

Land Registration in the Arab Society in Israel

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Unlike the previous paper, which dealt with public land (state-owned land), this paper deals with the registration of privately-owned land. Although there is no argument between the state and the Arab citizens over the fact that it is privately-owned land by Arab citizens, for various reasons that we will enumerate below, the owners' registry has not been updated for years. Despite the difficulties in the registration process, there is no disagreement regarding the nature of the ownership of the land in question. Land registration issues are a key issue in the promotion of physical development, housing construction and the implementation of master plans and detailed plans in Arab communities. The proper registration of land and rights anchors a person to his or her land and allows logical physical development while providing an appropriate solution to housing needs. Without proper registration, land cannot be mortgaged or sold, community development plans can be delayed and construction permits cannot be granted.

Much of the land within the jurisdiction of the Arab communities is privately owned. Therefore, the need for and dependence upon land registration in the Arab communities is more widespread than in the other communities in Israel. Most residents of Arab communities, who constitute approximately 80 percent of Israel's Arab citizens, live on privately-owned land which in many cases is not registered in their name because the ownership registry has not been updated for so many years. As stated, this has severe ramifications at private and community levels. The current state of affairs stems from historical, socioeconomic and political factors that led to a longstanding neglect of this issue by the central government, the local government and the residents themselves.

In recent years, as pressures to develop the land have grown more powerful and the shortage of land available for development has become more acute, a certain amount of change has taken place in the Arab communities in the awareness of the importance of registration. There is more willingness among Arab citizens to register their land. In addition, several regulations were recently changed, which could make simplify the registration procedure. The time is ripe for inter-ministerial, system-wide work that will put the issue on the public agenda, provide information to the Arab citizens and training for the local leadership and professional personnel and, most important, deal with the barriers that prevent land registration.

In 2010, the government decided to introduce a five-year plan for economic development in the Arab sector. The plan includes a concrete method for dealing with the issue of land registration in Arab communities, which involves three major clauses:

1. It was decided that the Tax Authority Administration would establish an inter-ministerial team to make recommendations for the encouragement of the registration of land rights in the Arab sector.
2. It was decided that the accountant general of the Finance Ministry would establish an inter-ministerial team to make recommendations regarding credit and loans for real estate projects in the Arab communities.
3. A decision was made to allocate a budget for the promotion of detailed planning on privately-owned land. The Ministry of Housing and Construction and the Finance Ministry, in cooperation and coordination with the local authorities, will move detailed plans for privately-owned land forward and complete them, including consolidation and parcellation, for the construction of approximately 5,700 housing units. A supplementary budget of NIS 39.9 million has been allocated for this purpose. No detailed plan for privately-owned land will be put into effect as long as any issues of the land's ownership remain unsettled.

A window of opportunity has therefore been created here, since there is increasing demand for proper registration. This stems from awareness of the need for detailed plans (in order to grant construction permits on the individual level and to carry out development plans at the community level). In order to ensure that the detailed plan will be carried out, land and rights must be properly registered. In many cases, consolidation and parcellation are also necessary as an early stage in the registration of rights by the owners. Also, contrary to the situation until now, when Arab local authorities were unable to deal with the subject of detailed planning because of their economic situation, a government budget has now been allocated for it. However, those two components obligate the government to ensure that the work is carried out efficiently.

Therefore, the goal of this paper is to give decision-makers a description of the major problems and to inform them of the barriers that prevent proper land registration in the Arab communities and the opportunities for improving the situation.

The Current Situation

Despite the dearth of public statistics, it is obvious to everyone that the state of land registration in the Arab communities is bad. Almost none of the original village centers (the core of the communities) are registered. Land that is not at the center of the original village is partially registered, but most of it was registered during the Mandate period – in other words, approximately 70 years ago. In practice, the land is held by multiple fourth-generation owners, who in most cases made intra-family agreements that have no legal validity, and their rights are not registered. The registration processes that began in the Arab communities are incomplete, lose their validity and are not implemented.

The state is responsible for leading the statutory process of land registration (for both privately-owned and state-owned land), but the initiative for proper registration of land lies with the landowners (there are no penalties for failure to register). This creates a situation in which there are bureaucratic, political and economic barriers that deter and

even prevent most of the landowners from taking the initiative to register their ownership of the land that they inherited and that belongs to them, despite the severe personal and public ramifications of failure to register the land properly, as illustrated in Diagram 1.

