amounts of land all over Palestine, within the 1948 boundaries of the state and in the territories occupied in '67, has taken place.

Yara Hawari 15:25

And I guess this leads me to something that I've been thinking about with regard to the concept of stolen Palestinian land — how it's framed and how it's limited, particularly by mainstream media discourses.

So for example, it's rare that you'll hear mainstream media talking about stolen land in the western part of Jerusalem, or occupied land in the western part of Jerusalem. And yet, even by international law standards, which are really minimum standards, Palestinian refugees are still entitled to repatriation or compensation to lands and properties in that part of the city.

So that is to say that I think there is a danger when we focus on written documentation as proof of ownership — that we really limit the conversation of what constitutes stolen land, in a similar way as to how international law limits occupied land just to the '67 territories. So I was wondering if you could speak a little bit to that.

Rashid Khalidi 16:20

A couple of things. I mentioned that there is a distinction between urban property and agricultural property. Most urban property — there are very solid records of ownership by Palestinians in Sharia courts, in British records, in the United Nations Conciliation Commission records of land in Palestine. And so there actually exists documentation, even if the families don't have it, even if the owners don't have it.

In the case of West Jerusalem, 30,000 people were driven — Arabs, Palestinians were driven out of West Jerusalem in the spring of 1948, from a range of neighborhoods: Baqa'a, Talbiya, and so on, and the German Colony, which were mainly Arab-owned neighborhoods of the city.

We talk about the 60,000–70,000 people driven out of Haifa. We talk about the 60,000–70,000 people driven out of Yaffa. And the population driven out of Tabariya, the population driven out of Bisan and other towns and cities in 1948. Nobody pays attention to the fact that a huge part of West Jerusalem was Arab. The owners and the residents were Arab. They were driven out by Zionist militias well before May 15th, 1948.

And to most of those urban areas — Yaffa, Haifa, and so forth — there is very good documentation, actually, in these various different archives. The problem is agricultural land. That's the real problem, which is, of course, most of the land in Palestine, which is most of the land of most Palestinians.

So, as you say, there are international laws that prohibit the seizure by the occupying power of private property. But you have to prove that it's private property. And that is really a problem, in particular with many areas where registration had never taken place, or where people's lands were registered and they did have proof of ownership — but that proof has been lost because of war and dispossession and ethnic cleansing.

Yara Hawari 18:10

And that really just highlights one of the many limitations of international law, and I think emphasizes why international law cannot be the only framework in which Palestinians pursue justice, or repatriation and compensation, for the things that they lost.

I wanted to end with a concluding question: what are your hopes for this case? What kind of precedents are you trying to set?

Rashid Khalidi 18:35

I think the case is important, not because any of the people involved in it have any sense that they're going to recover their property — certainly not in the short term. That's not the point. The point is, first of all, to highlight something that is constantly, as you suggested in one of your earlier questions, obscured in media coverage — which is just the theft of Palestinian property, of Palestinian land. Not just the theft of a country, and not just the ethnic cleansing of a country, but the seizure of people's livelihoods — agricultural and urban, private property, bank accounts, rugs, books — everything that they owned was stolen from them after they were driven out of their homes in 1948. And as you say, this is never talked about. So I think any spotlight that can be put on this general issue, I think, is all to the good.

The second thing is, I hope it will at the very least embarrass, and ideally stop, the US government from in fact formally accepting — through taking this property and building an embassy on it — Israel's theft of Palestinian land.

Now, Israel stole the land, and that's an issue that can only be dealt with in the very long term. But the US government is about to build on that property and thereby consecrate, through that building, its acceptance of this theft — formally accept, in other words, what Israel has done. And hopefully bringing up this issue

can stop that, or at the very least cause maximum embarrassment to the people who are doing it.

Yara Hawari 20:15

Professor Khalidi, I think we'll leave it there. Thank you so much for joining me on this episode of Rethinking Palestine.

Rashid Khalidi 20:22

Thank you so much, Yara.

Yara Hawari 20:28

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