

Does Israel “Steal” Private Palestinian Land in the West Bank?

by Hugh Fitzgerald



The *Jerusalem Post* has an enlightening – and depressing – article [here](#) on land ownership in the “West Bank”:

One of the most serious accusations against Israel’s presence in Judea and Samaria to “end the occupation” and in the Boycott, Divestment and Sanctions campaigns is that Israel systematically steals or “seizes” “private Palestinian land.” Not only would that be illegal, it is immoral. This seems to be the basis for the High Court’s decision to strike down the Regulation Law.

It is important to remember the reason for the Regulation Law. When Jewish communities (“settlements”) were established, it was done “in good faith,” and with government

approval on vacant land. Arabs did not go to court to claim "their land." Only much later, led by left-wing NGOs, were Arabs encouraged to make their claims.

Remember that the Palestine Mandate called for, in Article 6, "close settlement of Jews on the land, including State and waste lands." The lands that Jews built settlements on were vacant at the time. Were they State or waste lands, on which Jews were allowed to settle, or were they the private property of Arabs? The Arabs did not press any claims at first; they did so only when encouraged by left-wing – i.e., anti-Israel – NGOs. That suggests they were not at all certain about their ownership.

*The humanitarian purpose of the Regulation Law was to protect Jews who had built their homes "in good faith." Most other countries have similar laws which protect homeowners in cases where the value of what was built far exceeds the value of the land. **Destroying the homes of many thousands of Jews to resolve questionable or false Arab land claims would be unfair and unjust. Therefore, compensation was offered to Arab claimants, regardless of proof of ownership.***

*The source for the charge that "Israel is stealing privately owned land" is not only PLO/PA, Hamas, left-wing and anti-Israel media, and Arab propaganda, but an agency of the Israeli government: **Coordinator of Government Activities in the Territories (COGAT).***

COGAT, a unit of the Defense Ministry, is responsible for "implementing government policy in Judea and Samaria." But COGAT not only "implements," it also makes policy. And, as a separate independent military-legal administration, it is virtually unaccountable to anyone except the defense minister and the prime minister...

COGAT and the IDF legal adviser, in cooperation with the attorney-general's office, the state prosecutor's office, the

Justice Ministry and the High Court (Bagatz), routinely decide that land claimed by Arabs is valid...

COGAT defends its decisions by citing the land registry (taba) for Judea and Samaria, which lists names of "owners," mostly villages and tribes who were given state land during the early 1960s. None of the land was purchased, most of the land was never used, no taxes were paid and the original Arab recipients of land are no longer alive. To whom does this disputed land belong?

During Jordanian rule over Judea and Samaria (the "West Bank"), the government gave out state land to Arabs. Those new owners didn't pay anything for it, they often didn't use it, they paid no taxes on it. In what sense were they the owners of that land? In the first place, did the government of Jordan have a right to distribute "state and waste lands"? That could only be true if Jordan were something more than merely the "military occupier" of the West Bank. But it never was. It had no claim to land under the Mandate for Palestine. It had not been the legitimate "inheritor" of the state and waste lands from the Mandatory authority, which had in turn inherited those "state and waste lands" from the former Ottoman ruler of the territory that became Mandatory Palestine.

According to Mandate law, gifted land could not be inherited without approval by the sovereign. Moreover, land that was given by the sovereign could be claimed as private only if the land was used continually (usufruct) for 10 years and taxes were paid. Otherwise, unused land reverts to the sovereign by law. Jordan changed this law and registered the land as privately owned, permanently, without conditions.

Jordan, without any valid authority – it was never the legitimate sovereign in the West Bank – simply decided that the Mandate's laws no longer applied. No legal argument was offered, for there was none. It was simply by fiat that Jordan

turned state and waste lands in the West Bank into private lands, first by distributing them to Arabs without any payment required, then ignoring the requirement that the land given by a sovereign had to be continually used for ten years, and taxes paid on the land. Many of the plots distributed by the government were never farmed by their Arab "owners," much less for ten years; no taxes were paid by any of these "owners." Jordan decided on its own that the Mandate's laws would not apply. It was determined to turn "state and waste lands" into "private lands" owned only by Arabs, who did not pay for the land, were not required to farm it, and did not have to pay taxes on it.

