

## **LAND TRANSFER INQUIRY COMMITTEE (LTIC) REPORT, NOVEMBER 1945**

(This report was assembled by the Palestine British Administration in October and November 1945. To our knowledge the full report was not fully assembled and therefore is not found in British Colonial Office Palestine Administration correspondence 733 files, that otherwise covered His Majesty's Government exchanges between Jerusalem and London. The committee was headed by R.E.H Crosbie and included four other members of the British administration, including the long time head of the Palestine Lands Department, J.H. Stubbs. Crosbie had headed a published inquiry in July 1930 that looked into the condition of Arab agriculturists. The Johnson-Crosbie Report's findings were the statistical basis for the writing of the 1930 Hope Simpson Report, it the basis of the 1930 Passfield White Paper. The Johnson-Crosbie Report itself was heavily influenced by the highly pro-Palestinian Arab, or anti-Zionist attitude of then High Commissioner Sir John Chancellor. The preponderance of information and testimony in this 1945 Report was provided by Palestinian Arab sources; the clarity of their collective testimony in outlining how Arab buyers and Jewish purchasers circumvented the British intention to halt the sale of Arab lands is remarkable for its detail and candor.

In one of the few instances in the duration of the Mandate, a Jewish Agency official or organization chose not to participate in an investigation or inquiry, and not provide information, documents or testimony. This for two reasons: the Jewish Agency refused participation in an inquiry that referenced the February 1940 Land Transfer Regulations that contained explicit prohibitions against Jewish land purchase, what the Jewish Agency believed to be an direct violation of Article 6 of the Palestine Mandate that sanctioned "close settlement by Jews on the land." The Jewish Agency refused to give an legitimacy to an inquiry on a regulation that it felt was unlawful. Second, to participate in the inquiry, the Jewish Agency or the Jewish National Fund would have been obliged to share documentation and testimony detailing the extent of land acquired in contradiction to the regulations, and perhaps more importantly reveal the variety of methods used by Arab sellers to transfer land into Jewish ownership.

The draft report was culled from the various tentative drafts and handwritten inserts submitted by the Land Transfer Inquiry Committee from 17 October 1945 to 14 November 1945. Articles 1-20 were approved at the tenth meeting of the LTIC held on 17 October 1945; Articles 21-24 were decided upon at the 12th meeting of the LTIC held on 30 October 1945; Articles 25-29 were decided upon on 6 November 1945; and Articles 30-61 were submitted in draft form and discussed on 14 November 1945. All material was reproduced at the Israeli State Archives with the permission of the State Archivist. The original draft reports are housed at the Israeli State Archives in files SF/215/1/40 and LS 249/file 4.

Paragraphs 47, 48, and 49 below, and J. Tuqan's dissent letter at the end of this document relate to the means used to circumvent and evade the regulations. To our knowledge this draft report was not reproduced in a final form, nor to the best of my

knowledge was it sent by the High Commissioner's Office in Palestine to the British Colonial Office in London.

The most salient paragraph of the report comes in paragraph 50, reproduced here:

“In any event, the remedy lies in the hands of the Arabs themselves. Unless they enter into collusion with the Jews to defeat the spirit of the White Paper, Jews will not be able to enter improperly into possession of the land within a restricted area. If the parties whom the law is designed to defend conspire to evade the law, then it is indeed difficult for the authorities to enforce it and to defend them.” (Ken Stein, November 24, 2009)

### **DRAFT REPORT**

Land Transfer Inquiry

Committee: Mr. R.E.H. Crosbie, Chairman  
Mr. J. Stubbs, M.C.  
Mr. A.P. Mitchell  
Mr. J. Kuperman, M.B.E.  
Jamal Eff. Tuqan, M.B.E.  
Rajai Eff. Husseini, Secretary

Sir,

In your letter SF/215/40 dated 2nd June 1945, we were appointed a committee of inquiry with the following terms of reference:--

- (i) To collate allegations made by members of the public in regard to transactions said to be in contravention of the Land Transfers Regulations, to investigate these transactions and to advise whether there have in fact been contraventions of the Regulations;
- (ii) If there have in fact been contraventions, to report on the methods employed in contravention of the Regulations;
- (iii) To review the administration of the Land Transfers Regulations and to make recommendations in regard to any modifications which in view of the committee would be likely to implement the purpose of the Regulations.

