

# Fact Sheet for Landowners

## How to Protect Your Rights when Antiquities are Discovered on Your Property

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Almost all excavations in the West Bank uncover archaeological remains.

The discovery of antiquities on private land is perceived by landowners (farmers or other individuals who wish to develop their land) as an impediment to developing and building on their land. Landowners in the West Bank often worry that the discovery of antiquities on their property may result in the obstruction of plans to build on or cultivate their land, or that it will lead to the confiscation of their property.

That being said, by familiarizing themselves with the law, landowners may benefit from the discovery of archaeological artifacts on their property and minimize the obstacles to cultivating and developing their land. This fact sheet explains the laws pertaining to antiquities. Specifically it addresses two fundamental laws: the Jordanian Antiquities Law (valid in Area C in the West Bank) and the Jordanian Land (acquisition for public purposes) Law no. 2 1953.

This fact sheet has three sections: the first section lists a number of laws followed by a Q&A, introducing various courses of action which can be taken in the event that antiquities are discovered on one's property; the second section presents two case studies in which landowners have challenged the authorities' intention to prevent them from taking advantage of the antiquities found on their land; in the last section we will introduce basic concepts and terms associated with archaeological activity in the West Bank.



## Rules of Thumb



In the event that antiquities are discovered in Area C, they must be reported to the Civil Administration **within three days**. Remember: the antiquities belong to the governing body (the GOC Central Command is the designated alternative governing body), but the land remains the property of the landowner.



Landowners are prohibited from privately excavating their land and from selling antiquities without a license. Violators risk being fined or even arrested.



It is forbidden by law to take any action that is likely to damage antiquities, such as dismantling stones, building on top of antiquities or farming on the land.



The Civil Administration is forbidden to conduct an excavation or any other archaeological activity without the landowner's consent, unless granted approval by the court.



The Antiquities Law is a complex law; in the event that antiquities have been discovered on your property, it is advisable to study the law and seek professional legal assistance.



## Declaring an area an archaeological site

Declaring an area an antiquities site is a legal act. From the moment an area is defined as an archaeological site, the authorities have wide-ranging authority over activities undertaken at the site. So long as a site has not been declared an archaeological site, the authorities have no right to become involved, unless antiquities are found in the course of development work, including any type of construction, road-building and infrastructure work.

Most of the archaeological sites were already declared as such during the British Mandate period. A small number of sites were declared during Jordanian rule and just a few under Israeli military rule. Landowners can easily find out if their land has been declared an antiquities site by checking the Israel Antiquities Authority website or in the Mandate records and declarations, which can be requested from the Civil Administration.



# Frequently Asked Questions



## 1. How is an Archaeological site declared?

According to the Antiquities Law (Israeli and Jordanian), any site or a portion of a site built before 1700 is an archaeological site. Any addition to the structure that took place after the year 1700 is also recognized as an antiquities site. Hence, according to the Jordanian Antiquities Law, the additional parts are also protected from demolition.



## 2. What is the legal procedure for declaring an archaeological site?

The declaration involves issuing a notice in the county, district or village center in which the designated antiquities site is found. **Failing to issue such a notice is considered a violation of the legal procedure, in which case there is a legal foundation for objecting to the declaration** (Section 9 (a) of the Jordanian Antiquities Law).



## 3. When archaeological remains are found on private property, who do they belong to?

Any antiquity, even if found on private land, is the property of the governing authority, and in the West Bank in Area C, the antiquity is the property of the civil administrator, who serves as representative of the substitute governing authority. The Civil Administration is appointed by the General Officer Commanding (GOC) Central Command - by virtue of his position as the designated substitute governing authority in the West Bank - as the military entity responsible for executing his policies in the West Bank. Therefore, **it is against the law and considered antiquities theft to conduct an excavation without a license**. Violators of the law may be fined or even arrested. According to section 15 of the law, any individual who discovers antiquities or has knowledge of such, must report to the Staff Officer for Archaeology (SOA) within three days. The SOA is appointed under the Civil Administration as the officer responsible for archaeological matters (Section 7 of the Jordanian Antiquities Law combined with military legislation issued during the past 49 years by the IDF commander).



