

March 30, 2016

The Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

**RE: Violations of the Internal Revenue Laws by
The Jewish National Fund (EIN: 13-1659627)**

Dear Commissioner Koskinen:

The IRS should revoke the Jewish National Fund's (JNF) tax-exempt status because it does not have a charitable purpose and engages in activities that violate public policy. JNF is a New York registered, § 501(c)(3) tax-exempt organization that enables, subsidizes and facilitates the forced population transfer of Palestinians throughout Israel and the occupied Palestinian territory (OPT); destruction and confiscation of Palestinian agricultural land; and settler violence against Palestinian populations. In particular, JNF promotes racist policies like leasing state land "solely for the Jewish people," thereby excluding non-Jewish Israeli citizens from access to public property.¹ Additionally, JNF has allocated thousands of dunams of land for illegal Israeli settlements.² Because these activities actively undermine any enumerated tax-exempt purpose and violate public policy, JNF is not entitled to § 501(c)(3) tax exemption.

BACKGROUND AND KEY FINDINGS

Article 3(c) of the covenant between JNF and the Israel Lands Authority (ILA) states that the JNF's funds must be used "to bring direct or indirect benefit to those of the Jewish religion, race or Jewish origins."³ Indeed, one of the JNF's main purposes is to purchase lands upon which only Jews may settle.⁴ To fulfill this goal, the JNF owns 13 percent of all land in Israel, including 1 million dunams – more than 247,000 acres – of confiscated Palestinian land.⁵

Israel's discriminatory land laws authorize the state to confiscate Palestinian land under the Absentee Property Law (1950) and the Jewish National Fund Law (1953). Together, these laws disenfranchise many Palestinian landowners by designating them as either absentees –

¹ Excerpts from the Jewish National Fund's Response to H.C. 9205/04 and H.C. 9010/04, ¶10, available at: <http://www.adalah.org/uploads/oldfiles/eng/publications/makan/hc9010.pdf> (last accessed 3/28/2016).

² Press Statement, Mark C. Toner, Deputy Dep't Spokesperson, U.S. State Dep't, Israeli Announcement of New Housing Units in the West Bank and East Jerusalem (July 29, 2015), <http://www.state.gov/r/pa/prs/ps/2015/07/245478.htm>.

³ See *supra*, note 1.

⁴ Shahar Ilan, *Is the JNF racist?* HAARETZ (July 25, 2007), <http://www.haaretz.com/print-edition/news/is-the-jnf-racist-1.226212>.

⁵ HUMAN RIGHTS WATCH, *Discrimination in Land Allocation and Access, in OFF THE MAP: LAND AND HOUSING RIGHTS VIOLATIONS IN ISRAEL'S UNRECOGNIZED BEDOUIN VILLAGES* (2008), available at <http://www.hrw.org/reports/2008/iopt0308/4.htm>.

Palestinian refugees who fled in 1948/1967 and were later denied reentry – or present absentees – internally displaced Palestinians whom Israel denies property restitution. The land laws facilitate the nationalization and the transfer of both absentee and present absentee lands to ILA and JNF for the sole benefit of the “Jewish people.” By transferring confiscated land to JNF first before exclusively offering it to Jewish citizens, Israel effectively immunizes its colonization of Palestinian land from domestic and international legal challenges.⁶

Because at least half of ILA’s governing council must be nominated by JNF, the latter enjoys significant influence over the governmental body charged with setting Israel’s land policy.⁷ Currently, in furtherance of its so-called “Blueprint Negev” campaign, JNF has been actively involved in deforestation and master planning campaigns throughout the Negev Desert atop unrecognized Palestinian villages. In creating room for at least 14 new Jewish-only settlements with 250,000 residents, settler-only roads, recreation centers and parks, JNF has destroyed approximately 76,000 Palestinian homes, displacing over 160,000 people.⁸ According to Seth Morrison, a former JNF board member who resigned in protest over JNF’s eviction practices, these are not isolated incidents.^{9 10}

For example, take Al-Araqueeb, a Palestinian village in southern Israel that is home to over 50,000 non-Jewish, Israeli citizens.¹¹ For over 200 years, Palestinian villagers have lived on and cultivated Al-Araqueeb.¹² But, in July 2010, ILA along with 1,000 Israeli soldiers razed the village, demolished 46 structures, and uprooted 850 trees in order to make way for “Blueprint

⁶ Noura Erakat, *Singular Legal Regime Necessitates One-State Solution*, JADALIYYA (Mar. 2, 2012), <http://www.jadaliyya.com/pages/index/4532/singular-legal-regime-necessitates-one-state-solut>; HUMAN RIGHTS WATCH, *supra* note 5; Alaa Mahajneh, *Situating the JNF in Israel’s Land Laws*, AL-MAJDAL at 30 (vol. 43, Badil 2010).

⁷ Press Release, Adalah, Adalah Advises Israel Land Reform Committee on Non-Discrimination (Aug. 29, 2004) available at <http://www.adalah.org/en/content/view/6323>.