Since Jordan was never acknowledged as the legitimate sovereign over this territory, its occupation and anti-Jewish laws – including prohibiting non-Jordanian citizens from owning land and incurring the death penalty for selling land to Jews – have no validity; COGAT differs.

The status of land in Judea and Samaria was further confused by former High Court Chief Justice Dorit Beinisch, who, at the end of her term decided unilaterally that hazakah, the right to claim title to land by working it and paying taxes applied only to Arabs, not Jews.

Since COGAT considers the land registry for Judea and Samaria "confidential," it restricts access to it by Jews, making it nearly impossible to challenge Arab claims of private ownership or for Jews to acquire land. COGAT's secretive procedure is backed by the High Court, which defends COGAT's rule as a government agency. COGAT refuses to explain why their rules prevail exclusively and why access to public documents is forbidden...

Since 2008, COGAT has prevented the operation of a sewage treatment plant between the Arab village of Silwad and the Jewish community of Ofra because, COGAT ruled, it is built on "private Palestinian land" which belongs to the village. The

attorney-general and the High Court have ordered that the project – which would serve all residents of the disputed area – be removed.

COGAT also opposes plans to widen the road near the Adam Junction because it infringes on “private Palestinian land.” Asked for details about who owns the land in question, COGAT has refused – and COGAT is “the law.”

Who decided that the sewage plant was built on “private Palestinian land”? COGAT. Who decided that a road could not be widened because it would infringe on “private Palestinian land”? COGAT. Who decided that Jews should be barred from access to land registries, without which they cannot possibly prove their claim that land was not “private Palestinian land,” but “state and waste land” that the Jordanian government had illegally distributed for free to local Arabs? COGAT. This has created a situation where all Arab claims to land are accepted, and their all attempts by Jews to prove their invalidity are made virtually impossible by COGAT, which will not allow them to see the land registries.

*...The High Court could also require that disputes over land ownership be heard first by District Courts before any appeals, as is commonly practiced in all democratic countries. The High Court’s recent decision striking down the Regulation Law ignores this important first step in judicial procedures and norms. Therefore, **the fundamental questions remain: To whom does disputed land belong? Is the Regulation Law legal, fair and just? This is one of the reasons why plans to extend Israeli law and sovereignty to Jewish communities in Judea and Samaria is so important.***

According to the Mandate for Palestine, all “state and waste lands” were to be made available for “close settlement by Jews on the land.” But during the period 1949-1967, when Jordan held the West Bank not as by right, but only as the “military

occupier,” the Jordanian Government simply gave away many of those “state and waste lands” to Arabs. As Jordan had no valid claim to those lands in the first place, those who took such lands from the government had only as good a claim to them as the donor – which was no claim at all.

When Israel won the West Bank in the Six-Day War, instead of simply declaring all claims by the Palestinians to what had been identified as “state and waste lands” invalid, the Israeli government decided not to contest the validity of Arab claims to land ownership on those former “state and waste lands.” Worse still, COGAT made it impossible for Jews to consult the land registries in contesting Arab ownership; these were made accessible only to Arabs. No satisfactory explanation for this policy exists, though it has been suggested that for the Israeli government, it was simply less hassle, and less expensive, not to contest Arab claims to those lands handed out by the Jordanian government. And as the Jewish state was starting up its settlement-building in the West Bank, it didn’t want to cause more friction with the local Arabs by reappropriating “state and waste lands” (as it had every right to do), but instead treated such lands, where they had been given by the Jordanian government to Palestinians, as having been validly transferred from a legitimate owner. Thus were Arab claims to what had during the Mandate period been “state and waste lands” honored by the Israeli government. And Israel is now living with the consequences of COGAT preventing Jews from adequately contesting Arab claims to be the “owners of private land” which only the sovereign, that is the government of Israel as the successor to the Jewish National Home, and not the “military occupier” Jordan, has a right to transfer as it sees fit.

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