**4. In the event that any individual, institution or the Civil Administration intends to conduct an excavation on private property, are they obliged to take any measures?**

Landowners have the right to object to an excavation on their property and in such a case it is forbidden to excavate unless the court approves the excavation. In the event that plans to conduct an excavation are in place, the license holder must negotiate with the landowner to rent or purchase the land for the purpose of carrying out the excavation. If the license holder and the landowner do not reach an agreement, the license holder is entitled to ask the court to confiscate the land from its owner. It is important to note that to date, **we do not know of any cases in which the procedure of excavating on private property has reached the courts** (Section 11 of the Jordanian Antiquities Law).



**5. Does the Civil Administration have the right to excavate private land without permission from its owner? Is it legal to destroy cultivated fields for the purpose of an archaeological excavation?**

It is important to remember that though according to the Jordanian Antiquities Law, antiquities found on private land are state property and are under the auspices of the Staff Officer for Archaeology, the landowner still owns the land. Therefore, **it is forbidden for the Staff Officer for Archaeology to conduct an excavation, destroy cultivated fields or engage in any other activity without either the permission of the landowner, or an authorization from the court, allowing the excavation to take place despite the landowner's objection.** There are several known cases where excavations conducted on private property have led to house demolition orders or denying residents access to their land.



## 6. How can the landowner obtain information about the scope of the excavation to be conducted on his property?

Anyone who intends to conduct an excavation must submit a plan delineating the area in question to the Staff Officer for Archaeology. The plan is based on preliminary archaeological examinations, which determine the scope of the excavation. **Any individual who owns property on which an archaeological excavation is planned is entitled to demand information regarding these examinations.** Furthermore, if the antiquities in a given place are an obstacle to the owner making use of the land (for construction, farming etc.), the owner has the right to demand the abovementioned examinations to determine the scope of the expected excavation and possible ways to pursue development projects on his own land without damaging antiquities (Section 22 of the Jordanian Antiquities Law).

## Usage of land containing antiquities



### 1. Can the landowner build on his property after it is declared an archaeological site?

It is not entirely prohibited to build on top of an area declared as an archaeological site. However, in order to build on a declared archaeological site, a special permit must be obtained from the authorities responsible for protection and management of antiquities. The Staff Officer for Archaeology (SOA) at the Civil Administration is the current authority. **In the event that the construction request is rejected by the SOA, it is important to refrain from building illegally and to find other ways to legally oppose the decision.** Proceeding with construction without a permit will likely result in a demolition order for that structure (Sections 41-45 of the Jordanian Antiquities Law) and possibly legal or other administrative procedures by the army and the Civil Administration.



## 2. What should a landowner do if antiquities are found in the middle of a construction project?

In the event that antiquities were found during construction on the property, the landowner must report to the Staff Officer for Archaeology within three days and obtain a special authorization to continue construction. As mentioned, it is not entirely prohibited to build in an area containing antiquities.



## 3. Does the landowner have the right to carry out maintenance works at a site that has been excavated and left exposed, and develop it for tourism?

Theoretically, any individual can do as he/she wishes on his/her own property, in accordance with the relevant legal provisions. However, since the Staff Officer for Archaeology (SOA) under the Civil Administration is responsible for antiquities by law, the SOA must be a partner to the development of the antiquities site, or at the very least authorize the landowner to do so. **In some cases, Palestinian residents have successfully fought to change and revoke the authorization given to settlers to develop archaeological sites on land privately owned by Palestinians.** A full description of two such cases - Tel Rumeida and the Biyar Aqueduct – will be discussed in detail below.



#### 4. Is the landowner permitted to conduct an archaeological excavation on his/her property?

An archaeological excavation is not permitted for anyone except for licensed archaeologists. Any individual seeking to conduct an excavation on his/her property must prove that he/she has been trained as an archaeologist by a certified academic institution. In addition, he/she is to prove that **there is a certified academic institution willing to vouch for him/her as a scientific authority and that he/she is able to fund the archaeological excavation** (Section 20 of the Jordanian Antiquities Law).



#### 5. Is it possible to trade in small artifacts (such as jugs, coins, inscriptions, jewelry, statues, etc.) discovered on private property?