⁸ *Jewish National Fund, Blueprint Negev: Campaign Update*, JEWISH NAT’L FUND, available at <http://www.jnf.org/work-we-do/blueprint-negev/blueprint-negev-update-flyer.pdf>; Noam Sheizaf, *The Jewish National Funds List of Projects in the Settlements*, +972 MAGAZINE (May 4, 2014), <http://972mag.com/the-jewish-national-funds-list-of-projects-in-the-settlements/90512/>.

⁹ INST. FOR MIDDLE E. UNDERSTANDING, Elad, the Jewish National Fund & the US Taxpayer-Subsidized “Judaization” of Silwan, Oct. 8, 2014, available at <http://imeu.org/article/elad-the-jewish-national-fund-the-us-taxpayer-subsidized-judaization-of-sil>.

¹⁰ HUMAN RIGHTS WATCH, OCCUPATION, INC.: HOW SETTLEMENT BUSINESSES CONTRIBUTE TO ISRAEL’S VIOLATIONS OF PALESTINIAN RIGHTS at 109 (2016), available at https://www.hrw.org/sites/default/files/report_pdf/israel0116_web.pdf; MA’AN DEV. CTR. & JORDAN VALLEY POPULAR COMMS., EYE ON THE JORDAN VALLEY (2010), available at <http://www.maancr.org/old/pdfs/Eyeon%20theJVReportFinal.pdf>; Aviva Bar-am & Shmuel Bar-am, *Seven of the JNF’s Best*, TIMES OF ISRAEL Dec. 28, 2013), <http://www.timesofisrael.com/seven-of-the-jnfs-best/>; CORPORATE WATCH, *The Jordan Valley Meeting Point: The Jewish National Fund’s Racist Alternative Reality*, (Aug. 11, 2010), <https://corporateoccupation.wordpress.com/2010/08/11/the-jordan-valley-meeting-point-the-jewish-national-funds-racist-alternative-reality/>.

¹¹ Noga Malkin, *Erasing Links to the Land in the Negev*, HUMAN RIGHTS WATCH (Mar. 11, 2011), <http://www.hrw.org/news/2011/03/11/erasing-links-land-negev>; Gideon Levy & Alex Levac, *Drafting the Blueprint for Palestinian Refugees’ Right of Return*, HAARETZ (Oct. 5, 2013), available at <http://www.haaretz.com/weekend/twilight-zone/1.550550>.

¹² LEVY & LEVAC, *supra* note 11.

Negev,”¹³ which has used deforestation as a pretext to confiscating Palestinian land.¹⁴ As a result of the campaign, Al-Araqeeb experienced 86 military assaults through July 2015 – despite a 2011 temporary injunction – that forced many residents, half of them children, into homelessness.¹⁵

JNF also gives infrastructural support to Israel’s annexation and confiscation of Palestinian land throughout the occupied West Bank, including East Jerusalem and the Jordan Valley. In December 2015, Israel announced that it planned to erect 891 more illegal housing units in East Jerusalem. In furtherance of this goal, the Jerusalem Regional Planning Committee authorized JNF to commence new construction in Gilo, a Jewish-only Israeli settlement that sits atop parts of Beit Jala and Al-Walajah, two Palestinian villages in the neighboring Bethlehem District.¹⁶ Together, JNF and ILA will expand Gilo to accommodate these new settlement units and will annex as much Palestinian land as they need from Beit Jala and Al-Walajah, re-routing the separation barrier and cutting villagers off from the Cremisan Valley.¹⁷

In 2014, investigative Israeli journalist Raviv Drucker revealed numerous projects funded by JNF in Gilo, Har Gilo and tens of other illegal settlements throughout the occupied West Bank.¹⁸ According to Drucker’s report, JNF has spent millions of dollars on recreational facilities, roads, monuments and parks built on illegally confiscated Palestinian land.¹⁹

JNF activities in the Jordan Valley are another poignant example. The region constitutes almost 30 percent of the occupied West Bank, and its Palestinian population has decreased from 250,000 in 1967 to 60,000 as of 2013 as a direct result of Israel’s military occupation.²⁰ Israel illegally controls more than 90 percent of the Valley, inviting nearly 10,000 Jewish Israelis to live in 39 different illegal settlements.²¹ Although the Jordan Valley has some of the richest water and mineral resources in the West Bank, Israeli restrictions on Palestinian access to water has incapacitated Palestinian agriculture and individual water use.²² The 10,000 illegal settlers in the Jordan Valley are allocated an amount equivalent to a third of what Israel allocates to the 2.5 million Palestinians in the entire West Bank.²³ Further, Palestinians are forced to buy their water

¹³ MALKIN, *supra* note 11; *Forced Displacement: The Story of Al-Araqib*, WHO PROFITS FROM THE OCCUPATION (last visited Mar. 29, 2016), <http://www.whoprofits.org/content/forced-displacement-story-al-araqib>; Adalah, Position Paper, *From Araqib to Susiya: The Forced Displacement of Palestinians on Both Sides of the Green Line* (May 2013), available at http://www.adalah.org/uploads/oldfiles/Public/files/English/Publications/Position_Papers/Forced-Displacement-Position-Paper-05-13.pdf.

¹⁴ ADALAH, *supra* note 13.

¹⁵ WHO PROFITS, *supra* note 13.