2. We have heard evidence, often supported by written memoranda, from a number of witnesses, and to facilitate the hearing of this evidence, we have held meetings in Haifa and in Gaza as well as in Jerusalem. From the Arab side we heard four advocates, Henry Eff. Cattar, Kamal Eff. Barbari, Subhi Eff. Khadra and Ahmad Eff. Shukairi; and also Ahmad

Eff. Kamel Ed-Daher, representative of the Arab National Fund in Nazareth, and Sheiks Salman Abu Rabia, Freih Musadder and Ali Abu Middain from Beersheba Sub-District. From the District Administration we heard Mr. McGeagh and Mr. Duffield of the Gaza district, Abdalla Eff. Khardus and Taufiq Eff. Yazdi of the Galilee District, and Hilmi Eff. Huseini of the Haifa District. From the Department of Land Settlement we heard Messrs. Jardine, Camp, O'Conner, Miller, Pusey, and Kenyon. We have also received communications from various other persons. In addition we obtained advice from the law officers on certain points. As regards to the Jewish side, we invited the authorities of the Jewish National Fund, who were mainly concerned in the allegations made to us, to nominate a representative to give evidence before us. We received a reply to our invitation in the following terms:--

"In reply to your communication of 5th July, I beg to inform you that the Keren Kayemeth Leisrael is unable to extend its collaboration to your Committee presumably set up with the object of giving effect to the 1939 White Paper on Palestine, to which the Jewish Agency for Palestine and the Jewish Community has declared its unalterable opposition."

We were therefore unable to avail ourselves of any comments that they might have to offer on the allegations.

3. The complaints made by the Arab public were of three kinds. A few purported to be concerned with definite contraventions of the Land Transfer Regulations. The majority were concerned with the failure to give effect to the spirit of the White Paper which gave rise to the Regulations.

#### **CONTRAVENTIONS**

4. We have found no evidence of definite contraventions of the Regulations. The allegations made proved to be concerned not with contraventions but with evasions of the Regulations.

#### **EVASIONS**

5. In view of our third term of reference, we have thought it incumbent upon us to inquire into these alleged evasions. They fall under three main headings according as they arise from:-

- A. The third provision to Regulation 3 and the corresponding provision to Regulation 4;
- B. The procedure of the Execution Office;
- C. The procedure for land settlement.

6. It will be convenient to quote here Regulation 3 and the third proviso which reads as follows:--

"The transfer of land situated within Zone A save to  
Palestinian Arab shall be prohibited; ..... provided further that

this Regulation shall not apply to any transfer of land made in the execution of any judgment or order of a Court, Chief Execution Officer or Land Settlement Officer--

(a) In satisfaction of a mortgage executed and registered before the date of the coming into force of these regulations.

(b) Delivered or made before the date of publication of these regulations in the Gazette."

7. We consider first section (b). It sometimes happens that a creditor secures a judgment order against a debtor but delays for a considerable time to apply for execution of the judgment. Some of these judgment orders are still outstanding from before 28th February 1940, when the Regulations were published in the Gazette. Cases have occurred where Jews have acquired an Arab creditor's rights under a pre-Regulation judgment and have then secured sale of the debtor's land in execution of the judgment. Since the judgment was given before the Regulations were published, the proviso relieves the sale of restriction to Palestine Arabs, and the land has been sold to Jews.

8. This maneuver has been carried a step further. If the debtor concerned has no land or only a small area of land, the Jews provide him with funds to buy the land before securing execution of the judgment. They may obtain collateral security for the money advanced, such as a promissory note or a mortgage on a property in an unrestricted area.