Being that antiquities are property of the governing body (in the West Bank the GOC Central Command is the designated alternative governing body), it is forbidden to trade in antiquities without a permit issued by the authorities. An individual seeking to trade in antiquities must obtain a special license to trade in antiquities from the Civil Administration. Any applicant for a license to trade in antiquities must fulfill a number of conditions: **payment of an annual fee, declaration of antique items in the applicant's possession, and pledging to refrain from purchase or sale of stolen or forged merchandise** (Sections 37-40 of the Jordanian Antiquities Law).

## Confiscation<sup>1</sup>

As of writing this document, we are not aware of any cases in the West Bank or in Israeli territory where land has been confiscated for the purpose of an archaeological excavation or the protection of antiquities.

Susya in the South Hebron Hills is the only known case where a military order was used to expel residents living in the ancient site, whereas Zanuta, south of Hebron, is the only known case where the State claimed that the residents are to be cleared from their land because they are living in an antiquities site. At the time of writing, a decision has not yet been made regarding the residents of Zanuta and it is not clear if the court will accept the State's claim against them. These two cases give rise to a number of questions regarding the use of antiquities to violate Palestinians' rights to their own land.

1) Confiscation refers to purchase of land by the state without the landowner's consent. Confiscation can be carried out for what is considered, by definition, the advancement of a plan by the state for public purposes. According to existing laws in the West Bank, public purpose is defined as any purpose that the governing body has determined as a purpose that is essential to the public (Section 2, Part II of the Jordanian Land Law (acquisition for public purposes) 1953). According to a High Court ruling on the issue, it is required that the confiscation be carried out in such a way that the public purpose serves the Palestinian population (see Note 2).





## 1. Why is the military government able to confiscate land for the purpose of an archaeological excavation?

Under the decree regarding the Land Law (acquisition for public purposes) (Judea and Samaria (No. 949) 1981), which constitutes an update to the Jordanian Confiscation Law from 1953, the representative governing body is permitted to confiscate land in the public's interest. **Public interest is defined as any purpose determined as such by the governing body** (Section 2 of the order regarding the Land Law (acquisition for public purposes). According to a High Court ruling, the authority carrying out the confiscation must ensure that the public purpose will serve the Palestinian population.<sup>2</sup>



## 2. In what ways is the military government required to notify of its intention to confiscate land for the purpose of an archaeological excavation?

After a decision is made to confiscate land for the purpose of an archaeological excavation, the governing body (the Staff Officer for Archaeology at the Civil Administration) is required to announce its decision in a number of ways:

**A. Prior to making the decision**, the license holder must announce his/her intention to confiscate a certain area by publishing a notice in an official newspaper each day for 15 days. This notice must include a declaration of the intention to file a request to confiscate the land, and that it is in the public interest (as defined in Section 2 under the order concerning the Land Law (acquisition for public purposes) (Section 3 under the order concerning the Land Law (acquisition for the public purposes). However, according to an amendment to this order under order no. 949 (1981), the requirement does not apply in the event that the confiscation is initiated by the governing body itself.

**B. After the decision is made regarding confiscation of the designated area**, the representative of the substitute governing authority (The Civil Administration) must publish its decision in an official newspaper (Section 5 under the order concerning the Land Law (acquisition for public purposes). According to an amendment to this order, (order no. 949 (1981), the official

2) HCJ 393/82 Jam'iat Iscan Al-Ma'al'moun v. IDF Commander in the Judea and Samaria Region - (Judgment from 12.28.1983).

newspaper publication will be a proclamations file according to its definition under the order regarding the Proclamations File (Judea and Samaria) (No. 111) 1967.

**C. After the decision is made**, the Civil Administration is required to provide written copies of the decision to confiscate the land to all the current owners of the area slated for confiscation. The current landowner is required to provide the names of all stakeholders in the property, who may be affected by the decision, within 15 days from the moment the landowner was notified of the decision to confiscate (Section 6 under the order regarding the Land Law (acquisition for public purposes).

**D. The Civil Administration must deliver a written copy of the decision** to all professionals who make use of the land and are registered in the land registration office or listed in the Land Registry. For unregistered land plots, a list of known land users must be submitted.