Diagram 1: The negative effects of failure to register privately-owned land



The current situation is characterized by a multiplicity of agencies that deal with various aspects and stages of land registration. The Justice Ministry is responsible for the final registration of land, both privately-owned and state-owned. The ILA conducts a registration system parallel to that of the Justice Ministry, which administers state-owned land that has been leased to contractors and individuals. The Construction and Housing Ministry participates in the process as a marketer of state-owned land, parallel to the ILA. The Interior Ministry promotes planning, including consolidation and parcellation, which in many cases has not reached the stage of actual registration of land rights. The Mapping Center of Israel, which is responsible for measuring and cadastral registration, operates according to timetables that are not coordinated with the registration process and in many cases, the measurements lose their validity.

Several years ago, the Finance Ministry established a committee to speed up land registration. Among its members were all the agencies connected with this issue. The committee was established in order to cope with the current fragmentation. Owners of privately-owned land have no representation there (and certainly not Arab owners of privately-owned land), since no one is in charge of ensuring the registration of rights to privately-owned land in its owners' name or of ongoing supervision of the issue. On the

other hand, the ILA and the Housing Ministry have a great deal of say on the committee as the parties involved in land arrangements. Despite the committee's existence, the major problem – the lack of a current integrative database that could provide a unified, single report of the situation – has not been solved. Such a database is required for the preparation of logical work plans on the basis of need.

Barriers to the Registration of Land in the Arab Communities

Economic, social and political barriers combine with organizational and professional barriers that exist both in government ministries and agencies and in Arab society.

Economic barriers

Barrier 1: Difficulty financing consolidation and parcellation work as part of detailed planning

Consolidation and parcellation work includes planning, measurement, assessment, legal work and validation through confirmation of the plan by the planning authorities. This work involves high costs, and in many cases, individuals or local authorities cannot afford them.

Barrier 2: Past property-tax debt

Those who wish to register land are obligated to obtain confirmation that they have paid property tax. Property tax is levied on vacant, non-agricultural land. As the result of a struggle by several social groups, the tax was abolished, but large past debts remain, preventing many Arab citizens from registering their land. Recently, following instructions from the five-year plan for economic development of the Arab sector, a government committee was established, and we hope that it will make courageous recommendations that include debt forgiveness, which would lead to significant change regarding this major barrier.

Barrier 3: Compounding of past debts on the basis of land taxation

All land transactions involve various taxes, either to the state or the local authority: capital gains tax on real estate, purchase tax, sales tax, land excise tax and various fees to the local authority. Intra- and inter-family agreements for the transfer of land are still common in Arab society. Such agreements are not reported to the tax authorities out of a desire to avoid the taxes that apply to land transactions, and in the past also because of long-ingrained habit. The state does not do enough to provide information and tools for dealing with the problem. Such tools would include registration campaigns that include forgiveness of past tax debt.

Barrier 4: The economic advantages of not registering

When land is not registered in the name of its actual owner, no liens can be put against it (either by the state as lender or by an individual creditor who has obtained a ruling from the Bailiff's Office). Often, support allowances or welfare payments are withheld from landowners. This creates an incentive to avoid registering land.

Organizational Barriers

Barrier 5: The lack of a joint database

Information about the state of land registration is scattered among the various government authorities. The information is unavailable, not public and cannot be consolidated in such a way that will show the current situation clearly. As things stand, the problems and their scope cannot be analyzed, and intelligent decisions regarding priorities cannot be made.

Barrier 6: Fragmentation of the registration process – responsibility, authority and under-budgeting

Land registration is a legal procedure that requires planning, measurement and legal work. It is a complicated, expensive process that can lose its validity if it does not proceed properly. While the Justice Ministry is responsible for arrangement, it does not control all the levels of implementation, nor does it control the budget. The budgeting of some of the components of the arrangement is controlled by the Mapping Center of Israel, the ILA and the Housing Ministry.

Barrier 7: Non-representation of Arabs on the steering committee for land registration and the committee to expedite registration

Arab citizens who own land privately are not represented on the steering committee for land registration or on the committee to expedite registration. They have no voice in setting priorities for action. This barrier combines with the fact that most construction planning lacks an Arab voice, particularly at the level of national and district planning. Thus the specific needs of the Arab community are not represented.