9. It seems unlikely that the number of suitable judgments still outstanding is large, and unlikely therefore that this maneuver can be often repeated. However, it seems clear to us that the concession was designed to safeguard bona fide judgment creditors at the time when the Regulations were published from possible loss as a result of restrictions on the sale of land. We consider that the period which has elapsed since then has afforded ample time to these creditors to secure their rights; and we might add that, in view of the present high prices of land, the hardship of restricting the market would be small.

10. Mr. Kuperman argued that the rescinding of the concession might precipitate sales by creditors who would otherwise be dissents willing to give their debtors longer periods in which to pay. In addition, he pointed out that the law in force (Article 1660 Majelle) provided for a period of 15 years, after which non-executed judgment debts are prescribed. He saw no justification for recommending a special period of prescription for judgment debts of a certain category. The rest of the Committee felt that the period of prescription was not affected but only the question whether the sale was to be in a restricted or an unrestricted market.

11. With one dissentient voice, therefore, we recommend that after a suitable period of grace--perhaps 12 months--the concession afforded by section (b) of the proviso should be rescinded.

12. We turn now to section (a) of the proviso. At first we contemplated a recommendation on similar lines to our recommendation with regard to section (b). That is to say, we contemplated recommending that the concession should be rescinded at the end of a similar period of grace after the expiry of the mortgage. On further consideration, however, we have felt that, as the area affected by a mortgage is definitely limited, no maneuvers of the kind described above and be carried out, and the dangers of retaining the concession are small. It was suggested that, if the sale of the mortgaged property did not cover the mortgage debt, additional land could also be sold under the proviso; but the majority of the Committee held that any outstanding part of the debt would be merely an unsecured debt, and would not benefit from the proviso. The Law Officers supported the majority view, but suggested that, if the Regulations were being amended in other respects, the opportunity should be taken to put the interpretation of the sub-section beyond doubt. It was suggested also that, if the area of the mortgaged land was not defined by a plan, additional land might be sold with it. In point of fact, no case of either kind suggested has been brought to our notice.

13. We are loathe to infringe the sanctity of the mortgage contract and we therefore recommend that section (a) of the proviso should remain substantially unaltered, but should be redrafted as suggested by the law Officers in the preceding paragraph.

14. Similarly in regard to regulation 4, we recommend that section (b) be rescinded after a period of grace, but that section (a) be retained substantially unaltered, though redrafted as suggested by the Law Officers in paragraph 12 above.

15. It is alleged that these abuses are enhanced by abuses in the Execution Offices, viz:--

- (a) the sale of larger areas than are required to satisfy the judgment debt;
- (b) collusion to secure that the land should finally be adjudged to a Jewish bidder;
- (c) improper haste in the legal procedure;
- (d) inadequate publicity in the Arab press.

16. It would not be practicable to limit statutorily the area which may be sold to the minimum required to satisfy the judgment debt, since this would sometimes cause hardship to the debtor. For example, it is often impracticable to sell part of an irrigated property. Some discretion must be left to the Execution Officer, but we consider that this discretion should be exercised by the Chief Execution Officer in person and not delegated to any subordinate. The Chief Justice was approached in June 1943 with regard to such excessive sales, and shortly afterwards he issued a directive to the authorities concerned. We have not learnt of any subsequent cases which conflict with this directive. We suggest that no further action is now necessary.

17. It would not be practicable to limit statutorily the area which may be sold to the minimum required to satisfy the judgment debt since this would sometimes cause hardship to the debtor. For example it is often impracticable to sell part of an irrigated property. Some discretion must be left to the Execution Officer in person and not delegated to any subordinate. The Chief Justice was approached in June 1943, with a directive to the authorities concerned. We have not learnt of any subsequent cases which conflict with this directive. We suggest that no further action is now necessary.