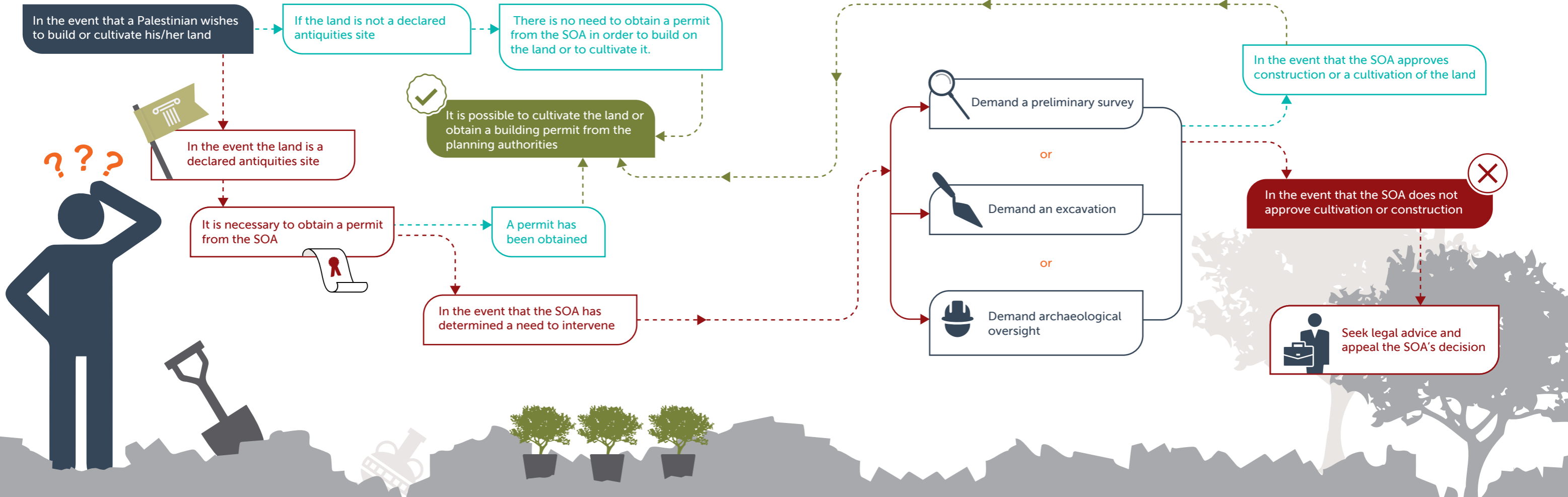
### 3. Has the Civil Administration confiscated land in the past for the purpose of an archaeological excavation?

Although it is legal to confiscate land for the purpose of an archaeological excavation, **it is a complicated procedure, and there are different ways to oppose the confiscation**. There are no known cases in which private property was confiscated for the purpose of an archaeological excavation. Therefore, familiarity with the law is very effective in the struggle against confiscation.



### 4. Is the landowner entitled to compensation if antiquities were found on his/her property?

**The landowner is not entitled to compensation due to the fact that the land is still in the possession of the landowner**. The state must pay the landowner compensation only in the event that the archaeological site is confiscated. This is the case despite the stipulation by Section 10 of the Jordanian Antiquities Law, which determines that when antiquities are found at a site, any action that is likely to cause changes to the appearance of the antiquities or damage them is prohibited at that site. It is possible to appeal the level of compensation to the military appeals committee, located at the Ofer Military Base.



# Test Cases

## Tel Rumeida in Hebron

Tel Rumeida is Hebron's ancient mound. It is partially populated by several Palestinian families and partly used for agriculture. Since the establishment of the Jewish settlement in Hebron, the settlers and the Palestinian residents have been embroiled in an acute struggle over control of the mound. Consequently, in 1984 Yitzhak Rabin, then Israel's Minister of Defense, initiated an archaeological excavation program for Hebron. Now the wheels have turned, today the settlers are quite evidently exploiting the archaeology of the area as a means of proving their historical ties to the place (evidence for the existence of a Jewish settlement in Hebron during biblical times) and to deprive the Palestinians of their rights. Since 2014, excavations had been carried out on behalf of the Staff Officer for Archaeology and Ariel University in the areas bordering the Palestinian homes. These excavations are intended to advance the establishment of an archaeological park to be managed by the settlers of Hebron. If implemented, the plan will sever the Palestinian homes from other parts of the city and strengthen the settlers' hold on the Tel Rumeida enclave.