¹⁶ The [Green] Line is Long Gone, B’TSELEM (Jan. 5, 2016), http://www.btselem.org/jerusalem/20150105_expansion_of_gilo_settlement.

¹⁷ *Id.*

¹⁸ SHEIZAF, *supra* note 8.

¹⁹ *Id.*

²⁰ PLO NEGOTIATIONS AFFAIRS DEPT., Israeli Annexation Policies in the Jordan Valley, Sept. 2013, available at <http://www.nad-plo.org/userfiles/file/Factsheet%202013/JORDANVALLEY%20FACTSHEET.pdf>.

²¹ PLO NEGOTIATIONS AFFAIRS DEPT., *supra* note 20; Background on the Jordan Valley, B’TSELEM (May 18, 2011), http://www.btselem.org/jordan_valley.

²² The Jordan Valley, MIFTAH (Dec. 26, 2012), <http://www.miftah.org/PrinterF.cfm?DocId=25630>.

²³ *Id.*

for at least six times the average price, forcing them to spend approximately 40 percent of their household income on water alone.²⁴

Between 1997 and 2003, JNF built the Tirza Reservoir in the northern West Bank with funds it collected alongside partner organizations.²⁵ The reservoir collects floodwater from the largest stream in the West Bank, Wadi al-Far'a, before it reaches the Jordan Valley.²⁶ Israel then redirects the water to Jewish settlers for their exclusive use.²⁷ JNF also played a key role in funding and constructing the Allon Road, the main roadway that Jewish settlers use to travel to and from Jordan Valley settlements, bypassing Palestinian towns.²⁸ The Allon Road was a critical piece of the broader Allon Plan, dating from shortly after the 1967 conquest of the area, an Israeli initiative to annex key areas in the West Bank in order to connect Jordan Valley settlements with those in East Jerusalem.²⁹ ³⁰ Today, JNF continues funding, paving, preparing, and constructing major Jewish-only roads throughout the West Bank, frequently in coordination with Israel's Defense Ministry.³¹

JNF retains several subsidiary organizations to carry out many of its settler-colonialist activities.³² Two such organizations, Himnuta and Elad, aggressively purchase Palestinian land in East Jerusalem and offer it exclusively to illegal Jewish settlers.³³ Their efforts in Wadi Hilweh, a Palestinian neighborhood in Jerusalem, have resulted in Jewish-only tourist trails.³⁴ Similarly in Silwan, another Jerusalem Palestinian neighborhood, their efforts have resulted in dozens of evictions.³⁵

²⁴ *Id.*

²⁵ Marlin Levin & Esther Kustanowitz, *Hadassah in Pictures, It Takes a Dream: The Story of Hadassah*, 132, (2nd rev. ed. 2002).

²⁶ *Id.*

²⁷ JNF in the Jordan Valley: Colonization Now, TARABUT – HITHABRUT (Aug. 1, 2013), <http://www.tarabut.info/en/articles/article/JNF-in-the-Jordan-Valley/>; HUMAN RIGHTS WATCH, SEPARATE AND UNEQUAL: ISRAEL'S DISCRIMINATORY TREATMENT OF PALESTINIANS IN THE OCCUPIED PALESTINIAN TERRITORIES at 18 (2010), available at https://www.hrw.org/sites/default/files/reports/ipt1210webwcover_0.pdf; KKL-JNF Reservoirs Provide Priceless Benefits, KEREN KAYEMETH LEISRAEL – JEWISH NATIONAL FUND (last visited Mar. 29, 2016), <http://www.kkl.org.il/eng/water-for-israel/water-reservoirs/>.

²⁸ The JNF and Settlements, WHAT'S BEHIND THE JEWISH NATIONAL FUND (last visited Mar. 29, 2016), <http://www.whatsbehindjnf.org/settlements/>; Terence Smith, *Israel Is Quietly Building A Highway on West Bank; Outside Arab Areas*, N.Y. TIMES (Feb. 20, 1973).

²⁹ THE KNESSET (PARLIAMENT), *biography of Yigal Allon (Peikowitz)* (last visited Mar. 29, 2016), http://www.knesset.gov.il/lexicon/eng/alon_eng.htm; B'TSELEM, DISPOSSESSION AND EXPLOITATION: ISRAEL'S POLICY IN THE JORDAN VALLEY AND THE NORTHERN DEAD SEA (May 2011), available at https://www.btselem.org/download/201105_dispossession_and_exploitation_eng.pdf; HUMAN RIGHTS WATCH, *supra* note 27 at Ch. IV.

³⁰ SMITH, *supra* note 28.

³¹ Security Roads, JEWISH NATIONAL FUND (last visited Mar. 29, 2016), <http://www.jnf.org/work-we-do/our-projects/security/security-roads.html>.

³² INST. FOR MIDDLE E. UNDERSTANDING, *supra* note 9.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

In 2004, JNF explained that its lands are the “inalienable property of the Jewish people” and that, “it is not obliged to act for the good of all (Israel’s) citizens (but) for the good of the Jewish people only.”³⁶ The JNF does not, however, account for the fact that the 13 percent of all of Israel’s land it holds was acquired by the state through war and transferred to the institution without compensation to its Palestinian owners. Because the JNF works with the state to the detriment of Israel’s 1.7 million non-Jewish citizens and the nearly 2 million Palestinians living in the occupied West Bank, it should no longer receive tax-exempt status.