18. Since the bidding list is exhibited in public up to a specified time, we see no form of collusion by which an official could give unlawful preference to any bidder. The allegations seem to arise from the fact that the debtor is entitled under the law to accept "upon written authority from the Execution Office," without awaiting the end of the auction, any offer that would satisfy the judgment debt. In an unrestricted area, he would be entitled to sell as much of his land as he wished. In a restricted area, he may attempt to evade the Land Transfers Regulations by selling an excessive area. We consider that it is the duty of the Chief Execution Officer to see that such evasion does not occur.

19. We have found no evidence to support the allegation of undue haste in procedure. It probably arises from the same cause as we have considered above.

20. The Chief Justice also laid down in his directive that adequate publicity for sales through the Execution Office should be given in the Arab press, and no further action seems to us to be necessary.

21. In general we recommend that the Chief Execution Officer himself should supervise any transfers to persons other than Palestinian Arabs of land in a restricted area, especially if it is proposed to sell an area larger than is required to satisfy the judgment debt.

22. The bulk of the alleged evasions are connected with land settlement, the procedure for which is necessarily elastic. Settlement Officers in their judicial capacity have to solve different problems in different parts of the country; one may be working in an area of mixed communities, another in a mainly homogeneous area; one may attach more importance to meticulous accuracy, another to speed in completing the settlement of the country. Hence their procedure differs in detail and so their methods of giving effect to the Land Transfer Regulations. There may have been occasions at first in certain areas when the implication of these Regulations was not fully realized, but now full attention is concentrated on them.

23. Settlement Officers have to consider various forms of right, which may be classified according to the period of possession involved, viz:--

- (a) prescriptive,
- (b) equitable,
- (c) possessory.

Each may be affected by the Land Transfer Regulations.

24. Although prescription does not confer title, yet it secures the possessor of the land concerned against an action for eviction, so that the practical result is much the same. Settlement Officers generally agree that the prescriptive period of ten years may run against the owner, even if the land is held by different possessors, of whom perhaps only the last is a Jew. Some Settlement Officers hold that in a restricted area the whole period of prescription must have been completed before the commencement of the Regulations; others are satisfied if the present Jewish possessor came into possession before the commencement of the Regulations. We consider that, as the taking of possession was not contrary to the law then existing, the possessor should not be penalized in any way, and that therefore the more lenient interpretation should be adopted.

25. Sometimes a full title may be granted though the prescriptive period has not been completed. Under the terms of the Land Transfer Ordinance, 1920 any sale which is not registered in the Land Registry is illegal; but the Courts have held that an argument to sell is not illegal. They have held further, that, if an agreement to sell has been made, and if the full purchase price has been paid, and if possession of the land concerned has been taken, then an equitable right has been created, and they may order that effect be given in the Land Registry to this right. The period of possession necessary to establish equitable right has not yet been fully determined, but a judgment already given held that two years and five months was enough (C.A./40/45). Where the sale is not complete, e.g. where installments of the purchase price are outstanding or possession has not been taken, the Courts do not order specific performance of the contract, if the damage caused by breach of the contract can be made good by the payment of money. It seems probable that the doctrine of Equitable right may be yet further developed, and that the conditions of its grant may be relaxed. Settlement Officers, who, like the Courts, are required to pay attention to equitable as well as legal rights in judging land cases, naturally follow in the footsteps of the Courts.

26. As far as we can ascertain, no judgment has yet been given to show the attitude of Courts to an agreement to sell land in a restricted area, but a number of such agreements have been made in the hope that they may one day be effective. They are often accompanied by an irrevocable power of attorney, authorizing someone to do all that is necessary to carry out the registration of the sale in the Land Registry. The ignorant fellah regards the signature of such a power of attorney as equivalent to parting with his title deed (qushan).

27. A question arises with regard to the interpretation of the Land Transfer Regulations. No equitable right can be based on a wrong; but if, as seems probable, "transfer" means only "Transfer in the Land Registry," then neither an unregistered sale (bia' barrani) nor an agreement to sell, regardless of date, contravenes the Regulations. It seems possible, therefore that either may be used as a basis for a claim to equitable right. We consider that the definition of "transfer" should be amended so as to exclude this possibility.

