

# FROM WATER TO LAND: THE HYDRO-SOCIAL CYCLE WADI FUKIN Legal Implications



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**Working Paper:** What legal avenues relating to water and the environment can address the systemic processes that exacerbate the Israel-Palestine conflict?

**This Presentation:** What legal implications arise from the systemic processes shaped by the hydro-social cycle in the case of Wadi Fukin

## **PART I - The Hydro-Social Cycle in Action**

- Case of Wadi Fukin
  - land confiscation
  - settlement development

## **PART II – Legal Implications through a ‘Water Lens’**

- Environmental impact assessment and principle of non-discrimination
  - One state scenario
  - Two state scenario





1984: Betar Illit (pop. 45170) established

Before 2000



2014

1945: Population 280 and 12000 dunums of land (~3000 acres)

1948: Lost 9000 dunums (2224 acres)

1956: Wadi Fukin destroyed

1972: the inhabitants were permitted to return

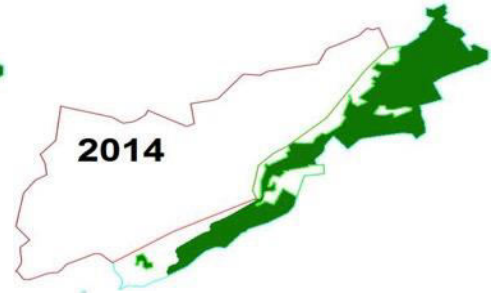
2005: 218 acres were seized from Wadi Fukin



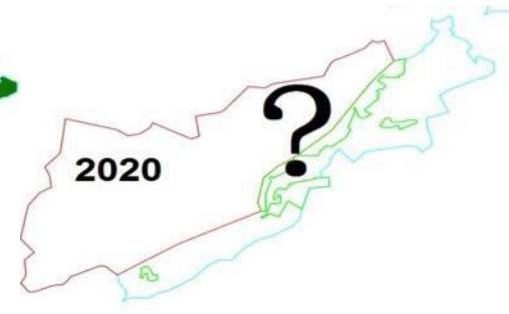
Before 1948



1949



2014

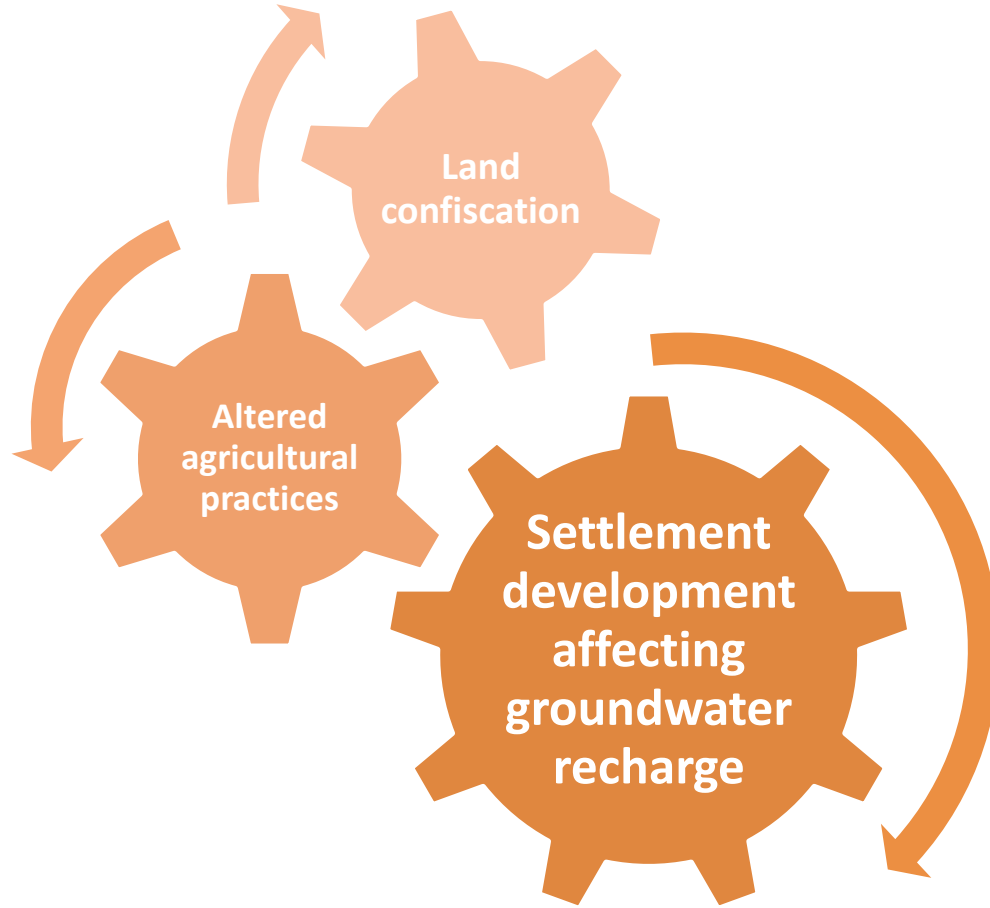


2020

2014: Land confiscation 4,000 dunums (988 acres) (¼ belonging to Wadi Fukin)



# Hydro-social cycle in action



## The problem:

Water's place in a systemic process of land acquisition

## Implications on viability of the Palestinian State

- Blurring boundaries
- Undermining sovereignty
- Prohibition against forcible transfer *regardless of motive*

**Planned measures (i.e. settlement development) require inclusive process that takes account of the impact on all those effected**

- **Environmental Impact Assessment**  
Linked to principle of non-discrimination  
(Knox, 2002)
- **Procedure requires Notification, Consultation, Participation of affected Party and Public Participation**



- **Israeli Law: Environmental Impact Statements required under 1982 Planning and Building Law**

EIS requirement when planned measure will cause significant impact on the environment in an area with high environmental sensitivity because of natural and landscape resources, including recharge area

(Article 2(a)(2)(b))

- **But not an inclusive process**
- **Non-discrimination as a human right**

- **1997 United Nations Watercourses Convention**
  - **Palestine signed in 2015**
- **Emerging acceptance of requirement for transboundary environmental impact assessment by all States**
  - **Pulp Mills (Argentina vs Uruguay) 2010**  
**to satisfy due diligence obligation to prevent significant transboundary harm**
  - **Non-discrimination as a peremptory norm**

# Conclusions

## PART I - The Hydro-Social Cycle in Action

- Water issue inherent in land and development, and **systemic processes of discrimination** in Israel-Palestine conflict
- Focus should not be on substantive outcomes - there is a **continuing process** rather than a status-quo

## PART II – Legal Implications through a ‘Water Lens’

- Transboundary/ inclusive environmental impact assessment should be invoked **to challenge** systemic processes
- This requirement applies regardless of one or two state scenario

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# Thank you

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