DISCUSSION

I. THE IRS MUST REVOKE THE JEWISH NATIONAL FUND’S IRC § 501(C)(3) TAX-EXEMPT STATUS BECAUSE JNF IS NOT ORGANIZED OR OPERATED FOR A CHARITABLE PURPOSE.

A tax-exempt, charitable organization must satisfy the common law definition of a charity by passing a two-pronged test.³⁷ An organization must be both (1) organized exclusively for an exempt purpose and (2) operated exclusively for such purpose. Although “exclusively” does not mean “solely” in this context, the presence of a single non-exempt purpose that is substantial in nature “precludes exempt status, regardless of the number or importance of truly exempt purposes.”³⁸ An institution that promotes racial or religious discrimination is not, as a matter of law, organized or operated for a charitable purpose.³⁹ Because JNF’s *raison d’être* is to provide services to Jewish Israelis to the detriment of Palestinian citizens of Israel and those in the occupied Palestinian territory, IRS should revoke its tax-exempt status.

(a) JNF is ineligible for tax-exempt status because it is organized to promote a racist and discriminatory purpose.

Organizations that espouse racially discriminatory policies do not qualify for tax-exempt status. Between 1970 and 1971, IRS issued rulings that limited tax-exempt status to private schools that practiced racial discrimination in their admissions processes and otherwise failed to adopt racial nondiscriminatory policies.⁴⁰ In *Bob Jones University v. United States*, 461 U.S. 574 (1983), the Supreme Court upheld IRS’s revocation of an evangelical Christian university’s tax-exempt status because it refused to admit unmarried black students and threatened to expel

³⁶ Yuval Yoaz, *JNF Not Required to Act for Good of All*, *Court Told*, HAARETZ (Dec. 16, 2004), available at <http://www.haaretz.com/jnf-not-required-to-act-for-good-of-all-court-told-1.144072>; Dan Leon, *The Jewish National Fund: How the Land Was ‘Redeemed’*, PALESTINE-ISRAEL J., vol. 12 no. 4 (2005/2006), available at <http://www.pij.org/details.php?id=410>.

³⁷ 26 U.S.C.A. § 501(c)(3) Internal Revenue Code; *Bob Jones University v. United States*, 461 U.S. 574, 579 (1983); *Columbia Park and Recreation Ass’n, Inc. v. C.I.R.*, 88 T.C. No. 1, 13-14 (1987); *Quality Auditing Co., Inc. v. Commissioner of Internal Revenue*, 114 T.C. 498, 504 (2000); *Levy Family Tribe Foundation, Inc. v. Commissioner*, 69 T.C. 615, 617 (1978); *Federation Pharmacy Services Inc. v. Commissioner of Internal Revenue*, 72 T.C. 687, 691 (1979); *Mellon Bank, N.A. v. United States*, 762 F.2d 283 (3d Cir. 1985).

³⁸ *Quality Auditing Co.*, 114 T.C. at 504 (citing *Better Bus. Bureau v. United States*, 326 U.S. 279, 283 (1945)).

³⁹ *Bob Jones University*, 461 U.S. at 582.

⁴⁰ *Bob Jones University*, 461 U.S. at 574 (1983).

“[s]tudents who date outside their race,” genuinely believing that the Bible forbids interracial relationships.⁴¹ In its decision, the Supreme Court noted, “Racial discrimination in education violates deeply and widely accepted views of elementary justice.”⁴² Accordingly, any public benefit that Bob Jones might have otherwise conferred was nullified by racially discriminatory policies that placed the institution’s purpose “at odds with the common community conscience.”⁴³

Similarly, in *Green v. Connally*, 330 F. Supp. 1150 (D.D.C. 1971), 12 years before *Bob Jones* was decided, the parents of black students attending public schools in Mississippi sued to enjoin the U.S. Treasury from giving racially discriminatory private schools tax-exempt status. The district court granted the injunction, explaining that Internal Revenue Code provisions on charitable exemptions “must be construed to avoid frustrations of Federal policy.” Accordingly, while parents were free to send their children to racially exclusive private schools at their own cost, the schools and their sponsors had no “constitutional entitlement to government support, whether in the form of tax exemptions or deductions or otherwise.” The court also stated that all charitable trusts “are subject to the requirement that the purpose of the trust may not be illegal or contrary to public policy” since they are considered to be for the benefit of the community.⁴⁴ Although it may be acceptable to make contributions that benefit a group with shared values, such contributions “take on a different and unacceptable hue when it is manifested as racial discrimination.”⁴⁵