28. In addition to full title acquired through equitable right or de facto, through prescription, Settlement Officers are authorized under Section 52 of the land (Settlement of Title) Ordinance, 1929, to grant possessory title to land, when:--

- (a) "another person is in possession thereof in such circumstances that, if possession continues for the period prescribed by law, any action for recovery thereof by the registered owner will not be heard thereafter;
- (b) The registered owner cannot be traced or makes no claim to the land."

Such possessory titles may obviously be converted in the course of time into full titles. However, in view of the recent introduction of the doctrine of equitable right, possessory title has ceased to be a matter of practical importance.

29. To sum up, we are of opinion that no right or title, whether prescriptive, equitable, or possessory, should be based on any contract made or possession with or without contract taken after the commencement of the Land Transfer Regulations; and we recommend that the necessary legislation should be introduced to secure this object.

30. In particular, and without limitation of the preceding recommendation, we recommend legislation:--

- (a) Amending the definition of "transfer" in the Land Transfer Regulations to include the conversion of an equitable into a full title;
- (b) Providing nevertheless that, if all of the three conditions for an equitable title, viz. signature of the agreement to sell, completion of payment and taking of possession, were fulfilled before the commencement of the Regulations, full title may be granted:
- (c) But that, if any one of these conditions be unfulfilled at the commencement of the Regulations, no title shall be granted:
- (d) And providing similarly that, if a person other than a Palestinian Arab takes possession of land in a restricted area before the commencement of the Regulations, the period of prescription may be completed after the Regulations;
- (e) But if he takes possession after the commencement of the Regulations, no right may accrue to him.

31. Allegations have also been made with regard to certain minor matters in the procedure for land settlement, viz:-

- (a) The investigation of undisputed claims;
- (b) The renunciation of claims;
- (c) Augmentation of mush'a shares by collusive manipulation of village or property boundaries.

32. It has been alleged that, when a claim is undisputed, Settlement Officers give judgment in favor of the claim without investigation, though the absence of dispute may be due to collusion. There has perhaps been some variety of practice in this matter in the past, but we believe that adequate investigation is now made.

33. It is alleged that a similar result is achieved during settlement by a formal renunciation of claims by owners who have been bribed to renounce them. We find that Settlement Officers now rarely accept renunciations of claim except to permit re-arrangement of ownership between co-owners or to dispose of parcels or shares below the minima prescribed.

34. An example has been quoted to us of the augmentation of mush'a shares by collusive manipulation of village or property boundaries. It is difficult to estimate the danger from this source, but in any event it is impracticable to limit the discretion of Settlement Officers in dealing with such boundaries.

35. Statutory provision exists for the investigation of all claims. To avoid complaints of the nature prescribed, we recommend that this provision should be rigidly applied to all claims made by persons other than Palestinian Arabs in a restricted area, whether disputed or not.

#### **PAST IRREGULARITIES**

36. After examining the evidence with regard to the various forms of evasion we have considered whether to recommend any retroactive measures or only precautionary measures for the future. We are unanimously of the opinion that it would be impracticable to adjust any irregularities which may have resulted from evasions in the past.

37. With one dissentient, we are also of the opinion that neither the number nor the magnitude of these past irregularities has been such as to call for an attempt to adjust them.

38. Jamal Effendi Tuqan, while agreeing that adjustment is impracticable holds that the past irregularities have been considerable both in number and in magnitude.

#### **PROPOSALS MADE TO US**

39. Various proposals were made to us by witnesses who thought that they would give better effect to the Regulations. We deal below with those that seem to call for comment.

40. It has been suggested to us that any evasion of the Regulations should be made a penal offence, and that the Attorney General should be empowered to intervene to demand the penalty. Where there is no contravention but only an evasion, there is no offence, and therefore there can be no penalty and no intervention by the Attorney General.