The Palestinian residents and the Municipality of Hebron have turned to the High Court, demanding to put an end to the excavations, on the grounds that the Palestinians own the land. In parallel, a group of residents, with the support of Emek Shaveh and Breaking the Silence, claimed that the settlers should not be given priority in managing the archaeological park, on the grounds that archaeology is a common heritage and a shared asset that belongs to the entire public and should be placed under the auspices of the local residents and their representatives, that is, the Palestinians and their government officials.

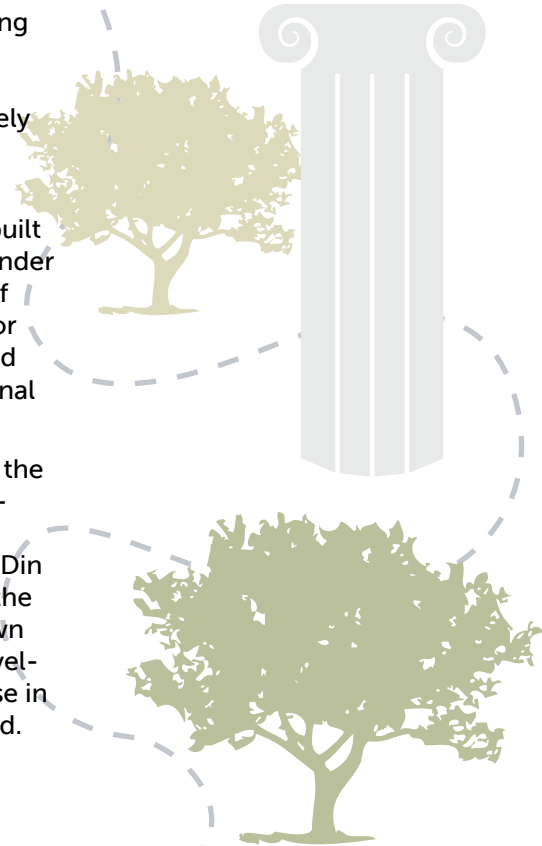
Following this struggle, in December of 2015, the state made a precedential decision, according to which the lease agreed between the settlers of Hebron and the Civil Administration concerning the management of the future archaeological park in Tel Rumeida must be cancelled. This struggle is not only important for restricting the physical expansion of settlements into areas inhabited by Palestinians, but is also a symbolic struggle to save archaeology as a common cultural asset which belongs to all groups and nationalities who share the region, and as a means of generating dialogue between them.

## The Biyar Aqueduct

The Biyar Aqueduct, 3 kilometers long, is part of an ancient water system that transported water from Bethlehem to Jerusalem. It is not possible to walk along the full length of this underground aqueduct. However, since 2000 the Gush Etzion Regional Council has been working to open a section of the aqueduct for tourists despite the fact that this particular section is located on the privately owned land of a resident from the Palestinian village of al-Khader.

Although the precise dating of the aqueduct cannot be confirmed, the Gush Etzion Field School and Regional Council present it as an aqueduct that was built during the Second Temple period, and as evidence of Jerusalem's influence under Jewish rule. The Biyar Aqueduct development project is, therefore, a means of taking over land and strengthening the Israeli settlements through tourism. For instance, in 2011, the Israeli authorities decided to include this site in the "Land of Israel Historic Trail" - part of a project for the advancement of Jewish national heritage sites in Israel.

A number of petitions were submitted to the Civil Administration on behalf of the al-Khader municipality and the resident on whose property the settlers' development project was taking place. The petitions were never addressed. In July 2016, the al-Khader residents, with the support of the Emek Shaveh and Yesh Din organizations petitioned the High Court against the settlers' development of the site on privately owned Palestinian property. In light of the great interest shown by settlers in antiquities sites, the Palestinian landowner's objection to the development of an antiquities site at the Biyar Aqueduct is a very important test case in the struggle against the trend of exploiting antiquities in a bid to take over land.



# Glossary



**Jordanian Antiquities Law (1966)** - The law that regulates management of archaeological excavations in the West Bank. The Jordanian Antiquities Law originates in the Mandate Antiquities ordinance. Following the conquering of the West Bank in 1967 and in accordance with international law, the status of the Jordanian Antiquities Law was established as the law that defines methods for the protection of antiquities sites in the West Bank. In 1986 several amendments were made to the law.