Like the racist activities that prevented the institutions in *Bob Jones* and *Green* from enjoying tax-exempt status, “there can be no doubt that” JNF’s practice of forcibly displacing Palestinians from their land and building Jewish-only housing developments “is contrary to a fundamental public policy.”⁴⁶ JNF’s own constitutive documents forbid selling, leasing or transferring lands to non-Jews; indeed, Palestinians are barred from developing any land that JNF holds in trust for those of Jewish race or descent living anywhere in the world.⁴⁷ Sometimes, JNF employs discriminatory policies in ways that may appear race-neutral but are actually designed to exclude Palestinians. For example, one of JNF’s primary activities is to create housing developments for immigrants and “young Israelis fresh from military service.”⁴⁸ But these subsidized and affordable housing opportunities, which are made possible by JNF’s direct access of over 2.5 million dunums of land, are available only to Jewish citizens of Israel.⁴⁹ Since Palestinian refugees cannot return to Israel and since Palestinian citizens of Israel are “exempted” by the state from military conscription, they cannot enjoy JNF’s leasing discounts and are effectively excluded from the land.⁵⁰

JNF’s development of the Negev Desert is another example of how the organization’s activities are designed to discriminate against Palestinians to ensure that JNF lands and programs

⁴¹ *Id.*

⁴² *Id.* at 593.

⁴³ *Id.* at 592

⁴⁴ *Green*, 330 F. Supp. at 1160.

⁴⁵ *Id.* at 1163.

⁴⁶ *Bob Jones University*, 461 U.S. at 592.

⁴⁷ Walter Lehn, *The Jewish National Fund*, 3-4 J. OF PALESTINE STUD. 74, 74-96 (1974).

⁴⁸ Community Building, JEWISH NATIONAL FUND (last visited Mar. 29, 2016), <http://www.jnf.org/work-we-do/our-projects/community-building/>.

⁴⁹ ADALAH, *supra* note 7.

⁵⁰ *Id.*

are enjoyed only by Israeli Jews. Recently, JNF has been working closely with the Israeli government to reforest land throughout the Negev atop unrecognized Palestinian villages in order to create space for 250,000 Jewish settlers. Together, JNF and the Israel Land Authority have destroyed tens of thousands of Palestinian homes and displaced over 150,000 Palestinians, all under the banner of “Blueprint Negev,” a \$600 million “initiative to develop the Negev Desert in a sustainable manner and make it home to the next generation of Israel’s residents.”

In a 2009 brochure on Blueprint Negev, JNF described new settlements in the Negev to accommodate 2,600 Jewish Israeli families.⁵¹ The brochure ignores the Palestinian Bedouins who currently inhabit the land, mentioning them only to reassure readers that JNF will “continue to have conversations with the Bedouin and work with their committees -- in particular, the Abu Basma Regional Council -- to determine which projects would best enhance their quality of life.”⁵² But the Abu Basma Regional Council was not representative of the Negev’s Palestinian Bedouins; instead, it was managed by an appointed representative of Israel’s Interior Ministry and was not at all affiliated with any Bedouin communities.⁵³

JNF has never coordinated with any Bedouin Palestinian communities in facilitating its Blueprint Negev campaign and has made few efforts to hide its desire to remove all Palestinians from the Negev. The village of Al-Araqeb in the Negev is one well-known instance. In July 2010, 1,300 Israeli police invaded and demolished the village.⁵⁴ Residents helped to rebuild the demolished homes with the help of Israeli and international activists, but the Israeli police promptly reinvaded and destroyed the structures again.⁵⁵ To date, Israeli authorities have demolished Al-Araqeb over 80 times, and JNF has sued the residents for the cost of demolition.⁵⁶

(b) JNF cannot receive tax-exempt status because it is substantially operated to further a discriminatory agenda in Jerusalem.

JNF does not satisfy the operational test within the meaning of IRC §501(c)(3) since it substantially engages in discriminatory activities that do not qualify as exempt purposes. Any truly public benefits JNF may confer are secondary and incidental to its primary purpose benefitting a narrow class based on religion.

For example, Himnuta and Elad, two of the JNF’s subsidiary organizations,⁵⁷ purchase and acquire land in efforts to increase Jewish settlement on Palestinian land to promote a Jewish

⁵¹ JEWISH NATIONAL FUND, *supra* note 8.

⁵² *Id.*

⁵³ Thabet Abu Ras, *Segmenting the Naqab (Negev): Israel Redistricts to Postpone Local Elections for Arab-Bedouin Citizens*, 97 ADALAH NEWSLETTER (Adalah), Oct. 2012, available at <http://www.adalah.org/uploads/oldfiles/Public/files/English/Newsletter/97-October2012/Redistricting-Naqab-Dividing-Abu-Basma-Thabet-Abu-Ras.pdf>.

⁵⁴ ADALAH, THE INEQUALITY REPORT: THE PALESTINIAN ARAB MINORITY IN ISRAEL at 36 (Mar. 2011), available at http://www.adalah.org/uploads/oldfiles/upfiles/2011/Adalah_The_Inequality_Report_March_2011.pdf; BADIL, NGO PROGRESS REPORT: IMPLEMENTATION OF UNIVERSAL PERIODIC REVIEW RECOMMENDATIONS (ISRAEL) TO THE HUMAN RIGHTS COUNCIL at ¶4.6 (Aug. 2011), available at <http://www.badil.org/en/legal-advocacy/un-submissions/human-right-council.html>.

⁵⁵ ADALAH, *supra* note 54.