41. It may happen, however, that the parties interested in a transaction enter into collusion to conceal an attempted contravention of the Regulations. It has been suggested that not only the Attorney General but any member of the public should be entitled to intervene before the Settlement Officer or before the Courts to show that the Regulations are being evaded. We consider that to allow any member of the public to intervene at his own wish would afford an opportunity for species of blackmail. Dishonest persons might threaten to delay a case indefinitely by interventions unless they were bribed to abstain. On the other hand, we think it desirable that the Attorney General should have power to intervene, whenever he deems it necessary. Further, as he himself may not always have the necessary time to undertake a case, he may of course authorize (as he has power to do) any member of the public, who wishes to do so, to act on his behalf.

42. The intervention of the Attorney General may be used to solve a difficulty which arises from Regulation 5. This Regulation lays down that "any transfer of land made in contravention of the provision of these Regulations shall be null and void," but does not specify on whose authority or by what machinery any such transaction is to be declared null and void. Presumably the authority must be a Settlement Officer or a Court, but it is not clear where the initiative lies. We consider that the Attorney General should be empowered to intervene when he thinks it necessary.

43. It has been suggested also that an appeal should lie from a Settlement Officer on a question of fact. Such procedure would be entirely at variance with the accepted procedure for appeals, and cannot seriously be considered.

44. It has been suggested that the Regulations, so far as they regard Zone B, should be amended to include Arabs ordinarily resident in the Lebanon and Syria. Such inclusion would frustrate development in the Hula area.

45. It has been suggested that the Orthodox Patriarch should be debarred from selling land to the Jews. The Arabs of the Orthodox community claim that the land registered in the name of the Orthodox Patriarch is held by him on behalf of the Orthodox community in Palestine, the majority of whose members are Palestinian Arabs. This matter is outside our competence.

46. Government has ruled that no company is a Palestinian Arab within the meaning of the Regulations. It has been suggested that Arab companies should be exempted from this ruling. Such exemption would be dangerous, since a nominal Arab company might in reality be controlled, either in the present or in the future, by Jews. On the other hand, under the present ruling the development of legitimate Arab companies is frustrated by inability to acquire necessary land. We recommend that this disability should, after provision of adequate safeguards, be removed. The details are highly technical and are a matter for the Law Officers rather than for us.

**SPIRIT OF THE WHITE PAPER, 1939**

47. There remains the question of the alleged failures to give effect to the spirit of the White Paper. These arise mainly from:--

- (a) registration in the name of an Arab nominee of land purchased on behalf of Jews and usually occupied by them;
- (b) mere possession without title, after unofficial purchase.

48. It has been represented to us, that to evade the Regulations, the Jews sometimes arrange for an Arab to be the nominal purchaser and the holder of title to land which is actually at their disposal and is usually occupied by them immediately after the purchase. The nominee may be a minor employee, such as a watchman, who has no funds of his own. As security he may be required to sign an acknowledgement of a large debt to the Jews, which would normally remain dormant, but could be used for an action in court if he tried to profit by his nominal ownership. It was suggested to us that the Director of Land Registration should refuse to register purchases made in this way, on the ground that they were contrary to the spirit of the White Paper. This suggestion appears to us quite impracticable, and would undoubtedly expose the Director of Land Registration to action in the High Courts.

49. It has been represented to us also that it is becoming increasingly common for Jews, by arrangement with Arab owners, to take possession of land in a restricted area and to cultivate it without any pretence to title. It is probable that they are satisfied with mere possession, but of course the hope that the law will one day be changed. There remains the possibility that if possession continues long enough, prescription may eventually secure them against eviction. It has therefore been urged that, in order to conform to the spirit of the White Paper, the term "transfer" in the Regulations should be re-defined so as to include entry into possession. It appears to us that the Regulations are in effect Land Transfer of Title Regulations and as such concerned only with title, so that mere possession without title is a matter outside their sphere. Our terms of reference are limited to the question whether the purpose of the Regulations is being achieved and it is therefore not for us to consider whether or not limitations of the Regulations to matters of title adequately embodies the spirit of the White Paper.

