

Land Registry Regulation in the Occupied Territories

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1. What are land registry regulations?

Land registry regulations entail noting land rights via a land registration deed (colloquially referred to as a “tabu,” a Turkish word that dates back to the Ottoman agrarian system). In the West Bank, the regulation process commences with ownership claims: whomever claims ownership of a certain area may offer evidence accordingly. All claims are recorded through the “Claims Board,” following which a clarification process is conducted, and a “Rights Board” is ultimately published. That is effectively the final stage in which determination of ownership may be appealed. The procedure concludes with issuing a deed via the land registry, which is final and may only rarely be appealed.

2. What is the current situation in the West Bank regarding land registration?

The process of land registration in the West Bank began during the British Mandate and continued under Jordanian rule. In 1968, following the Israeli occupation, the military commander froze all land registry proceedings in the West Bank. The rationale was twofold*: First, the state of occupation is intended to be temporary, and may not give way to irreversible changes; land registry proceedings on occupied territory are effectively annexation, which is prohibited according to international law. Another reason for the freeze was that many landowners in the West Bank left the area following the war and the start of the occupation (effectively becoming “absentee” landlords). These absentee landlords cannot bring their cases before the committee. Even documentation belonging to those who were not absentees, was not in their hands, but rather in Jordanian possession. Since a large portion of the information regarding property is in Jordanian possession rather than that of the military commander, it is not possible to maintain a reliable registry.

Today, only a third of the land in the West Bank is listed in the land registry.

**The rationale for freezing land registry regulation in the West Bank is detailed in: Eyal Zamir, State Land in Judea and Samaria – Law Review, Jerusalem Institute for Policy Research, 5745 (1985).*

3. Why is a new land registration regulation currently being promoted in the West Bank, and what are its implications?

Although the rationale has remained unchanged since the start of the occupation, the Civil Administration recently recommended annulling the freeze on regulation proceedings in order to regulate land in the West Bank. The attempt to regulate land registration in the West Bank is another attempt at annexation, similar to previous attempts. It aims to expropriate as much land as possible from Palestinian landowners, and to thwart their capacity to reclaim land through legal proceedings. This attempt has emerged as full annexation no longer seems to be viable, following the change in the US government, and the revocation of the Regulation Law.

The meaning of land regulation in the West Bank is that all land whose owners do not or cannot sufficiently prove their ownership, will permanently become state land. State land declarations, as they currently stand, may be reversed and repealed if a person provides evidence of ownership. Yet once the land is registered as state land, even if the individual obtains ownership documents at a later stage, they will not be able to appeal the registration. Registration in the land registry, in contrast to the initial registration or current declaration procedure, is final, and may only be appealed in rare cases such as those involving fraud. Thus, land regulation prevents legal proceedings over the declaration of state land, and in turn makes them final.

4. What's wrong with the intention to regulate land in the West Bank?

The relevant legal framework for this issue is the laws of occupation under international law. The registration process that the state seeks to initiate is in conflict with the two basic principles of the laws of occupation – the principles of temporariness and trusteeship. Per the principle of temporariness, an occupation should be a temporary state. Land registration is irreversible, thus making the situation permanent. Land regulation is a matter of permanent, not temporary, rule – the existence of land regulation is an indication of sovereignty. Per the trusteeship principle, the occupier should manage the territory as a trustee for the protected population, keeping their interests and needs in mind. Data indicates that state land declarations in the occupied territories are almost always allocated for the benefit of Israeli Jewish settlements.

The Civil Administration now claims that Israel is legally obligated to continue the process of land registration in the West Bank under Article 43 of the Hague Regulations, which obliges the occupying power to uphold the rules of government and law that were in force prior, as much as possible amid occupation. This claim does not consider the fact that the rationale that led the military to halt the registration process in the past (the aforementioned issue of

temporariness, the absence of many landowners, and the lack of documents detailed above in question 2), remain valid, and are even stronger today.

Thus conducting permanent registration processes (via the tabu), in contrast to the initial registration procedures and declarations that are currently conducted, stand in stark contrast to international law and constitute a forbidden act of annexation.