Professional Barriers

Barrier 8: Lack of integration and coordination of the multi-disciplinary information required to address the issue, and lack of professional training

The issue of land registration and rights requires profound and interdisciplinary knowledge in the fields of physical and social planning, taxation, law, valuation, surveying and more. There is a shortage of experienced multi-disciplinary personnel who specialize in the subject, as well as professional training about innovations in the field.

Barrier 9: Protracted legal procedures

Issues involving claims of ownership and issues of opposition to consolidation and parcellation plans end up in courts. The courts often delay decisions on such sensitive and volatile subjects, either for fear of making a decision or due to delaying tactics used by one of the parties.

Barrier 10: The local leadership's difficulties in taking a leading role in the registration of land rights

In many cases, the procedure of registering the rights of multiple owners requires that the local leadership take a leading role, particularly when it is necessary to mediate between the interests of an individual or a family and those of another individual or family, or the public interest. In many such cases, the local leadership avoids taking a leadership role because it is unaware of the importance of registration or fears the personal and political complexities that it entails. A shortage of appropriate information and training for the local Arab leadership perpetuates the situation.

Barrier 11: Difficulties in leading the dissolution of partnerships in *musha*⁷ land and the ILA's inability to deal with such procedures

A great deal of *musha* land is shared by various owners, including the ILA as the administrator of the property of the 1948 refugees. Some of the owners and landholders refuse to engage in dissolution procedures or consolidation and parcellation, for fear that these procedures will be seen as recognition of the state's right to land belonging to relatives who were expelled or who left in 1948.

Barrier 12: Suspicion and unwillingness of landowners to participate in the procedures required to register their rights

There is a great deal of suspicion on the part of landholders that stems from their experiences from the recent past in which large tracts of land (either owned or held) were expropriated from Arabs and given to the state. The fact that until recently professional personnel and officials in the government ministries who dealt with these procedures were Jews only added to the suspicion.

Policy Recommendations

Changes in organization and awareness on the operational level

All of the active players in the field of land registration must be consolidated and an inter-ministerial team created, working under the supervision of the Prime Minister's Office, to make land registration a priority. The team must work together with representatives of the leadership of the Arab local authorities, Arab professional personnel and representatives of the social groups that work in this field. The officials should be made to realize that registering land rights in the Arab owners' names is an immediate and direct national interest. **The inclusion of Arab professional personnel and leaders** in all processes and echelons of decision makers regarding land registration will help to dispel suspicion, solve problems and advance logical and coordinated plans for expediting registration.

Collecting data and creating a joint database

⁷ *Musha* – a method used during the Ottoman period for joint ownership of land belonging to a tribe, family or village. The state passed a law stipulating that land belonging to landowners who had been expelled or had left the country in 1948 would be considered state-owned land. This created a situation in which land is owned both by the state and by private individuals.

Data regarding the state of land registration and the registration of land rights must be collected from all the pertinent agencies. A joint database that can be updated continuously and that will show the work of all the agencies is essential because it will enable the creation of intelligent work plans on the basis of professional priorities.

Forgiveness of past property-tax debts and updated taxation on land transactions

The existing mechanisms for forgiving past property-tax debt must be expanded to apply to all past debts. Regarding the compounding of past debts for land transactions, we recommend that such debts be forgiven for people who are no longer alive and that the minimum debt allowed by law be imposed together with the customary arrangements, with debt rescheduling arranged for those who cannot afford it.

Continuing trainings

Continuing trainings and education must be offered to professionals who work in Arab communities (architects, urban planners, engineers, surveyors and lawyers) regarding the importance and advantages of registration and practical innovations for implementing it. These classes should also be offered to employees of the local authorities and community leaders. Classes should be initiated at the Institute for Continuing Education for Judges about the ramifications of non-registration of land on the fabric of life in the Arab sector, in order to encourage clear, detailed, practicable and quick rulings in conflicts over land.

Conclusion

Land is the most sensitive issue in the national conflict between Jews and Arabs. Compared to it, proper registration of land is a secondary issue in which both the state and its Arab minority have a strong interest. Both the leaders of the Arab sector and the government are well aware of that. **This is a rare instance of agreement and identical interests regarding a subject that lies at the heart of this charged and controversial issue.**

Recruiting the operational echelon for intensive cooperative work is a supreme interest for Jews and Arabs and for the state and its citizens. The solution to the conflict over land will enable dramatic improvement in the economic and physical development of the Arab communities and increase equality between Arabs and Jews in Israel.