50. In any event, the remedy lies in the hands of the Arabs themselves. Unless they enter into collusion with the Jews to defeat the spirit of the White Paper, Jews will not be able to enter improperly into possession of the land within a restricted area. If the parties whom the law is designed to defend conspire to evade the law, then it is indeed difficult for the authorities to enforce it and to defend them.

51. Jamal Eff. Tuqan dissents from the views expressed in the three preceding paragraphs, and has written a note of reservation to that effect.

### SUMMARY

52. In the third paragraph of this report we stated that allegations had been made with regard to contraventions, evasions and failure to give effect to the spirit of the Land Transfer Regulations.

53. We began by recording that no evidence of a definite contravention had been brought to our notice.

54. We went on to examine the alleged evasions. We found these to arise from three principal sources, and we have recommended certain measures to guard against the possibility of irregularities in the future:--

- (A) with regard to the third proviso to Regulation 3 and the corresponding proviso to Regulation 4,
  - (i) that section (a) of each be re-drafted to show beyond doubt that the concession is limited to the mortgaged area;
  - (ii) that after a suitable period of grace the concession afforded by section (b) of each should be rescinded;
- (B) with regard to the procedure of the Execution Office,
  - (i) that the Chief Execution Officer himself should supervise any transfer to persons other than Palestinian Arabs of land in a restricted area, especially if it is proposed to sell an area larger than is required to satisfy the judgment debt;
- (C) with regard to the procedure for land settlement,
  - (i) that "transfer" should be re-defined to include the conversion of equitable into full title;
- (ii) that legislation should be introduced to ensure that no equitable right should be given where legal right would be debarred by the Regulations;
  - (iii) but that, when all the requirements for equitable right were fulfilled before the commencement of the Regulations, equitable title should be granted;
  - (iv) that, if a person other than a Palestinian Arab has taken possession of land in a restricted area before the commencement of the Regulations, the period of prescription may be completed after the Regulations;
  - (v) but that, if he has taken possession after the commencement of the Regulations, no right may accrue to him.

55. Mr. Kuperman dissented from the recommendation in (A) (ii) above for the rescinding of the concession afforded by section (b).
56. We have also examined a few minor allegations, but have recommended only that the existing provision for investigation of claims should be rigidly applied.
57. We consider that it would be impracticable to adjust any irregularity which may have resulted from evasion in the past; and, with one dissident, we do not consider that the number or the magnitude for these past irregularities has been such as to call for any attempt to adjust them.
58. Jamal Eff. Tuqan agrees that adjustment is impracticable, but holds that the irregularities have been considerable both in number and in magnitude.
59. We have considered certain proposals made to us and recommend:--
- (i) that the Attorney General should be empowered to intervene, either in first instance or on appeal, whenever he deems it necessary. He may of course authorize a member of the public to act on his behalf;
  - (ii) that he should similarly be empowered to intervene to demand that a transaction be declared "null and void;"
  - (iii) that provision should be made with adequate safeguards, to exempt genuine Arab companies from the present ruling that no company is a Palestinian Arab.
60. Finally, we have considered allegations that the spirit of the White Paper is being violated through the machinations of Arab nominees and through collusive entry of Jews into possession of land regardless of title.
61. We consider that it would be quite impracticable to deal with the former problem.
62. We draw attention to the latter problem; but, since the Land Transfer Regulations are concerned only with title, we consider that it would be outside our sphere to deal with questions of mere possession without title.
63. We have suggested that the remedy lies in the hands of the Arabs themselves.
64. Jamal Effendi Tuqan has written a note of dissent from the views expressed in the three preceding paragraphs.
65. In conclusion, we desire to record our appreciation of the zealous and efficient manner in which Rajai Eff. Husseini has performed the duties of Secretary to the Committee.