⁵⁶ *Israel Destroys Bedouin Village of Al-Araqib for the 78th Time*, MONDOWEISS (Nov. 19, 2014), <http://mondoweiss.net/2014/11/destroys-bedouin-village>.

⁵⁷ INST. FOR MIDDLE E. UNDERSTANDING, *supra* note 9.

historical narrative of Jerusalem.⁵⁸ In Wadi Hilweh, a neighborhood next to the Old City of Jerusalem, Elad, a private Jewish-settler organization, funded an archeological dig and tourist center on behalf of the Israeli government.⁵⁹ Both were created to promote a highly politicized Jewish claim to the land on the site of the City of David, believed to be the biblical site of King David's palace.⁶⁰ Currently, Elad maintains and operates the "City of David" tourist center to exploit the site for political gain in support of Jewish claims to the land.⁶¹ The subsidiary organizations purport to further a public interest (i.e., archeological site and tourist center) while engaging in a non-exempt purpose (i.e., politicized claims to archeological sites). A 2014 leaked report by European heads of missions in Israel states:

Israeli authorities, in conjunction with [Elad], are using archeology to promote a one-sided historical narrative of Jerusalem, placing emphasis on its Biblical and Jewish connotations while neglecting the Christian/Muslim historic-archeological ties to the same places."⁶²

A former JNF board member, Seth Morrison, who resigned in protest of the organization's discriminatory practices, stated: "The JNF has gained ownership of other Palestinian homes in East Jerusalem and, in many instances, then transferred these properties through its subsidiaries to Elad, a settler organization whose purpose is to 'Judaize' East Jerusalem."⁶³

II. THE JEWISH NATIONAL FUND IS NOT ENTITLED TO TAX-EXEMPT STATUS UNDER § 501(C)(3) BECAUSE ITS ACTIVITIES VIOLATE U.S. PUBLIC POLICY ON ISRAELI SETTLEMENTS IN THE OCCUPIED PALESTINIAN TERRITORY.

To compensate for the fact that tax exemptions deprive the government of revenue that it could have used to benefit the public, a tax-exempt organization must serve, rather than betray, the public's interest.⁶⁴ Thus, a tax-exempt organization's activities must confer a public benefit that the government would have otherwise provided and must not violate public policy. Because JNF helps build and sustain Israeli settlements in the occupied Palestinian territory, including East Jerusalem, in contradiction of settled U.S. foreign policy and international law, it is ineligible for §501(c)(3) status.

Presidents Lyndon Johnson, Richard Nixon, Gerald Ford, Jimmy Carter, Ronald Reagan, George H.W. Bush, Bill Clinton, George W. Bush and Barack Obama have all explicitly and unambiguously condemned Israeli settlement building in the West Bank, including East Jerusalem.⁶⁵ In doing so, each administration has recognized that the settlements are a primary

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Mellon Bank, N.A.*, 590 F. Supp. at 164.

⁶⁵ Barack Obama, President of the United States of America, Remarks by the President at Cairo University: Remarks by the President on a New Beginning (June 4, 2009) (transcript available at

obstacle to a just and lasting peace because they perpetuate and accelerate Palestinian displacement, undermine U.S.-led peace processes and violate international law. Indeed, JNF's settlement activities "hamper the creation of a Palestinian State, elevate the rights and privileges of Israeli settlers over Palestinians living in the West Bank" and harbor violent Jewish extremism, including groups that were responsible for this past summer's firebombing of a home in the Palestinian village of Duma, which killed an 18-month-old baby and his parents.⁶⁶

In the Jordan Valley, which makes up almost 30 percent of the West Bank, JNF-supported settlement activity has helped reduce the Palestinian population in the area from 250,000 to 60,000.⁶⁷ Although the Jordan Valley has some of the richest water and mineral resources in the West Bank, Israeli restrictions on Palestinian access to water has incapacitated Palestinian agriculture and individual water use.⁶⁸ Many of these restrictions are often imposed in coordination with JNF. Between 1997 and 2003, JNF and other partner organizations built the Tirza Reservoir in the Northern West Bank.⁶⁹ The reservoir collects flood water from the largest stream in the West Bank, Wadi al-Far'a before it reaches the Jordan River.⁷⁰ The purpose of the reservoir is to trap the water before it reaches the Jordan Valley so that Jewish settlers can use it for their exclusive benefit.⁷¹

Most significantly, the JNF played a key role in funding and constructing the Allon Road, which was part of the notorious Allon Plan.⁷² The Allon Plan was an extensive Israeli settlement initiative to control key areas in the West Bank, especially in the Jordan Valley, where land would be annexed and confiscated in order to create Jewish-only bypass roads connecting settlements to one another.⁷³ Indeed, the Allon Road was the main connecting road for exclusive