**The Military Law (also known as 'Military Security Legislation', 1967)** - In 1967, after Israel subjected the West Bank to a military government and in accordance with international law, it was determined that Israeli law would not be applied in the West Bank region (except for East Jerusalem, which was annexed by Israel without international consent) and that the Jordanian Law, which applied to the region until then, would be upheld. To this day, the West Bank operates according to the Kingdom of Jordan legal system as of 6.5.1967. Over the years, thousands of decrees have been added by the military commander (General Officer Commanding). A small portion of these decrees are accessible on the IDF MAG Corps website.



**Staff Officer for Archaeology (1967)** - After the West Bank was conquered in 1967, it was determined that the military commander of the region (General Officer Commanding) would be the alternative governing body in the region until the temporary occupation period would come to an end. The Civil Administration was established in 1981 as the representative entity of the military commander, and is responsible for enforcing Israeli policy in the West Bank as well as for handling daily civil issues concerning planning, construction and infrastructure. The SOA (Staff Officer for Archaeology) serves as a branch of the Civil Administration, and is responsible for antiquities sites in the West Bank. In this context, the Staff Officer for Archaeology oversees development projects where antiquities are at stake, by issuing licenses for excavation as well as overseeing their management and the publication of their results.

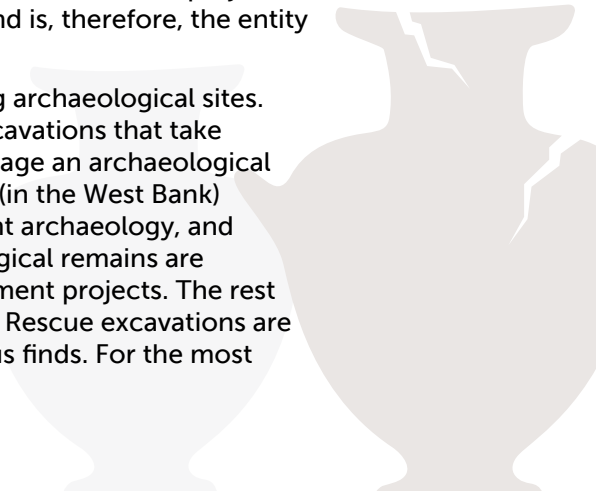
## Archaeological Terms

**Antiquity** - any mobile or immobile object, any structure or part of a structure or any built up area, defined by the Jordanian Antiquities Law as part of the material culture of an ancient people. The date in which the antiquity was created is the criterion that determines it as such: any object, structure or built up space created prior to the year 1700, is defined as an antiquity and is qualified to be protected from construction and development activities which are likely to damage it.

**Archaeological Survey** - the most common method for locating antiquities. The survey includes a search for archaeological remains that indicate the existence of an archaeological site within the boundaries of a given area. For the most part, the findings include pottery, walls protruding from the ground or other architectural objects. A license from the Staff Officer for Archaeology is required to conduct an archaeological survey (in Israel a license must be issued on behalf of the Israeli Antiquities Authority). Remember, the archaeological survey license is not a license to conduct an excavation, but is strictly for the purpose of conducting a survey of the area.

**Preliminary Archaeological Tests** - Plans to develop an area or an archaeological site are subject to a number of preliminary tests to investigate the scope of the archaeological remains found there. These tests are funded by the developer who initiated the development and construction projects. In most cases, the developer in the West Bank is the Civil Administration and is, therefore, the entity that funds any preliminary archaeological activities.

**Archaeological Excavation** – Works aimed at unearthing and documenting archaeological sites. Most archaeological excavations are conducted as rescue excavations: excavations that take place in the event of an intended development project that is likely to damage an archaeological site. Rescue excavations are overseen by the Staff Officer for Archaeology (in the West Bank) or by the Israel Antiquities Authority (in Israel). The West Bank has abundant archaeology, and according to an evaluation by the Staff Officer for Archaeology, archaeological remains are unearthed and require rescue excavations for 70% of the region's development projects. The rest of the archaeological excavations are conducted by academic institutions. Rescue excavations are distinguished by their objective of documenting a site and salvaging various finds. For the most part, the structures are destroyed at the end of the excavation.





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