We have the honour to be,  
Sir,

(Sgd) R.E.H. Crosbie	-	Your obedient servants,	
J.N. Stubbs	)	Chairman	
A.P. Mitchell	)	Members	
J. Kuperman	)		
J.A.R. Tuqan	)		
R.S. Husseini	-	Secretary	

The Chief Secretary  
Jerusalem.

28th November, 1945.

**Note of Reservation by Jamal Eff. Tuqan on paragraphs 48, 49 & 50  
and on paragraph 43.**

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1. The Land Transfer Regulations, 1940, were primarily made to give effect to paragraph 16 of the 1939 White Paper, in which it is stated among other things that the "reports of several expert Commissions have indicated that, owing to the natural growth of the Arab population and the steady sale in recent years of Arab land to Jews, there is now in certain areas no room for further transfer of Arab land, whilst in some other areas such transfer of land must be restricted, if Arab cultivators are to maintain their existing standard of life and a considerable landless Arab population is not soon to be created. In these circumstances the High Commissioner will be given general powers to prohibit and regulate transfers of land." This statement is also repeated in the Statement Explanatory of the Land Transfers Regulations, 1940.
2. It is therefore evident that the intention and purpose of the Regulations was to prohibit and restrict alienation of Arab land in any form to persons other than Palestinian Arabs, and it was with this end in view that Government decided to apply the principles of the Regulations to State Domain although State Domain is excluded from the provisions of the Regulations. Furthermore, the word "transfer" has not been defined in the Regulations, but according to Regulation 9 it includes leases, mortgages, charges and any other dispositions. It has been held by the Courts (Ex C.A. 90/1932 Palestine Law Reports Vol. I page 846 and C.A. 105/1928 Palestine Law Reports Vol. I page 373) that a sale outside the land registry is a disposition which is void for non-registration, the inference being that a "bei' barrani" is a disposition and hence a "transfer" in accordance with the definition.
3. Section 12 of the Land Transfer Ordinance also provides that "If any person is a party to any disposition of immovable property which has not received the consent required by Section 4, and either enters into possession, or permits the other party to enter into possession, of the immovable property, whether by himself or any person on his behalf, he is guilty of an offence and is liable to a fine of one-fourth of the immovable property."
4. Furthermore the word "transfer" could not be limited to registration of title only, as it would be absurd for the Land Transfers Regulations to forbid registration in the names of persons other than Palestinian Arabs in Zones A and B, but to allow their entry into possession and their acquisition of land in some other way than by transfer at the Land Registry.
5. It could never have been the intention of Government to protect the Land Registers in forbidding dispositions to persons other than Palestinian Arabs, and not the Arab occupants of Zones A and B. Registration cannot be divorced from possession, as the whole object of land settlement and land registration is to ensure that ownership should correspond with possession. Otherwise the whole system of land registration would be meaningless.

6. The practice referred to by the Committee in paragraphs 48, 49 & 50 of this report is becoming the most common method used for defeating the effect and purpose of the Regulations, and consequently I maintain that the question of the entering of persons other than Palestinian Arabs into possession of land in a restricted area is a matter within the sphere of the Regulations. In any case, whether or not "possession" falls technically within the meaning of the term "transfer," I submit that, if the object of the Regulations is to be served, the term "transfer" should be defined more precisely so as to make it clear that it includes entry into possession either directly or through a nominee, and that further such transfer should not only be prohibited and declared void but should also be made a criminal offence.

I should also like to make one further observation with regard to paragraph 43 of the report. While I agree that an appeal should not lie from a Settlement Officer on a question of fact, yet I consider that an appeal on a question of law should lie by right and not be leave. Settlement cases are among the most important forms of litigation and sometimes involve areas of considerable values. In view of the importance of land matters in Palestine, an appeal on a question of law should be allowed as of right in accordance with the general practice of the courts in much less important cases.

28th day of November, 1945

(Sgd.) J.A.R. Tuqan.