https://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-Cairo-University-6-04-09); Hillary Clinton, Secretary of State of the United States of America, Remarks: Press Availability With Egyptian Foreign Minister Ahmed Ali Aboul Gheit (May 27, 2009) (transcript available at <http://jerusalem.usconsulate.gov/remarks052709.html>); J. Adam Erel, State Department Deputy Spokesman, State Department Press Briefing (Dec. 31, 2003) (transcript available at <http://iipdigital.usembassy.gov/st/english/texttrans/2003/12/20031231160303ssor2.148074e-02.html#axzz3Ux980zUu>); Zaki Shalom, *The United States and the Israeli Settlements: Time for a Change*, 15 STRATEGIC ASSESSMENT 73 (Oct. 2012), available at http://www.inss.org.il/uploadImages/systemFiles/adkan15_3cENG3%20%282%29_Shalom.pdf; U.S. DEPT. OF ST., SHARM EL-SHEIKH FACT-FINDING COMMITTEE REPORT (Apr. 30, 2001), available at <http://2001-2009.state.gov/p/nea/rls/rpt/3060.htm>; Interview with President George H. W. Bush, President of the United States of America, The President's News Conference Following Discussions With Prime Minister Toshiki Kaifu of Japan in Palm Springs, California, in *The American Presidency Project* (Mar. 3, 1990), available at <http://www.presidency.ucsb.edu/ws/index.php?pid=18215>; Daniel C. Kurtzer, *Do Settlements Matter? An American Perspective*, 16 MIDDLE E. POLICY 89 (2009).

⁶⁶ Jill Jacobs, *Why Your JNF Donation Might be Building Settlements*, FORWARD (Dec. 15, 2015), <http://forward.com/opinion/israel/327323/why-your-jnf-donation-might-be-building-settlements/>.

⁶⁷ PLO NEGOTIATIONS AFFAIRS DEPT., *supra* note 20.

⁶⁸ MIFTAH, *supra* note 22.

⁶⁹ LEVIN & KUSTANOWITZ, *supra* note 25.

⁷⁰ *Id.*

⁷¹ TARABUT – HITHABRUT, *supra* note 27; HUMAN RIGHTS WATCH, *supra* note 27; KEREN KAYEMETH LEISRAEL – JEWISH NATIONAL FUND *supra* note 27.

⁷² WHAT'S BEHIND THE JEWISH NATIONAL FUND, *supra* note 28; SMITH, *supra* note 28.

⁷³ THE KNESSET, *supra* note 29; B'TSELEM, *supra* note 29; HUMAN RIGHTS WATCH, *supra* note 27;

settler use and cuts across Palestinian land in the West Bank.⁷⁴ Today, the JNF continues funding, paving, preparing, and constructing major Jewish-only roads in the Jordan Valley, including many roads that were constructed in cooperation with the Israeli Ministry of Defense.⁷⁵

In December 2015, Israel unilaterally annexed parts of the West Bank to Jerusalem as part of its settlement planning policies, and further announced 891 more illegal settlement housing units.⁷⁶ The Jerusalem Regional Planning Committee authorized the JNF to construct housing in the Israeli settlement of Gilo, which is built on Palestinian land in the Bethlehem District, specifically Beit Jala and al-Walajah.⁷⁷ The JNF together with the Israel Land Authority will develop the area predicated on Palestinian dispossession and removal.⁷⁸ JNF-sponsored expansion of Gilo and neighboring Har Gilo, goes hand-in-hand with Israeli annexation policies to re-route the Israel Separation Barrier, which will cut Palestinian residents of Beit Jala from the Cremisan Valley.⁷⁹ The JNF is facilitating settlement expansionist policies that the United State. has condemned as counter to its foreign policy.

In 2014, Israeli journalist Raviv Drucker explained how JNF spent millions of dollars to help create a “new neighborhood in Ariel, a yeshiva in Beit El, and a visitors’ center in Gush Etzion,” all illegal Israeli settlements.⁸⁰ While it is unclear how much of the money used to fund these projects came from U.S. tax-exempt donations, there are clues. According to the most recent available tax filings by JNF in the United States, \$20 million was spent in the form of “grants for ‘general support’ to unspecified projects in the Middle East.”⁸¹

There is no doubt that JNF’s support for illegal Israeli settlements contravenes U.S. public policy. In his congressional testimony before the House Committee on Foreign Affairs in 1980, then-Secretary of State Cyrus Vance explained:

U.S. policy toward the establishment of Israeli settlements in the occupied territories is unequivocal and has long been a matter of public record. We consider it to be contrary to international law and an impediment to the successful conclusion of the Middle East peace process. ... Article 49, paragraph 6, of the Fourth Geneva Convention is, in my judgment, and has been in the judgment of each of the legal advisers of the State Department for many, many years, to be ... that [settlements] are illegal and that [the Convention] applies to the territories.⁸²

⁷⁴ SMITH, *supra* note 28.

⁷⁵ JEWISH NATIONAL FUND, *supra* note 31.

⁷⁶ Daniel K. Eisenbud, *Jerusalem Furthers Plans for 891 Housing Units Approved in Contested Gilo Neighborhood*, THE JERUSALEM POST (Dec. 16, 2015), <http://www.jpost.com/Israel-News/Nearly-900-housing-units-approved-in-Jerusalems-contested-Gilo-neighborhood-437471>.

⁷⁷ B’TSELEM, *supra* note 16.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ JACOBS, *supra* note 66.

⁸¹ *Id.*

⁸² KURTZER, *supra* note 65.

In 1992, the Bush administration pressed Congress to attach conditions on loan guarantees to Israel. Congress legislated Title VI, P.L. 102-391, signed into law on October 6, 1992, which amended the Foreign Assistance Act Section 226 and limited U.S. aid to Israel “to support activities in the geographic areas which were subject to the administration of the Government of Israel before June 5, 1967.”⁸³ Accordingly, from FY1993 to FY1996, U.S. loan guarantees to Israel (\$2 billion/year) were reduced by \$774 million because of spending on Jewish settlements in the occupied territory.⁸⁴

In 2003, the U.S. placed similar restrictions on supplemental funding to Israel. The Emergency Wartime Supplement Appropriations Act (2003) authorized \$9 billion in loan guarantees to Israel over a three-year period.⁸⁵ The act requires that the Israeli government use the loan proceeds guaranteed within the pre-1967 borders only, for the sole use of refinancing its government debt, and stipulated that the amount of the guarantees could be reduced, with all fees and subsidies paid by Israel, if it violated this restriction.⁸⁶ In November 2003, the State Department announced that the loan guarantee made in March of that year was reduced by \$289.5 million due to Israel’s continued settlement construction and construction of the separation wall in occupied Palestinian territory.⁸⁷ In 2005, the U.S. government reduced the amount by an additional \$795.8 million.⁸⁸

Simply put, JNF’s tax exempt status is incompatible with a governmental prerogative to avoid spending public funds on Israel’s settlement program.

On its own and through subsidiary organizations, JNF builds and expands Jewish-only settlements in Israel and the West Bank in violation of U.S. public policy. Settlement construction necessitates the confiscation of Palestinian land, forces Palestinian population transfers and restricts the enjoyment and distribution of public lands to Jewish-only use, thereby marginalizing the 4.5 million Palestinian citizens in the occupied Palestinian territory and nearly 1.7 million Muslim and Christian Palestinian citizens of Israel.

Instead of alleviating the U.S. government’s burden through charitable activities, JNF creates new government burdens and exacerbates existing ones. The U.S. government has not accepted the burden of building Jewish-only Israeli settlements on occupied Palestinian land or Israeli efforts aimed at, or resulting in, racial, religious or political discrimination. As a direct result of JNF’s involvement in Israel’s settlement enterprise, the United States has become burdened with decades of financial aid to the Palestinians to offset the crippling effects of JNF

⁸³ U.S. GOVERNMENT PRINTING OFFICE, "Legislation on Foreign Relations through 2002," *available at*: <https://www.usaid.gov/sites/default/files/documents/1868/faa.pdf>

⁸⁴ CLYDE R. MARK, ISRAEL: U.S. FOREIGN ASSISTANCE (Congressional Research Service) (April 26, 2005), *available at*: <https://www.fas.org/sgp/crs/mideast/IB85066.pdf>

⁸⁵ Emergency Wartime Supplement Appropriations Act of 2003, Pub. L. No. 108-11, Page 117 STAT. 576 (2003), <http://www.gpo.gov/fdsys/pkg/PLAW-108publ11/html/PLAW-108publ11.htm>

⁸⁶ *Id.*

⁸⁷ JEREMY M. SHARP, U.S. FOREIGN AID TO ISRAEL, (Congressional Research Service) (June 10, 2015), *available at* <http://fas.org/sgp/crs/mideast/RL33222.pdf>.

⁸⁸ *Id.*

activities such as forced home evictions, population transfers, illegal confiscation of land and racially and religiously discriminatory settlement construction.

The Iraq Study Group Report (2006) mandated a study of the impact of the 2003 war on Iraq and the possibility for civil war.⁸⁹ The report concluded that the United States' inability to resolve the Israeli-Palestinian conflict and halt Israeli settlement expansion has enhanced the security threat it faces. This in turn, also increases the government's burden.

The Jewish National Fund has systematically acted in contravention of public policy through its direct activities and its subsidiary organizations' activities in the expansion of Israeli settlements. A significant amount of the JNF's budget is derived from tax-deductible donations under the IRC's charitable scheme. In breach of §501(c)(3) of the IRC, JNF has used those funds for Israeli settlement expansion, which both contravenes U.S. public policy and increases its burden. Because of this, JNF is ineligible for tax-exempt status under §501(c)(3) of the IRC.

CONCLUSION

At the expense of American taxpayers, JNF has operated for decades in a manner that is inconsistent with the common law definition of a charitable organization. JNF's constitutive documents empower it to engage in non-exempt activities, like promoting illegal Israeli settlement construction and Jewish-only programming throughout Israel and the occupied territory, and supporting settler violence against Palestinians. Indeed, the JNF exclusively possesses 13 percent of so-called Israeli state land, which it forbids non-Jewish citizens of Israel and Palestinians in the occupied territory from enjoying. Consequently, JNF is not a charitable organization, and its activities contravene public policy and fail to confer a truly public benefit. To preserve the integrity of §501(c)(3), IRS must take immediate action and revoke JNF's tax-exempt status.

⁸⁹ THE IRAQ STUDY GROUP REPORT, James A. Baker III and Lee H. Hamilton, co-chairs (2006), *available at*: http://bakerinstitute.org/media/files/Research/88085bb4/iraqstudygroup_findings.pdf